

January 14, 2015

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Securities Exchange Commission (SEC) Municipalities Continuing Disclosure Cooperation (MCDC) Initiative

Issue

At the November 2014 Board Meeting, a progress report was provided regarding potential filing of continuing disclosure reports pertaining to Regent-authorized USHE institution revenue bonds. The Board was informed of the remaining steps to be completed in this process:

- A legal review of the findings from the examination of reporting practices of USHE institutions, this review to provide advice relative to the need to "self-report" any findings under the MCDC Initiative.
- A determination of any policy or procedure steps necessary to enhance the importance placed on ongoing institutional reporting practices.
- A review of potential third party engagement as continuing disclosure reporting agents going forward.

Legal Review Findings

Subsequent to the November 2014 Board meeting, the OCHE engaged Ballard Spahr LLP to perform the legal review of the findings presented by Digital Assurance Certification LLC ("DAC") for the University of Utah and by Zions Bank for the other seven USHE institutions. On November 24, 2014 a conference call was held with Ballard Spahr to discuss their findings. Call participants included attorneys with Ballard Spahr, the State Assistant Attorney General assigned to the Board of Regents, and an OCHE staff member.

The discussion focused on the issue of whether any of the findings appeared to warrant self-reporting of failure to disclose material misrepresentation or omission of information required by continuing disclosure reporting. The consensus reached was that, while there were some failures in reporting, nothing appeared to rise to the level of "material," and the decision was reached that self-reporting, which had a deadline of December 1, 2014 was not required.

Ballard Spahr subsequently prepared a detailed memorandum of their findings. As stated in the memorandum, Ballard Spahr's analysis of the issues is based on their views of securities law standards set forth by the U.S. Supreme Court and does not constitute a legal opinion or a guarantee that the SEC will

take a similar view. It is, however, a substantial analysis of the issues based on well-established legal standards pertaining to “materiality” and Ballard Spahr’s experience in the arena of SEC enforcement of anti-fraud provisions of the law.

The memorandum (attached) provides detailed information - by institution - of the findings and can be summarized as follows:

- Late annual financial filings – There have been several instances of late filing of the required information. Prior to 2005, Continuing Disclosure report filings were submitted to Nationally Recognized Municipal Securities Information Repositories (“NRMSIRs”) by hard paper copy. They were then faxed to the Municipal Securities Rulemaking Board (“MSRB”). While still allowing hard paper copy filing, in 2005 a procedure was initiated to enable electronic filing, which became the accepted means of submitting the information.

On July 1, 2009, the MSRB required all continuing disclosure and material event notices to be submitted on Electronic Municipal Market Access (“EMMA”). The late filings from USHE institutions occurred during the pre-EMMA period. As noted in the Ballard Spahr memorandum, the SEC itself has noted the lack of accessibility of the former NRMSIR system makes it unlikely that a reasonable investor would rely on the system. It is also possible that the continuing disclosure information was filed on a timely basis and the NRMSIR(s) failed to timely post such information. Further, any noncompliance during this time period is relatively stale and not likely to be an issue.

- Failure to file certain required operating data and financial information – There are several instances in this arena. However, Ballard Spahr concluded that they probably were not “material” omissions and/or that the information was generally otherwise available.
- Failure to link financial information to CUSIP numbers (identification numbers assigned to all stocks and registered bonds) associated with the bonds – There were two instances in this area.
- Rating Changes – There were two failures to report rating changes pertaining to the institutions or to bond insurer downgrades.
- Underwriter Disclosure – One important consideration in the determination of whether self-reporting was advisable was information about which, if any, of the underwriters involved in issuance of the bonds had self-reported under this initiative. Because the underwriters are subject to more punitive punishment (including financial penalties) than issuers, whether they reported or not is considered to be an important barometer. Regarding the USHE bond issues covered by the MCDC Initiative, only one underwriter self-reported any items and it was relative to a 2008 filing of operating and financial information being 35 days late in one instance. Again, it is noteworthy that the penalty cap for the underwriter under the MCDC Initiative created an incentive for them to over-report, and the underwriter involved has not indicated that it performed a thorough materiality analysis for the transactions it self-reported.

