

July 25, 2014

John Gross
Chief Financial Officer
Township of West Orange
66 Main Street
West Orange NJ 07052

**Re: U.S. Securities and Exchange Commission's Municipalities
Continuing Disclosure Cooperation Initiative**

Dear John:

Please find attached a resolution for consideration by your governing body at its next regularly scheduled meeting in furtherance of the recommendations contained in the MCDC Initiative (as hereinafter defined) of the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") and in Local Finance Notice 2014-9, dated July 23, 2014 (the "LFB Notice"), of the Local Finance Board, Division of Local Government Services of the Department of Community Affairs of the State of New Jersey (the "LFB").

The Township of West Orange (the "Municipality") has entered into continuing disclosure agreement(s) in connection with certain of its prior bond and/or note issuance(s) (the "Prior Issuances"), agreeing to file certain financial information and operating data and/or certain enumerated event notices with the former nationally recognized municipal securities information repositories or the Municipal Securities Rulemaking Board (the "MSRB") pursuant to the provisions of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "Rule"). In response to widespread concerns that many municipal issuers have not been complying with their obligations to file continuing disclosure documents under the Rule and have made false representations concerning compliance in bond and note offering documents, the Division of the Commission has set forth its Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), whereby the Commission will recommend favorable settlement terms (as outlined in the MCDC Initiative) to municipal issuers involved in the offer or sale of municipal securities, as well as underwriters of such offerings, if they self-report to the Division possible violations involving materially inaccurate statements in bond and note offering documents relating to prior compliance with continuing disclosure obligations pursuant to the Rule. Moreover, pursuant to the LFB Notice, the Director of the LFB has recommended the undertaking of a continuing disclosure review of its prior continuing disclosure undertakings (the "Review") by all municipal issuers and participation in the MCDC Initiative, where appropriate, as determined by the facts of each Review.

The attached resolution will authorize you or a third-party disclosure-dissemination agent to undertake such a Review, which shall include, but will not be limited to, a historical review of the Municipality's continuing disclosure obligations and filings in connection with its Prior Issuances that are presently outstanding and which are no longer outstanding but, as of the date five years prior to the date of submission of the Municipalities Continuing Disclosure Cooperation Initiative Questionnaire for Self-Reporting Entities contained in the MCDC Initiative (the "Questionnaire"), were outstanding; and the undertaking, at any time, of any applicable remedial filings with the MSRB deemed necessary for compliance with its continuing disclosure obligations.

The attached resolution further authorizes your participation in the MCDC Initiative should the results of your Review reveal that the Municipality may have made materially inaccurate statements in its bond and note offering documents relating to prior compliance with continuing disclosure obligations pursuant to the Rule in connection with its Prior Issuances issued during the period beginning five years prior to the date of submission of the Questionnaire. **Please note that the deadline for the submission of the Questionnaire to the Division, and thereby your participation in the MCDC Initiative, is 12:00 AM EST on September 10, 2014.**

I will contact you shortly to discuss any questions and/or concerns you may have about the enclosed resolution, MCDC Initiative, or LFB Notice.

Very truly yours,



John D. Draikiwicz, Esq.

JDD/cc

Enclosures

RESOLUTION OF THE TOWNSHIP OF WEST ORANGE
DIRECTING THE UNDERTAKING OF A CONTINUING
DISCLOSURE REVIEW AND AUTHORIZING PARTICIPATION IN
THE MUNICIPALITIES CONTINUING DISCLOSURE
COOPERATION INITIATIVE OF THE DIVISION OF
ENFORCEMENT OF THE U.S. SECURITIES AND EXCHANGE
COMMISSION

WHEREAS, the Township of West Orange (the "Governmental Entity") has entered into continuing disclosure agreement(s) in connection with certain of its prior bond and/or note issuance(s) (the "Prior Issuances"), agreeing to file certain financial information and operating data and/or certain enumerated event notices with the former nationally recognized municipal securities information repositories or the Municipal Securities Rulemaking Board (the "MSRB") pursuant to the provisions of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "Rule"); and

