

# UPDATE

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## Part VI: “The Importance of Projections in Matters Related to Pension and Employee Benefit Liabilities”

“Securities Disclosure: What Lessons Can We Learn from the Securities and  
Exchange Commission's Proceedings versus the City of San Diego, California?”

BY MARK H. VACHA, ESQ.

This installment is Part VI in a seven-part series about the Securities and Exchange Commission's (the “Commission”) proceedings versus the City of San Diego, California (the “City”) as set forth in the November 14, 2006 Release No. 8751 (the “Release”). The Release relates to the settlement between the Commission and the City pursuant to which the City consented to the entry of a cease-and-desist order relating to the City's offer and sale of over \$260 million in municipal bonds in 2002 and 2003. For more factual background on these proceedings and an overview, please see Part I of this series which is available on the Dilworth Paxson LLP website at [www.dilworthlaw.com](http://www.dilworthlaw.com). This article addresses potential insights from the Release regarding measurements related to pension and employee benefit liabilities. Although the Release dealt with a general purpose governmental issuer, the points made by the Commission can also be instructive for the board of a conduit borrower in a transaction such as a tax-exempt qualified 501(c)(3) bond financing (e.g. the board of directors or trustees of a university or a hospital).

### Importance of Projections

In the Release, the Commission criticized the adequacy of the City's disclosures given the City's knowledge as of February 2003 (and prior to all of its 2003 municipal securities offerings) of a projected tenfold growth in the City's net pension obligations from fiscal year 2002 to fiscal year 2009 and of a projected sevenfold growth in the City's unfunded liability over the same period which the Commission characterized as “dramatic”. The Commission in making these criticisms did not address any of the concerns that market participants often have regarding forward looking statements and projections. Nor did the Commission address any of the related qualifications and cautionary statements typically presented to a reader in connection with projections. The Commission clearly considered such projections in the context of pensions and retiree health care benefits with respect to the City to be material and necessary to be disclosed. It should be noted that these projections were developed by professional actuaries.

**A LOOK AHEAD...** The remaining installment in this series is:

**Part VII: “Remedial Efforts and Undertakings as a Source of Best Practices” (with conclusion).**



Mr. Vacha is a member of Dilworth Paxson's Corporate Department and its Public Finance and Securities Groups. He has advised issuers, and national and regional investment banking firms in municipal capital markets transactions. He has handled securitization/ structured finance, initial public debt offerings, tax credit financings, bond pools, and tax district financings as well as traditional municipal bond transactions in the general governmental and 501(c)(3) contexts.

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