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Memo

DATE:	March 2, 2018	FROM:	Matthew R. Gillaspie Managing Director
TO:	Board of Directors Superintendent Business Manager NEW HAMPTON CSD	RE:	Official Statement for the G.O. School Bonds, Series 2018

This letter is being sent to make you aware of your duties respecting the review and approval of these documents in the context of federal law and recent events. A recent enforcement action by the Securities Exchange Commission (SEC) against a municipal issuer of bonds reinforced the belief of many market participants that the SEC will take more aggressive actions in the future to hold municipal issuers accountable for the content of their Preliminary and final Official Statements. Current law gives the SEC direct enforcement powers against issuers of securities and issuer officials. [1]

We encourage you to be fully aware of your responsibilities under federal securities laws, to have a clear understanding of who is representing you in these matters, and to consult with legal counsel where appropriate. *This letter is for general informational purposes only, does not purport to be complete and does not constitute transactional or legal advice, particularly with respect to any specific matter, and should not be acted upon without first consulting with expert legal counsel.*

The antifraud provisions of the federal securities laws apply to statements made by issuers, whether made in a Preliminary Official Statement, a final Official Statement, (collectively, "Offering Documents") on a website or in a rating agency presentation (if reasonably expected to reach investors) or if made by issuers in connection with secondary market information required to be disseminated under relevant contracts. Under Rule 10b-5 (adopted pursuant to Section 10(b) of the Securities Exchange Act of 1934), it is unlawful for any person, in connection with the disclosures made above, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Both the SEC and private parties can bring actions against you as an issuer for material misstatements or omissions in your Offering Documents depending on the circumstances, regardless of whether a professional was engaged in some capacity in assisting you. In some causes of action, the standard for liability may be as low as ordinary negligence.

Please take steps to be confident that at the time of dissemination to the investing public, the disclosures made in the offering documents are accurate, complete and not misleading. These steps could include the adoption of formal written procedures to ensure the appropriate review and sign off of the offering documents by all relevant people at the issuer and appropriate disclosure training for people responsible for preparation and review of documents.

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1 The SEC also recently fined several former issuer officials of the City of San Diego from $5,000 to $25,000, charging that they were negligent in misleading investors in their disclosure documents. This is the first time issuer officials have had to pay penalties in connection with an SEC action.

U.S. Securities Exchange Commission Cease and Desist Order Against the State of New Jersey (the "Order")[2]

In the Order, the SEC asserts that during the period 8/2001 through 4/2007, the State was negligent in the preparation of disclosure documents which resulted in material misrepresentations and omissions regarding the funding and financial condition of its two largest pension plans. The SEC believed the documents contained a number of material misrepresentations and omissions that created the fiscal illusion that the Pension Plans were being adequately funded and masked the fact that the State was unable to make contributions to the Pension Plans without raising taxes or cutting other services, or otherwise impacting the budget. This is the first time that the SEC has ever charged a state with violations of the federal securities laws for disclosure deficiencies, and this case makes it clear that the SEC has the power to and will take actions to enforce federal securities laws in this area.

The SEC also asserted that the State did not have adequate disclosure procedures and training programs in place that may have prevented misrepresentations and omissions in the State's bond offering documents and that while the State had disclosed various developments regarding the Pension Plans, it did not explain the larger impact of those developments on the State's financial and budgetary condition.

LESSONS

The Order offers a number of lessons for state and municipal issuers, such as:

- It would be prudent for state and municipal issuers to develop written disclosure procedures and to institute training programs for their employees involved in any element of the disclosure process. Your legal professionals can provide you with examples of policies that may both assure complete disclosure and avoid SEC allegations of improper procedures.

- State and municipal issuers need to consider, when preparing their disclosure regarding pension obligations or any other matters affecting their finances, whether they have adequately explained the significance of the matters discussed to the overall financial condition of the issuer. Much of the SEC's criticism of the State's substantive disclosure relates to inadequacies the SEC thought existed in effectively explaining how the State's funding of the Pension Plans ultimately impacted or was impacted by the State's larger financial condition.

- State and municipal issuers may also need to evaluate how their governing bodies articulate policy decisions and whether the issuers need to re-articulate those decisions when describing them in bond offering documents to ensure that investors understand their full financial impact– potentially a very difficult task both practically and politically. Much of the SEC's criticism of the State's substantive disclosure relates to the presentation of the State's policy decisions in its bond offering documents. As the State made policy decisions regarding its Pension Plans, the SEC asserted that the State did not clearly explain to investors in its disclosure documents the financial impact of those policy decisions.

- Recall that the SEC has repeatedly stated that bond offering documents (Preliminary Official Statements and final Official Statements) are documents of the issuer, by the issuer, describing the bonds being sold, and it is the issuer's responsibility to ensure their adequacy, accuracy and completeness.

- While other parties such as the financial advisor, bond counsel and the underwriter, may in some circumstances have duties to inquire as to the reasonableness of statements made in offering documents, under the federal securities laws and the views of the SEC, issuers have primary liability for the content.

2 For a description of the case by one law firm, go to: http://www.nixonpeabody.com/publications_detail3.asp?ID=3463

ROLES AND RESPONSIBILITIES OF VARIOUS PARTIES TO A TRANSACTION

The Order provides a good opportunity to reflect on current municipal transactional and disclosure practices and consider whether changes would be prudent.

Traditional participants to a bond underwriting and their roles and responsibilities are as follows:

- Bond counsel generally issues a legal opinion regarding the validity and tax status of the bonds, prepares necessary resolutions for action by the issuer's board, and performs other tasks as specifically negotiated with the issuer. However, bond counsel typically does not act as counsel to the issuer for disclosure or any matters other than the validity and tax status. Unless an issuer specifically negotiates this service, most bond counsel firms specifically disclaim any responsibility for the content of the official statement and accordingly are not acting on behalf of issuers in advising on federal securities laws disclosure obligations. As a result, issuers frequently are left on their own regarding these obligations.

- A financial advisor generally provides guidance regarding issue structure, implications on budget and cash flow, timing for project needs, and evaluates the sale of the bonds.

- An underwriter buys the bonds from the issuer and may also provide information respecting the structure, timing and terms of the issue.

In Iowa, the financial advisor or the underwriter may assist the issuer in drafting the official statement, with guidance, input and final approval of the issuer. Many financial advisors and underwriters practicing in Iowa require indemnity from issuer clients to reinforce the relative duties of each party, i.e., that the content of the official statement, if ever alleged to be inaccurate, incomplete or misleading, is the responsibility of the issuer. As you can see, none of the above three parties are generally acting on behalf of the issuer with respect to the issuer's disclosure responsibilities, barring an explicit agreement to this effect, which could leave the issuer unrepresented and vulnerable to the types of allegations outlined by the SEC in the Order.

OUR SUGGESTION

We believe that the use by issuers of disclosure counsel may be prudent in light of the Order and to ensure that issuers are meeting their disclosure obligations. Disclosure counsel to the issuer could be bond counsel (more than likely, for an additional fee) or a third party counsel. Disclosure Counsel will review the documents, undertake a due diligence process with the issuer, guide the issuer regarding the content and appropriateness of statements, and issue a letter to the issuer and the underwriter to the effect that the official statement is not believed to be deficient. In addition, it might make sense for disclosure counsel to play a more global role of counsel to the issuer, reviewing all related contracts, engagement letters and other matters.

I hope you find this information helpful. Please contact me with any questions.