WHEREAS, the Governmental Entity has made certain representations regarding its continuing disclosures in bond and note offering documents in connection with its Prior Issuances; and

WHEREAS, in response to widespread concerns that many municipal issuers have not been complying with their obligations to file continuing disclosure documents under the Rule, and furthermore have made false representations concerning compliance in bond and note offering documents, the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") has set forth its Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"), attached hereto as Exhibit A, whereby the Commission will recommend favorable settlement terms to municipal issuers involved in the offer or sale of municipal securities, as well as underwriters of such offerings, if they self-report to the Division possible violations involving materially inaccurate statements in bond and note offering documents relating to prior compliance with continuing disclosure obligations pursuant to the Rule; and

WHEREAS, pursuant the Local Finance Notice 2014-9, attached hereto as Exhibit B, the Director of the Local Finance Board, Division of Local Government Services of the Department of Community Affairs of the State of New Jersey, has recommended the undertaking of a Review (as hereinafter defined) by all municipal issuers and participation in the MCDC Initiative, where appropriate, as determined by the facts of each Review (the "LFB Recommendation");

NOW, THEREFORE, IN CONNECTION WITH THE LFB RECOMMENDATION, BE IT RESOLVED BY THE GOVERNMENTAL ENTITY, as follows:

Section 1. The Governmental Entity, through its Chief Financial Officer or through the engagement of a third-party disclosure-dissemination agent, is hereby directed to conduct a continuing disclosure review of its prior continuing disclosure undertakings (the "Review"), and

the Governmental Entity hereby ratifies any such previously conducted Review. Such Review shall include, but is not limited to, a historical review of the Governmental Entity's continuing disclosure obligations and filings in connection with its Prior Issuances that are presently outstanding and which are no longer outstanding but, as of the date five years prior to the date of submission of the Questionnaire (as hereinafter defined), were outstanding; and the undertaking, at any time, of any applicable remedial filings with the MSRB deemed necessary for compliance with its continuing disclosure obligations.

Section 2. The Governmental Entity, through its Chief Financial Officer, is hereby authorized to participate in the MCDC Initiative, if in the discretion of the Chief Financial Officer after consultation with Governmental Entity officials, it is determined that the Governmental Entity may have made materially inaccurate statements in its bond and note offering documents relating to prior compliance with continuing disclosure obligations pursuant to the Rule in connection with its Prior Issuances issued during the period beginning five years prior to the date of submission of the Questionnaire.

Section 3. The Chief Financial Officer of the Governmental Entity is hereby authorized to execute and deliver any and all documents and instruments, including the Municipalities Continuing Disclosure Cooperation Initiative Questionnaire for Self-Reporting Entities contained in the MCDC Initiative (the "Questionnaire"), and to do and cause to be done any and all acts and things necessary or proper for participating in the MCDC Initiative and all related transactions, including the Review, contemplated by this resolution.

Section 4. All resolutions or proceedings, or parts thereof, in conflict with the provisions of this resolution are to the extent of such conflict hereby repealed.

Section 5. This resolution shall become effective in accordance with applicable law.

RECORDED VOTE:

AYE

NO

ABSTAIN

ABSENT

EXHIBIT A

EXHIBIT B

EXHIBIT A



U.S. Securities and
Exchange Commission



Municipalities Continuing Disclosure Cooperation Initiative

Division of Enforcement

U.S. Securities and Exchange Commission

I. Introduction

The Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative") is intended to address potentially widespread violations of the federal securities laws by municipal issuers and underwriters of municipal securities in connection with certain representations about continuing disclosures in bond offering documents.

As described below, under the MCDC Initiative, the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") will recommend favorable settlement terms to issuers and obligated persons involved in the offer or sale of municipal securities (collectively, "issuers") as well as underwriters of such offerings if they self-report to the Division possible violations involving materially inaccurate statements relating to prior compliance with the continuing disclosure obligations specified in Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Exchange Act").¹

II. Background

Rule 15c2-12 generally prohibits any underwriter from purchasing or selling municipal securities unless the issuer has committed to providing continuing disclosure regarding the security and issuer, including information about its financial condition and operating data.² Rule 15c2-12 also generally requires that any final official statement prepared in connection with a primary offering of municipal securities contain a description of any instances in the previous five years in which the issuer failed to comply, in all material respects, with any previous commitment to provide such continuing disclosure.