Remaining Steps

With the “self-reporting” issue having been resolved, two items remain to be addressed:

- Policies and Procedures Regarding Continuing Disclosure Obligations – While none of the failures found in this review process was deemed to be material, it is noteworthy that if and when the SEC finds an issuer to be in noncompliance, one of the primary requirements is the establishment of policies and procedures and compliance training within 180 days of the proceedings. Accordingly, the OCHE will be working with institutional representatives to craft an umbrella policy for Board adoption that will serve as a guideline for the adoption of institutional policies.
- Third Party Continuing Disclosure Reporting – While none of the findings in our review was deemed to warrant continuing disclosure self-reporting, the fact that a number of reporting missteps were found suggests that steps might be taken to enhance future compliance. One way to accomplish this would be to engage third party “dissemination agents” to review and file continuing disclosure reports in the future. At present, three USHE intuitions have now entered into such agreements. Further exploration of this approach will be undertaken.

Commissioner’s Recommendation

This is an information item only; no action is necessary.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH
Attachment

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MEMORANDUM

TO State Board of Regents of the State of Utah (the “Board”)
FROM Ballard Spahr LLP
DATE December 19, 2014
RE Municipalities Continuing Disclosure Cooperation Initiative (“MCDC Initiative”)

Please find below a summary of the information we discussed related to the Securities and Exchange Commission’s (“SEC’s”) MCDC Initiative.

I. MCDC Initiative

The SEC announced its MCDC initiative on March 10, 2014. The purpose of the MCDC Initiative is to encourage municipal securities issuers, conduit borrowers, and underwriters to self-report possible securities law violations related to misrepresentations in offering documents concerning an issuer’s prior compliance with its continuing disclosure obligations. The MCDC Initiative extends only to this issue; no other disclosure or other conduct of an issuer, conduit borrower, or underwriter falls within this program.

In the event an issuer, conduit borrower, or underwriter participates in the Initiative, and the Staff of the SEC Enforcement Division determines the party is eligible, the SEC Staff will recommend to the Commission that it accept a settlement agreement by which the issuer, borrower, or underwriter consents to a cease-and-desist order pursuant to which the party will be permanently enjoined from violating the federal securities laws. The cease-and-desist order will reflect that the SEC has determined that the party violated Section 17(a)(2) of the Securities Act of 1933, and also will reflect that the party has neither admitted nor denied the factual findings of the SEC. For participating issuers and borrowers, the SEC staff will not recommend a financial penalty. The order, which will be filed in federal court, will be publicly available.

Participating parties also must agree to other settlement terms with the SEC, which will require the following of participating issuers or borrowers:

- Establish policies and procedures and compliance training regarding continuing disclosure obligations within 180 days of the institution of the proceedings;

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- Take all remedial actions necessary to bring past continuing disclosure failures into compliance 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 each official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- Provide SEC staff with a compliance certification on the one year anniversary of the date of institution of the proceedings.

Individuals are not covered by the MCDC Initiative and may be the subject of follow-on investigations.

The deadline to self-report was December 1, 2014. In contrast to the order that will result from participating in the MCDC Initiative, the SEC does not publicize the submission of a questionnaire.

II. Applicable Legal Standards

Among other things, if the SEC were to pursue an issuer for violating the federal securities laws, the SEC would be required to prove that the defendant made a material misrepresentation. What is material, and whether a statement or omission constitutes a misrepresentation, are viewed through well-established legal standards. A fact is material “if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.”¹ Omitted information is material if there is a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.”² Materiality presents courts with issues of both fact and law; whether materiality can be proved usually requires economic proof that the information at issue would have “significantly altered the total mix of information made available.”

A misrepresentation can be an affirmative statement that is incorrect. Whether the absence of information—an omission—can constitute a misrepresentation depends on whether the party making the omission had an affirmative obligation to come forward with information but did not.³ In other words, unless a party has a specific duty to make a statement, the fact that it did not cannot be considered an omission that is a misrepresentation.

