



Legislation Text

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Original

THE CHAIR

Resolution authorizing the City to self-report under the Securities and Exchange Commission's Municipal Continuing Disclosure Cooperation Initiative.

This resolution authorizes the filing of a self-report pursuant to the Securities and Exchange Commission's (SEC) Municipalities Continuing Disclosure Cooperation (MCDC) Initiative.

In the 'SECs August 2012 Municipal Market Report

<<http://www.sec.gov/news/studies/2012/munireport073112.pdf>>, the SEC is significantly concerned that many municipal 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.

While the Comptroller does not believe the City has any material disclosure violations, the SEC has not issued any guidance on what is "material". The SEC could assert that the City's minor compliance foot faults constitute violations of securities laws.

Pursuant to the Initiative, issuers, such as the City, are able to self-report instances in which securities offering documents for the prior five years may have omitted or misstated material facts concerning the issuer's past compliance with its responsibility to publicly disclose financial and other material information. Participating issuers have been given until December 1, 2014 to self-report. By participating, issuers may avail themselves of standardized settlement terms that are designed to be more lenient than what might be demanded by the SEC in an enforcement action into the same conduct.

An MCDC self-report of all instances during the past five years of the City's failure to adequately disclose the nature of its compliance or noncompliance with its continuing disclosure obligations would enable the Enforcement Division of the SEC to recommend that the SEC accept a "settlement" under which the City consents to the institution of a cease and desist proceeding under Section 8A of the Securities Act for violations of Section 17(a)(2) of the Securities Act in which the City neither admits nor denies the findings of the SEC and certain other settlement conditions.

Whereas, The City has, from time to time, issued debt in public sales, using an offering document that describes the transaction and the City's past compliance with its continuing disclosure obligations to provide regular updates of certain information and operating data, as well as certain enumerated events; and

Whereas, The City has not been able to fully comply with certain filing deadlines contained in its older

Continuing Disclosure Agreements (CDA), primarily due to the requirement that the filings be made prior to the time the audits are finalized; and

Whereas, The City's CDAs for more recent securities offerings provide additional time to produce the required material so the City is better positioned to fully comply with the CDA; and

Whereas, The SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative (the "Initiative") where issuers may self-report disclosure violations and receive a standardized settlement in which the issuer neither admits nor denies the finding of the SEC; and

Whereas, While only "material" disclosure failures are considered violations of federal securities laws, the SEC has not provided guidance on what constitutes materiality in this context; and

Whereas, While there is no monetary penalty to the issuer that self-reports under the Initiative, in addition to consenting to the institution of a cease and desist order, the issuer must also indicate its intent to comply with the settlement terms which include:

1. Establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the proceedings.
2. Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings.
3. Cooperate with any subsequent investigation by the Division regarding the false statements, including the roles of individuals and/or other parties involved.
4. 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.
5. 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; and

Whereas, The Comptroller believes that the City is in a position to comply with these settlement terms and such terms will not be unduly burdensome or costly; and

Whereas, The Comptroller, with the assistance of Bond Counsel, and review by the City Attorney, has prepared a proposed self-report: now, therefore be it

Resolved, By the Common Council of the City, that the Comptroller is authorized to file the attached MCDC Self-Report on behalf of the City, with such changes as may be recommended by the City Attorney and accepted by the Comptroller; and, be it

Further Resolved, That the City Attorney and Comptroller are authorized to enter into a settlement with the SEC in accordance with the Initiative

Comptroller

Comptroller
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