The Commission may file enforcement actions under either Section 17(a) of the Securities Act of 1933 (the "Securities Act"), and/or Section 10(b) of the Exchange Act against issuers for inaccurately stating in final official statements that they have substantially complied with their prior continuing disclosure obligations. In such instances, underwriters for these bond offerings may also have violated the anti-fraud provisions to the extent they failed to exercise adequate due diligence in determining whether issuers have complied with such obligations, and as a result, failed to form a reasonable basis for believing the truthfulness of a key representation in the issuer's official statement. For instance, on July 29, 2013, the Commission charged a school district in Indiana and its underwriter with falsely stating to bond investors that the school district had been properly providing annual financial information and notices required as part of its prior bond offerings.³ Without admitting or denying the Commission's findings, the school district and underwriter each consented to, among other things, an order to cease and desist from committing or causing any violations of Section 10(b) of the Exchange Act and Rule 10b-5. The underwriter also agreed to pay disgorgement and prejudgment interest of \$279,446 as well as a penalty of \$300,000.

The Commission has in the past emphasized that the likelihood that an issuer will abide by its continuing disclosure obligations is critical to any evaluation of its covenants. An underwriter's obligation to have a reasonable basis to believe that the key representations in a final official statement are true and accurate extends to an issuer's representations concerning past compliance with disclosure obligations. Indeed, this provision of Rule 15c2-12 was specifically intended to serve as an incentive for issuers to comply with their undertakings to provide disclosures in the secondary market for municipal securities, and also assists underwriters and others in assessing the reliability of the issuer's disclosure representations. Moreover, the Commission has in the past stated that it believes that it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of an issuer's ongoing disclosure representations without the underwriter affirmatively inquiring as to that filing history, and the underwriter may not rely solely on a written certification from an issuer that it has provided all filings or notices.⁴

Based on available information, and as highlighted in the Commission's August 2012 Municipal Market Report, there is significant concern that many issuers have not been complying with their obligation to file continuing disclosure documents and that federal securities law violations involving false statements concerning such compliance may be widespread.

III. The MCDC Initiative

A. Who Should Consider Self-Reporting to the Division?

Issuers who may have made materially inaccurate statements in a final official statement regarding their prior compliance with their continuing obligations as described in Rule 15c2-12 should consider self-reporting to the Division to take advantage of the MCDC Initiative.

Underwriters of offerings in which the final official statement contains materially inaccurate statements regarding an issuer's prior compliance with continuing disclosure obligations should also consider self-reporting under the MCDC Initiative. Such underwriters may include the lead underwriter in an underwriting syndicate of such offerings or the sole underwriter in such offerings, and includes both competitive and negotiated underwritings.

Issuers or underwriters that have already been contacted by the Division as of the date of this announcement regarding possible inaccurate statements as to past compliance with continuing disclosure obligations, but against whom no enforcement action has yet been taken, may be eligible for the MCDC Initiative and should contact the Enforcement staff to discuss eligibility.

B. When and What Must Issuers and Underwriters Self Report?

To be eligible for the MCDC Initiative, an issuer or underwriter must self-report by accurately completing the attached questionnaire and submitting it within the six month period beginning March 10, 2014 and ending at 12:00 a.m. EST on September 10, 2014. Information required by the questionnaire includes:

- identification and contact information of the self-reporting entity;
- information regarding the municipal securities offerings containing the potentially inaccurate statements;
- identities of the lead underwriter, municipal advisor, bond counsel, underwriter's counsel and disclosure counsel, if any, and the primary contact person at each entity, for each such offering;
- any facts that the self-reporting entity would like to provide to assist the staff in understanding the circumstances that may have led to the potentially inaccurate statement(s); and
- a statement that the self-reporting entity intends to consent to the applicable settlement terms under the MCDC Initiative.