Issuers are regulated by the SEC only through the SEC’s enforcement of anti-fraud provisions, and are not otherwise subject to SEC regulation. Underwriters, on the other hand, are regulated by the SEC. In the context of securities like those at issue here, Rule 15c2-12 imposes certain requirements on underwriters that they, in turn, are required to seek of issuers. Where underwriters fail to impose those requirements, including relating to disclosures, there is no other basis under applicable law that imposes those disclosure requirements.

¹ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

² *Id.*

³ *Chiarella v. United States*, 445 U.S. 222 (1980).

III. Continuing Disclosure Audit Results and Materiality

Zions Bancorporation (“Zions”) audited the Board’s continuing disclosure practices related to representations in public offerings documents for the past five years for Dixie State University, Salt Lake Community College, Snow College, Southern Utah University, Utah State University, Utah Valley University, and Weber State University transactions. Digital Assurance Certification LLC (“DAC”) audited the Board’s continuing disclosure practices related to representations in public offerings documents for the past five years for University of Utah transactions. Ballard Spahr LLP did not conduct an independent audit. Further, as the SEC has provided minimal analysis regarding the types of misrepresentations regarding past continuing disclosure compliance it considers material misrepresentations under federal securities law, the analysis contained herein is based on our views of securities law standards set forth by the U.S. Supreme Court and does not constitute a legal opinion or a guarantee that the SEC will take a similar view.

a. Dixie State University (“DSU”)

No DSU bonds were sold during the applicable MCDC time period.

b. Salt Lake Community College (“SLCC”)

The Zions report identifies one SLCC transaction falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statement for the Board SLCC Auxiliary System and Student Fee Revenue Refunding Bonds, Series 2010 (“2010 SLCC Official Statement”) states that:

Currently, the College, on behalf of the Board of Regents, submit continuing disclosure information regarding the Outstanding Parity Bonds, on or before December 27th of each year. Since 1998, the College has failed to provide certain required operating and financial information based on the College’s commitment for continuing disclosure information. The College has provided pledged revenues; debt service coverage; and debt structure of the College as a note in the financial statements to the annual audit report. Enrollment data for several years has also been included in the Management Discussion and Analysis section of the annual financial report. However, five year summaries of state appropriations to the College and summaries of financial statements have not been provided on an annual basis.

Additionally, the College, from time to time, has not filed the required audited “continuing disclosure information” on or before December 27th of each year. The College did notify the Municipal Securities Rulemaking Board and each Nationally Recognized Municipal Securities Information Repository of these deadline failures.

SLCC’s past continuing disclosure noncompliance in the Zions report can be generally summarized as failures to post certain operating data and a few instances of late annual financial filings prior to the Electronic Municipal Market Access (“EMMA”) website becoming the only official repository for continuing disclosure information.⁴ The 2010 SLCC Official Statement is silent as to the Board’s past continuing disclosure compliance.

As such noncompliance was disclosed to the market, it is very unlikely the 2010 SLCC Official Statement contains a material misrepresentation regarding past continuing disclosure compliance. Further, silence absent a duty to speak may not be considered an omission that is a misrepresentation.

⁴ Please refer to the Zions audit results for full compliance details.

As further support for this conclusion, the underwriter has indicated that it did not report any statements as potential securities law violations under the MCDC Initiative, further reducing the likelihood of an SEC enforcement action against SLCC or the Board.

c. Snow College

The Zions report identifies one Snow College transaction falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statement for the State Board of Regents of the State of Utah, Snow College Student Fee and Housing System Revenue Bonds, Series 2011 (“2011 Snow College Official Statement”) is silent regarding past continuing disclosure compliance. The Zions report indicates that there were no outstanding continuing disclosure undertakings at the time of the 2011 Snow College Official Statement.

d. Southern Utah University (“SUU”)

