

VIA EMAIL ONLY

May 15, 2017

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609
rule-comments@sec.gov.

Re: File No. S7-01-17; Proposed Amendments to Rule 15c2-12

Dear Chairman Clayton:

This Office submits its comments to the Securities and Exchange Commission's proposed amendments to Rule 15c2-12 on behalf of the City of San José and its related entities (the "City"). San José is the 10th largest city in the United States with a population of over a million residents. The City owns and operates Norman Y. Mineta San José International Airport, a commercial service and general aviation airport that served approximately 5.1 enplaned passengers in fiscal year 2015-2016. Additionally, the City is the co-owner and the operator of a regional wastewater facility that provides wastewater treatment services to approximately 1.4 million residents and 17,000 businesses in the Silicon Valley. In order to fund capital maintenance and rehabilitation of these regional facilities and other City facilities, such as libraries, parks, and fire stations, and to construct additional improvements to serve its residents, the City must have effective access to the municipal bond market.

The City is committed to compliance with its continuing disclosure obligations. San José, like many cities, has a lean financial management staff charged with a number of responsibilities, including continuing disclosure compliance. As outlined below, our concern is that the proposed amendments will significantly increase the cost of compliance and will expose the City and its officials to potential liability for failure to properly disclose the proposed new material events.

Materiality Standard.

The proposed regulation requires the disclosure of several types of “financial obligations”, if material, as well as “agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material.” No definition of the term “material” is provided to guide the obligated person to determine whether the particular financial obligation or the financial obligation’s terms require disclosure. Without such guidance, cities likely will incur increased expenses of retaining outside counsel with expertise in securities laws to assist them. Given that the posting deadline of the material event notice to EMMA is 10 business days from the incurrence of the financial obligation or entering into the agreement, there is significant risk that mistakes will be made in failing to disclose events that the SEC deems to be material or alternatively, that cities will opt to disclose all financial obligations of which management staff are aware. Neither result will improve upon the quality of financial information available to investors. In order to provide information that is meaningful to investors, clarity in the amendments regarding materiality would be helpful for issuers and investors. The potential for too much information being provided to the market in an attempt of issuers to comply through over-disclosure is burdensome on issuers and also does not assist investors.

Financial Obligations – Increased Number of Potential Material Events.

The proposed regulations significantly increase the number of events that the City would be required to post to EMMA. The term “financial obligations” not only includes debt obligations, but also leases, derivatives, guarantees and monetary obligations resulting from a judicial, administrative, or arbitration proceeding. Again, our concern is not only the expansion of the obligation in terms of the number of events to be disclosed, but that there is not sufficient guidance on when these are to be disclosed in terms of both the obligation type and the materiality standard for disclosure. Further, the commentary in the proposed regulations indicates that both operating and capital leases are included as potential reportable events. The inclusion of operating leases expands the disclosure obligation considerably. For example, the City enters into a wide variety of leases across the organization, which are necessary for the day-to-day operations of the City. These leases range from leases of airport shuttle buses to office space, to copiers, and to equipment leases for specialized, non-routine work. The management of these leases is decentralized, and financial management staff may not necessarily be aware of them at the time they are entered into. In order to determine whether particular leases are reportable, an administrative mechanism would need to be established so that each lease could be analyzed to determine whether it meets the materiality standard for posting to EMMA within the 10 business day posting requirement.

Similarly, the City is involved in a variety of administrative, judicial and arbitration proceedings at any given time. The commentary relating to the proposed regulations indicates that the initial imposition of a monetary obligation, if material, is to be posted to EMMA. We reiterate our concerns about the lack of guidance on materiality. The timing of disclosure is also of concern since the initial imposition of a monetary obligation typically is subject to additional proceedings, such as post-trial motions, before the imposition becomes final. The proposed regulation requires additional clarification as to when the imposition of the monetary obligation is required to be posted.

Additional Clarification on Financial Difficulties.

Our concerns about the proposed regulation discussed above apply to the lack of guidance or definition on what in the SEC's view constitutes "financial difficulties" requiring disclosure of a "default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties." Likewise, the phrase "or other similar event" puts the City in a position of guessing whether a particular event requires disclosure or not. As the time frame for reporting is only 10 business days, an assessment of whether such an event is reportable and the information to include in the posting to EMMA will likely require incurring the expense of retaining outside counsel to review and advise on the obligation to disclose and the information to be included in the posting to EMMA. And, as noted above, in connection with the disclosure of financial obligations, cities are likely to choose to disclose rather than face the potential consequences of not disclosing, which may result in the disclosure of information to the market that is not significant to investors.

Opportunity to Educate and Re-assess Continuing Disclosure.

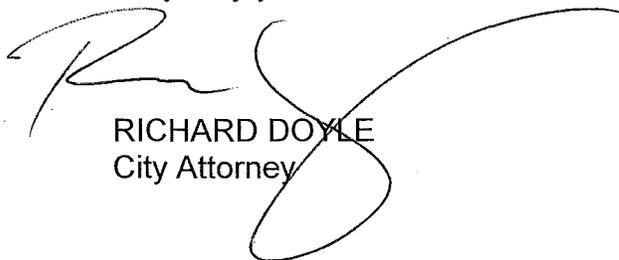
The SEC's Municipal Continuing Disclosure Cooperation initiative in 2014 as well as educational efforts made by groups such as NABL and GFOA have highlighted the continuing disclosure obligations of municipal borrowers in order to promote compliance. Instead of increasing the burdens with additional obligations, the SEC may wish to consider working with these groups and other organizations representing the interests of cities, such as the National League of Cities, to hold educational workshops on continuing disclosure obligations for issuers and obligated persons.

Additionally, this may be an opportunity to review Rule 15c2-12 in its entirety to determine whether current reporting requirements should be reduced. As an example, continuing the requirement for the obligated person to report rating changes seems to be unnecessary as rating changes are widely and immediately available to investors and reported by the rating agencies to EMMA daily. The focus of the continuing disclosure obligation should be on information that is more likely to be known by the obligated person as opposed to information readily available to investors, so that

issuers who are committed to their continuing disclosure compliance are able to comply with the Rule and their undertakings by providing quality disclosure to investors.

We appreciate the opportunity to provide these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Doyle', with a large, sweeping flourish extending to the right.

RICHARD DOYLE
City Attorney