Submissions may be made by email to MCDCsubmissions@sec.gov, by fax to (301) 847-4713 or by mail to MCDC Initiative, U.S. Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, MA 02110.

C. Standardized Settlement Terms the Division Will Recommend

To the extent an entity meets the requirements of the MCDC Initiative and the Division decides to recommend enforcement action against the entity ("eligible issuer" or "eligible underwriter"), the Division will recommend that the Commission accept a settlement which includes the terms described below.⁵

1. Types of Proceedings and Nature of Charges

For eligible issuers, the Division will recommend that the Commission accept a settlement pursuant to which the issuer consents to the institution of a cease and desist proceeding under Section 8A of the Securities Act for violation(s) of Section 17(a)(2) of the Securities Act.⁶ The Division will recommend a settlement in which the issuer neither admits nor denies the findings of the Commission.

For eligible underwriters, the Division will recommend that the Commission accept a settlement pursuant to which the underwriter consents to the institution of a cease and desist proceeding under Section 8A of the Securities Act and administrative proceedings under Section 15(b) of the Exchange Act for violation(s) of Section 17(a)(2) of the Securities Act. The Division will recommend a settlement in which the underwriter neither admits nor denies the findings of the Commission.

2. Undertakings

For eligible issuers, the settlement to be recommended by the Division must include undertakings by the issuers. Specifically, as part of the settlement, the issuer must undertake to:

- establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the proceedings;
- comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings;
- cooperate with any subsequent investigation by the Division regarding the false statement(s), including the roles of individuals and/or other parties involved;
- disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- provide the Commission staff with a compliance certification regarding the applicable undertakings by the issuer on the one year anniversary of the date of institution of the proceedings.

For eligible underwriters, the settlement to be recommended by the Division must include undertakings by the underwriters. Specifically, as part of the settlement, the underwriter must undertake to:

- retain an independent consultant, not unacceptable to the Commission staff, to conduct a compliance review and, within 180 days of the institution of proceedings, provide recommendations to the underwriter regarding the underwriter's municipal underwriting due diligence process and procedures;
- within 90 days of the independent consultant's recommendations, take reasonable steps to enact such recommendations; provided that the underwriter make seek approval from the Commission staff to not adopt recommendations that the underwriter can demonstrate to be unduly burdensome;
- cooperate with any subsequent investigation by the Division regarding the false statement(s), including the roles of individuals and/or other parties involved; and

- provide the Commission staff with a compliance certifications regarding the applicable undertakings by the Underwriter on the one year anniversary of the date of institution of the proceedings.

3. Civil Penalties

For eligible issuers, the Division will recommend that the Commission accept a settlement in which there is no payment of any civil penalty by the issuer.

For eligible underwriters, the Division will recommend that the Commission accept a settlement in which the underwriter consents to an order requiring payment of a civil penalty as described below:

- For offerings of \$30 million or less, the underwriter will be required to pay a civil penalty of \$20,000 per offering containing a materially false statement;
- For offerings of more than \$30 million, the underwriter will be required to pay a civil penalty of \$60,000 per offering containing a materially false statement;
- However, no underwriter will be required to pay more than \$500,000 total in civil penalties under the MCDC Initiative.

D. No Assurances Offered with Respect to Individual Liability

The MCDC Initiative covers only eligible issuers and underwriters. The Division provides no assurance that individuals associated with those entities, such as municipal officials and employees of underwriting firms, will be offered similar terms if they have engaged in violations of the federal securities laws. The Division may recommend enforcement action against such individuals and may seek remedies beyond those available through the MCDC Initiative. Assessing whether to recommend enforcement action against an individual for violations of the federal securities laws necessarily involves a case-by-case assessment of specific facts and circumstances, including evidence regarding the level of intent and other factors such as cooperation by the individual.