The Zions report identifies one SUU transaction falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statement for the Board SUU Auxiliary System and Student Building Fee Revenue Refunding Bonds, Series 2011 (“2011 SUU Official Statement”) states that:

The University and the Board of Regents have represented that they are in compliance with each and every undertaking previously entered into together by them pursuant to the Rule. Based on prior disclosure undertakings the University submits its audited annual financial report (Fiscal Year Ending June 30) and other operating and financial information on or before March 26th of each year (270 days from the end of the Fiscal Year). The University will submit its Fiscal Year 2011 audited annual financial report and other operating and financial information for the 2011 Bonds on or before March 26, 2012, and annually thereafter on or before each March 26th.

Certain institutions on behalf of which the Board of Regents has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

SUU’s past continuing disclosure noncompliance in the Zions report can be generally summarized as failures to post certain operating data, a few instances of late annual financial filings pre-EMMA, and the failure to link financial information to certain CUSIP numbers associated with the bonds.⁵ Failures to post to the former NRMSIR system arguably are of little consequence; the fact that the SEC itself has noted the lack of accessibility of the former NRMSIR system makes it unlikely that a reasonable investor would rely on the system. It is also possible that the continuing disclosure information was filed timely and the NRMSIR(s) failed to timely post such information. Further, any noncompliance during this time period is relatively stale. SUU’s timeliness issues are minor as the filings were posted within 30 days of the deadline. In addition to not being material in and of themselves, these timeliness issues do not raise a larger internal control issue that might cause a reasonable investor to question SUU’s or the Board’s observance of contractual obligations. Regarding the failure to update certain tables, much of this information is nonmaterial and it is our understanding that at least some of the table information was otherwise publicly available. Further, the Board disclosed to investors that certain institutions on behalf of which it issues securities have missed filing deadlines.

Based on the foregoing, it is unlikely the representations in the 2011 SUU Official Statement regarding past continuing disclosure compliance are material misrepresentations. As further support

⁵ Please refer to the Zions audit results for full compliance details.

for this conclusion, the underwriter has indicated that it did not report any statements as potential securities law violations under the MCDC Initiative, further reducing the likelihood of an SEC enforcement action against SUU or the Board.

e. University of Utah

The DAC report identifies nine University of Utah transactions falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statements for relevant University of Utah transactions state the following:

The Board's University of Utah General Revenue and Refunding Bonds, Series 2014B:

The University reports that it has been in compliance with its continuing disclosure undertakings for at least the last five years in all material respects. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

Amendment to the Board's University of Utah General Revenue Refunding Bonds, Series 2014B:

Subsequent to the date of the Official Statement, the University determined that it had not fully complied with its continuing disclosure undertaking relating to the State Board of Regents of the State of Utah University of Utah Research Facilities Revenue Refunding Bonds Series 2008A, and State Board of Regents of the State of Utah University of Utah Research Facilities Revenue Bonds, Series 2009A and University of Utah Taxable Research Facilities Revenue Bonds, Series 2009B (collectively, the "2008-2009 Research Bonds") The disclosure undertaking for the 2008-2009 Research Bonds required, among other information, an annual update to a historical debt service coverage table which was not subsequently included in the University's annual disclosure report relating to the 2008-2009 Research Bonds. Although the information for this table was disclosed indirectly, the University is taking steps to have a complete historical summary of this table to date filed on EMMA. The University has also determined that for certain of its bonds issued in the last five years, the first available annual disclosure report after the issuance of these bonds, while filed in a timely manner with respect to its other outstanding bonds, was not linked to the new bond issue in the first year following issuance. In subsequent years, the annual reports were appropriately linked and timely filed. The University also submitted to EMMA a notice of failure to file relating to these events on July 14, 2014.

