

DILWORTH UPDATE

From the Securities Group

January 2008

MEMBERS OF THE SECURITIES GROUP

Graham R. Laub, Chair
glaub@dilworthlaw.com

Christie Callahan Comerford
ccomerford@dilworthlaw.com

Samuel T. Cooper, III
scooper@dilworthlaw.com

Maura Fay McIlvain
mfay@dilworthlaw.com

Marc A. Feller
mfeller@dilworthlaw.com

Joseph H. Jacovini
jjacovini@dilworthlaw.com

Richard S. Kraut
rkraut@dilworthlaw.com

David M. Laigaie
dlaigaie@dilworthlaw.com

Lawrence G. McMichael
lmcmichael@dilworthlaw.com

Fenita L. Moore
fmoore@dilworthlaw.com

Ross J. Reese
rreese@dilworthlaw.com

James J. Rodgers
jrodgers@dilworthlaw.com

Brody C. Stevens
bstevens@dilworthlaw.com

Michael J. Tierney
mtierney@dilworthlaw.com

Mark H. Vacha
mvacha@dilworthlaw.com

Roger F. Wood
rwood@dilworthlaw.com

This *Update* is published by Dilworth Paxson LLP. It is provided solely for informational purposes. This is *not* legal advice.

3200 Mellon Bank Center
1735 Market Street
Philadelphia, PA 19103
P: 215.575.7000
F: 215.575.7200
© Dilworth Paxson LLP

PART III: THE IMPORTANCE OF THE ISSUER'S GOVERNING BODY (BOARD OR COUNCIL)

"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 III 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. This article addresses potential insights from the Release regarding the importance placed upon a municipal bond issuer's governing body. Although the Release dealt with a general purpose governmental issuer whose governing body was a city council, 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).

The Importance of the Issuer's Governing Body (Board or Council)

Although the Release addresses the role of various outside consultants such as attorneys, auditors and underwriters as well as various officials in the management of the City, the Release in many instances emphasizes the role of the elected officials—the members of Council including the Mayor. The Release stated that "The Mayor and Council were responsible for approving the issuance of the bonds and notes, including issuance of the preliminary official statements and official statements." The Release noted that certain information presented to Council put the City on notice about the pension and retiree health benefits situation. This discussion about elected officials should be considered in the context of remarks of SEC officials that the official statement disclosures should be read by officials at the governing body level which may also be in reaction to the Commission's experience in recent years with the disclosure issues surrounding the City of Miami, Florida. One lesson that may be taken from the Commission is that although *making negative disclosures*

making negative disclosures in an official statement or other offering document may be unpleasant politically or otherwise, it may amount to an insurance policy for issuer officials. Another potential lesson is that a governing body can not simply delegate disclosure responsibilities to management and outside professionals without any further participation or oversight.

A Look Ahead

The remaining four installments in this series are:

Part IV:

The Relevance of Rating Agencies

Part V:

Key Measurements Related to Pension and Employee Benefit Liabilities and the Importance of the Government Accounting Standards Board

Part VI:

The Importance of Projections in Matters Related to Pension and Employee Benefit Liabilities

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, 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.

He may be reached at 215.575.7257 or via email at mvacha@dilworthlaw.com.