E. No Assurances for Entities That Do Not Take Advantage of MCDC Initiative

For issuers and underwriters that would be eligible for the terms of the MCDC initiative but that do not self-report pursuant to the terms of the MCDC Initiative, the Division offers no assurances that it will recommend the above terms in any subsequent enforcement recommendation. As noted above, assessing whether to recommend enforcement action necessarily involves a case-by-case assessment of specific facts and circumstances, but entities are cautioned that enforcement actions outside of the MCDC initiative could result in the Division or the Commission seeking remedies beyond those described in the Initiative. For issuers, the Division will likely recommend and seek financial sanctions. For underwriters, the Division will likely recommend and seek financial sanctions in amounts greater than those available pursuant to the MCDC Initiative.

Questions regarding the MCDC Initiative may be directed to MCDCinquiries@sec.gov.

¹ Recommendations by the Division to the Commission are subject to approval by the Commission.

² The issuers' agreement to make such disclosures is memorialized in a written undertaking frequently called a Continuing Disclosure Agreement. The Continuing Disclosure Agreement requires that issuer to file annual financial information and notices of certain material events with the Electronic Municipal Market Access, or EMMA, an electronic information repository system maintained by the Municipal Securities Rulemaking Board (MSRB), which is accessible to all investors on the internet.

³ *In the Matter of West Clark Community Schools*, AP File No. 3-15391 (July 29, 2013); *In the Matter of City Securities Corporation and Randy G. Ruhl*, AP File No. 3-15390 (July 29, 2013).

⁴ See "Municipal Securities Disclosure," Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590, *supra* notes 50-54 (November 17, 1994). See also "Amendments to Municipal Securities Disclosure," Securities Exchange Act Release No. 34-62184A (May 26, 2010), 75 FR 331100, *supra* n. 348-362 (June 10, 2010).

⁵ The standardized settlement terms of the MCDC Initiative are only applicable to inaccurate statements concerning compliance with continuing disclosure obligations. The MCDC Initiative and the standardized settlement terms are not applicable to other material misstatements in final official statements or related communications or other misconduct. Any other potential misconduct is subject to investigation and separate enforcement action, if appropriate. If enforcement action is taken, entities may be subject to additional remedies for that misconduct, including additional financial sanctions.

⁶ Violations of Section 17(a)(2) require a finding of negligent conduct.

Modified: March 10, 2014



**U.S. SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT**

**MUNICIPALITIES CONTINUING DISCLOSURE COOPERATION INITIATIVE
QUESTIONNAIRE FOR SELF-REPORTING ENTITIES**

NOTE: The information being requested in this Questionnaire is subject to the Commission's routine uses. A list of those uses is contained in SEC Form 1662, which also contains other important information.

1. Please provide the official name of the entity that is self-reporting ("Self-Reporting Entity") pursuant to the MCDC Initiative along with contact information for the Self-Reporting Entity:

Individual Contact Name:
Individual Contact Title:
Individual Contact telephone:
Individual Contact Fax number:
Individual Contact email address:

Full Legal Name of Self-Reporting Entity:
Mailing Address (number and street):
Mailing Address (city):
Mailing Address (state): Select a state...
Mailing Address (zip):

2. Please identify the municipal bond offering(s) (including name of Issuer and/or Obligor, date of offering and CUSIP number) with Official Statements that may contain a materially inaccurate certification on compliance regarding prior continuing disclosure obligations (for each additional offering, attach an additional sheet or separate schedule):

State: Select a state...
Full Name of Issuing Entity:
Full Legal Name of Obligor (if any):
Full Name of Security Issue:
Initial Principal Amount of Bond Issuance:
Date of Offering:
Date of final Official Statement (format MMDDYYYY):
Nine Character CUSIP number of last maturity:

3. Please describe the role of the Self-Reporting Entity in connection with the municipal bond offerings identified in Item 2 above (select Issuer, Obligor or Underwriter):
- ☐ Issuer
 - ☐ Obligor
 - ☐ Underwriter
4. Please identify the lead underwriter, municipal advisor, bond counsel, underwriter's counsel and disclosure counsel, if any, and the primary contact person at each entity, for each offering identified in Item 2 above (attach additional sheets if necessary):
- Senior Managing Underwriting Firm:
Primary Individual Contact at Underwriter:
- Financial Advisor:
Primary Individual Contact at Financial Advisor:
- Bond Counsel Firm:
Primary Individual Contact at Bond Counsel:
- Law Firm Serving as Underwriter's Counsel:
Primary Individual Contact at Underwriter's Counsel:
- Law Firm Serving as Disclosure Counsel:
Primary Individual Contact at Disclosure Counsel:
5. Please include any facts that the Self-Reporting Entity would like to provide to assist the staff of the Division of Enforcement in understanding the circumstances that may have led to the potentially inaccurate statements (attach additional sheets if necessary):