The Board's University of Utah General Revenue Refunding Bonds, Series 2014A-1 and A-2:

The University reports that it has been in compliance with its continuing disclosure undertakings for at least the last five years in all material respects. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah General Revenue Bonds, Series 2013A:

The University reports that it has been in compliance with its continuing disclosure undertakings for at least the last five years in all material respects, except that certain annual information for fiscal year 2008 was provided by the University to the Nationally Recognized Municipal Securities Information Repositories ("NRMSIRS") prior to the due dates of the University's continuing disclosure undertakings, but posted by one or more NRMSIRS following such date; and certain maturities and series of bonds issued on behalf of the University were previously not linked on EMMA to certain disclosure documents that were timely filed by the University with respect to other series of bonds. The University reports that it has since revised its continuing disclosure filings on EMMA so that, as of the date hereof, each of such filings is now linked to all related series and maturities. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah Auxiliary and Campus Facilities System Revenue Bonds, Series 2012A:

The University is in compliance with the Rule's requirements. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah Auxiliary and Campus Facilities System Revenue Bonds, Series 2010B:

The University is in compliance with the Rule's requirements. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah Auxiliary and Campus Facilities System Revenue Bonds Series 2010A:

The University determined that the annual information filed with the national repositories did not include all of the information required by its previous undertakings for the University Hospital System, and promptly on July 12, 2005, supplied such missing information to the national repositories. Otherwise, the University is in compliance with the Rule's requirements. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah Hospital Revenue Bonds, Series 2011B:

The University is in compliance with the Rule's requirements. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah Hospital Revenue Bonds, Series 2010:

The University is in compliance with the Rule's requirements. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

The Board's University of Utah Hospital Revenue Bonds, Series 2009:

The University determined that the annual information filed with the national repositories did not include all of the information required by its previous undertakings for the Hospital, and promptly on July 12, 2005 supplied such missing information to the national repositories. Otherwise, the University is in compliance with the Rule's requirements. Certain other higher education system institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

(all of the Official Statement together, "University of Utah Official Statements"). The University of Utah's past continuing disclosure noncompliance in the DAC report can be generally summarized as follows:⁶

- Certain annual financial information was filed between 3 and 33 days late;
- Certain annual financial information was not linked to certain CUSIP numbers associated with the University of Utah's bonds;
- Certain operating data related to historical debt service coverage as well as comparative utilization statistics and staff information (for hospital bonds) was not timely filed; and

⁶ Please refer to the DAC audit results for full compliance details.

- A Moody's rating recalibration from Aa3 to Aa2 was not filed.

With respect to the Board's University of Utah General Revenue and Refunding Bonds, Series 2014B, the Official Statement was amended to include disclosures regarding the University of Utah's past continuing disclosure noncompliance. Therefore, it is very unlikely the representations in that Official Statement, as amended, regarding past continuing disclosure compliance are material misrepresentations.

For the remaining transactions, please see the materiality analysis contained in Section III.d, which would be the same for the University of Utah Official Statements. The lone exception from such analysis is the ratings calibration. The University of Utah previously filed notices regarding Moody's rating change to the underlying securities. It is arguable whether a notice of a rating recalibration would be required to be filed as a "rating change" within the meaning and SEC Rule 15c2-12 and, further, such information was publicly available.

f. Utah State University ("USU")

The Zions report identifies three USU transactions falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statements for the Board USU Building Fee Revenue Bonds, Series 2013 and 2013B state that:

Except as noted below, the University has represented that it is in compliance with each and every continuing disclosure undertaking previously entered into by it pursuant to the Rule.

Based on the Disclosure Undertaking, the University submits its annual financial report (Fiscal Year Ending June 30) (the "Financial Report") and other operating and financial information on or before March 27 (not more than 270 days from the end of the Fiscal Year). The University will submit the Fiscal Year 2013 Financial Report and other operating and financial information for the 2013B Bonds on or before March 27, 2014, and annually thereafter on or before each March 27 of each year.

The Official Statement for the State Board of Regents of the State of Utah, Utah USU Research Revenue Refunding Bonds, Series 2010 states that:

The University and the Board of Regents have represented that they are now in compliance with each and every undertaking previously entered into by them pursuant to the Rule, as it pertains to the University.

USU's past continuing disclosure noncompliance in the Zions report can be generally summarized as failures to post certain operating data and a few instances of late annual financial filings pre-EMMA.⁷

Please see the materiality analysis contained in Section III.d. With the exception of the Board disclosure, the materiality analysis is the same for the USU official statements. While the USU official statements did not provide disclosure regarding past noncompliance of other institutions on behalf of which the Board has issued bonds, such disclosure is very likely immaterial under federal securities law as the Board's credit does not stand behind the bonds. The compliance of other higher education institutions with past continuing disclosure undertakings would be similarly irrelevant to investors in the USU bonds.

⁷ Please refer to the Zions audit results for full compliance details.

g. Utah Valley University (“UVU”)

The Zions report identifies one UVU transaction falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statement for the Board UVU Student Center Building Fee and Unified System Revenue Bonds, Series 2012A (“2012 UVU Official Statement”) states that:

The University and the Issuer have represented that they are in compliance with each and every undertaking previously entered into by them with respect to the University pursuant to the Rule.

UVU’s past continuing disclosure noncompliance in the Zions report is comprised of a single late filing in 2008 of annual financial information 35 days after the filing deadline.⁸ As noted above, failures to post to the former NRMSIR system arguably are of little consequence; the fact that the SEC itself has noted the lack of accessibility of the former NRMSIR system makes it unlikely that a reasonable investor would rely on the system. It is also possible that the continuing disclosure information was filed timely and the NRMSIR(s) failed to timely post such information. Further, noncompliance information from 2008 is stale and, since 2008, the Zions report indicates that UVU has been in full compliance with its continuing disclosure obligations.

While the 2012 UVU Official Statement did not provide disclosure regarding past noncompliance of other institutions on behalf of which the Board has issued bonds, such disclosure is very likely immaterial under federal securities law as the Board’s credit does not stand behind the bonds. The compliance of other higher education institutions with past continuing disclosure undertakings would be similarly irrelevant to investors in the UVU bonds. Further, silence absent a duty to speak may not be considered an omission that is a misrepresentation.

Based on the foregoing, it is unlikely the representations in the 2012 UVU Official Statement regarding past continuing disclosure compliance are material misrepresentations. While the underwriter to the 2010 transaction, Citigroup Global, indicated that it included the 2012 UVU Official Statement in its MCDC self-report, the penalty cap for underwriter under the MCDC Initiative created an incentive for underwriters to over-report. Citigroup Global also has not indicated that it performed a thorough materiality analysis for the transactions it self-reported to the SEC.

h. Weber State University (“WSU”)

The Zions report identifies two WSU transactions falling within the five-year reporting period. Regarding past continuing disclosure compliance, the Official Statements for the Board WSU Student Facilities System Revenue Bonds, Series 2012 and WSU Taxable Student Facilities System Revenue Bonds, Series 2010A (the “WSU Official Statements”) state that:

The University is in compliance with the Rule’s requirements. Certain institutions on behalf of which the Board has issued bonds have missed filing deadlines imposed by the undertakings related to such bonds.

WSU’s past continuing disclosure noncompliance in the Zions report can be generally summarized as possible failures to timely file rating change notices related to bond insurer downgrades.⁹ It is arguable whether insurer downgrades that do not affect the underlying rating of an issuer’s securities

⁸ Please refer to the Zions audit results for full compliance details.

⁹ Please refer to the Zions audit results for full compliance details.

are a “rating change” within the meaning of Rule 15c2-12 that would require the filing of an event notice and, further, such information was publicly available. The Zions report indicated that otherwise WSU was in full compliance with its continuing disclosure obligations at the time of the WSU Official Statements. Further, the Board disclosed to investors that certain institutions on behalf of which it issues securities have missed filing deadlines.

Based on the foregoing, it is unlikely the representations in the WSU Official Statements regarding past continuing disclosure compliance are material misrepresentations. As further support for this conclusion, the underwriter has indicated that it did not report any statements as potential securities law violations under the MCDC Initiative, further reducing the likelihood of an SEC enforcement action against WSU or the Board.