On behalf of [Name of Self-Reporting Entity]
I hereby certify that the Self-Reporting Entity intends to consent to the applicable
settlement terms under the MCDC Initiative.

By: _____

Name of Duly Authorized Signer:

Title:

EXHIBIT B

LFN 2014-9

July 23, 2014

Local Finance Notice

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Richard E. Constable, III
Commissioner

Thomas H. Neff
Director

Contact Information

Director's Office
V. 609.292.6613
F. 609.292.9073

Local Government Research
V. 609.292.6110
F. 609.292.9073

**Financial Regulation
and Assistance**
V. 609.292.4806
F. 609.984.7388

Local Finance Board
V. 609.292.0479
F. 609.633.6243

Local Management Services
V. 609.292.7842
F. 609.633.6243

Authority Regulation
V. 609.984.0132
F. 609.984.7388

Mail and Delivery
101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

Web:
www.nj.gov/divisions/dca/dlgs
E-mail: dlgs@dca.state.nj.us

Distribution

Chief Financial Officers
Municipal Clerks
Finance Board Clerks
Authority Clerks
Additions

Secondary Bond Market Continuing Disclosure Commitments

This Notice is intended to give fair warning to local government officials, including Certified Municipal Finance Officers and comparable staff of authorities and other local governments, that there will be consequences for failing to have identified past noncompliance (where applicable) with continuing financial disclosure requirements related to outstanding bonds and other securities and determining by September 10, 2014 whether to take advantage of a compliance initiative offered by the Securities Exchange Commission's (SEC). While this notice is important for all local governments that have outstanding bonds, bond anticipation notes, and other securities, it is critically important where local governments anticipate a need to access financial markets in the near future - as with the need to "roll over" Bond Anticipation Notes or to issue bonds.

Continuing disclosure requirements are indirectly required pursuant to federal law. The CFO, or another local official, was generally required in one or more documents authorizing the issuance of debt (commonly called "Continuing Disclosure Agreements") to annually, or more frequently, publicly disclose certain information. Consequences of failing to live up to requirements will likely include future difficulty accessing credit markets. Consequences could include, among other things: (1) enforcement actions being brought by the SEC that will result in more severe penalties otherwise available pursuant to "the SEC's "Municipalities Continuing Disclosure Cooperation Initiative" (see below for discussion); (2) denial or deferral of applications made to the Local Finance Board or Director of the Division for various approvals; (3) actions against State licensures in the event of fraudulent attestations of compliance; and/or (4) decreased scores on future "Best Practices Questionnaires" (which will contain questions as to past compliance) that could trigger a withholding of a portion of State Aid.

It is important that you read this notice in its entirety and consult your public finance professionals so you understand your continuing disclosure obligations and what must be done to achieve compliance.

Local government access to capital is critical for advancing needed local infrastructure projects and meeting local cash flow needs. As a condition of providing access to capital in the form of debt, the financial community - at the time of buying debt and while debt remains outstanding - expects to be kept abreast of key financial information that could impact the value of securities in the secondary market. Legally, local governments have an obligation to provide certain information. They are obligated under federal law to issue certain information at the time of issuing new debt, and they are frequently contractually obligated to continue providing certain information while their debt remains outstanding.

Recently, the SEC and the financial community have focused attention on what is alleged to be a widespread failure of local government issuers across the nation to meet their continuing disclosure obligations. They maintain that local government issuers of debt frequently fail to meet their continuing disclosure obligations and misrepresent (sometimes innocently or inadvertently and other times fraudulently) their past compliance when issuing new debt.

Earlier this year, the SEC adopted a program to encourage local government issuers to self-identify past noncompliance and improve timely continuing disclosure in the future. Their program, known as the "Municipalities Continuing Disclosure Cooperation Initiative" essentially establishes lesser enforcement actions provided local government issuers (and others) self-identify past noncompliance and agree to a plan designed to prevent future noncompliance. You can read more about this program by visiting: <http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml>). It is strongly recommended that local government officials proactively take steps to self-identify their own levels of compliance with Continuing Disclosure Agreements if they have outstanding debt and consult their public finance officials during this process to, among other things, determine if it is advisable to participate in the SEC's program.

The private marketplace is also taking steps to improve disclosure by more closely reviewing past compliance and, as appropriate, refraining from underwriting or buying new debt unless compliance has been achieved. It is critically important that local governments anticipating a need to access financial markets conduct a self-assessment of past continuing disclosure compliance and correct deficiencies. Failure to do so could bar, or delay, access to capital markets.

As part of your self-assessment, it is recommended that you first identify your continuing disclosure contractual obligations with respect to past issuances of debt while it remained (or remains) outstanding. These obligations generally include filing audits, budgets, and certain operating data with various depositories.

Continuing Disclosure Agreements generally specify what information must be filed and where it must be filed. It is critically important that each local government understand the commitments it has made and live up to them. However, the Division recommends, as a best practice, that local governments with continuing disclosure requirements file the following information through the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access (EMMA) website (www.emma.msrb.org) in addition to any information they had previously agreed to provide:

- a) As soon as available: The issuer's Annual Financial Statement -- or a variation thereof where an Annual Financial Statement is not statutorily required; and
- b) As soon as available: The Issuer's Audited Financial Statements; and
- c) As soon as available: The Issuer's adopted budgets; and
- d) Within 180 days of the end of the fiscal year: Annual Operating Data, consisting of:
 - (i) Debt Statistics
 - (ii) Property Tax Information and tax statistics where the issuer relies on property tax collections as a major source of revenue;
 - Net Assessed Valuation
 - Real Property Classifications
 - Ratio of Assessed Valuation to True Value
 - Percentage of Collection
 - Delinquent Tax and Tax Title Lien Information
 - Property Acquired By Tax Title Lien Liquidation
 - Tax Rates
 - Tax Levies
 - Largest Taxpayers
 - (iii) Other major revenue data and statistics where the issuer relies on revenues other than property tax collections;
 - Sewer and water billings;
 - Parking rents and collections;
 - Etc.
 - (iv) Capital Budget
 - (v) New Construction Permits
- e) Within 10 business days of the occurrence of any material events consisting of the following:
 - (i) Principal and interest payment delinquencies;
 - (ii) Non-payment related defaults, if material;
 - (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
 - (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
 - (v) Substitution of credit or liquidity providers, or their failure to perform;
 - (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
 - (vii) Modifications to rights of security holders, if material;
 - (viii) Bond calls, if material, and tender offers;
 - (ix) Defeasances;
 - (x) Release, substitution, or sale of property securing repayment of the Securities, if material;
 - (xi) Rating changes;

- (xii) Bankruptcy, insolvency, receivership or similar event of the obligated person;
 - (xiii) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
 - (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- f) Any and all additional or other information or documents required by the specific continuing disclosure obligations of such Issuer, for any particular series of Securities outstanding.

You should also ensure that past official statements -- or similar documents issued with respect to new issuances of debt -- have accurately reported your past compliance with continuing disclosure requirements.

While not required, the Chief Financial Officer is encouraged to seek the assistance of an experienced professional to assist or undertake such self-assessment.

As a final matter, the Division will be drafting a proposed Local Finance Notice -- or other appropriate action -- to require: (1) CFOs to attest as part of budget submissions to the Division that appropriate steps are being taken to ensure compliance with continuing disclosure requirements; and (2) auditors to treat non-compliance with continuing disclosure requirements as an instance of non-compliance with prevailing laws, statutes, regulations, contracts and agreements that is required to be reported under *Government Auditing Standards*.

Approved: Thomas H. Neff, Director