

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-54863; File No. S7-19-06]

RIN 3235-AJ41

Proposed Amendments to Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to a rule under the Securities Exchange Act of 1934 (“Exchange Act”) relating to municipal securities disclosure which would delete references to the Municipal Securities Rulemaking Board (“MSRB”) as a recipient of material event notices filed by or on behalf of issuers of municipal securities or other obligated persons.

DATES: Comments should be received on or before January 8, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. S7-19-06 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. S7-19-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Martha Mahan Haines, Chief, Office of Municipal Securities, at (202) 551-5681; Mary N. Simpkins, Senior Special Counsel, at (202) 551-5683; or David Liu, Special Counsel, at (202) 551-5645, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Rule 15c2-12 [17 CFR 240.15c2-12] under the Exchange Act.

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I. Background

A. 1994 Amendments to Rule 15c2-12

On November 10, 1994, the Commission adopted amendments (“1994 Amendments”) to Rule 15c2-12 (“Rule”) under the Exchange Act¹ to provide, among other things, enhanced ongoing disclosure to the market for municipal securities.² Pursuant to subsection (b)(5)(i) of the Rule,³ the Commission requires brokers, dealers, and municipal securities dealers (“Participating Underwriters”), prior to underwriting a primary offering of municipal securities of \$1,000,000 or more, to reasonably determine that the issuer or obligated person for whom financial or operating data is presented in the final official statement (“Issuer”), has undertaken, in a written agreement or contract for the benefit of bondholders, to provide certain continuing disclosure information. Among other things, the Issuer must undertake to send to each nationally recognized municipal securities information repository (“NRMSIR”) or the MSRB, and to the appropriate state information depository (“SID”), if any, certain material event notices designated in subsection (b)(5)(i)(C) of the Rule.⁴ In addition, subsection (b)(5)(i)(D) of the Rule requires a Participating

¹ 17 CFR 240.15c2-12.

² Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) (“1994 Adopting Release”).

³ 17 CFR 240.15c2-12(b)(5)(i).

⁴ 17 CFR 240.15c2-12(b)(5)(i)(C). Subsection (b)(5)(i)(C) lists the following events which, if material, require notice: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting

Underwriter to reasonably determine that the Issuer has agreed to notify those same repositories if it fails to provide annual financial information by the agreed-upon date.⁵

The Commission included the MSRB in its plan for dissemination of material event notices set forth in the Rule because, at the time of the 1994 Amendments, the MSRB already had a voluntary disclosure system in place for receiving and disseminating certain types of material event notices.⁶ As the Commission noted in the 1994 Adopting Release, “permitting issuers and obligated persons to file such notices either with each NRMSIR or with the MSRB (as well as the appropriate SID) will facilitate prompt and wide disclosure.”⁷ In adopting the 1994 Amendments, the Commission also stated that inclusion of the MSRB as a filing option reflected the preference expressed by some commenters to file the required notices in one central place, rather than having to file with multiple NRMSIRs.⁸ Under the Rule, the use of the MSRB filing alternative is optional, as the material event notice obligation can be satisfied by sending notice to each of the NRMSIRs rather than to the MSRB.

financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities; and (11) rating changes.

In addition, in Rule 15c2-12(d)(2), the small issuer exemption is conditioned on an issuer or obligated person undertaking a limited disclosure obligation, including sending certain material event notices to each NRMSIR or the MSRB, as well as the appropriate SID. 17 CFR 240.15c2-12(d)(2).

⁵ 17 CFR 240.15c2-12(b)(5)(i)(D).

⁶ See Securities Exchange Act Release No. 30556 (April 6, 1992), 57 FR 12534 (April 10, 1992) (“CDI System Approval Order”). See also Securities Exchange Act Release No. 33742 (March 9, 1994), 59 FR 12759 (March 17, 1994) (“1994 Proposing Release”) at 12764, note 25.

⁷ See 1994 Adopting Release at 59605.

⁸ See 1994 Adopting Release at 59605.

B. CDI System and CDINet

The MSRB's original system for receiving material event notices, the Continuing Disclosure Information ("CDI") System, was approved by the Commission in April 1992 and commenced operation in January 1993.⁹ On March 24, 1997, the MSRB implemented certain improvements to its dissemination process and replaced its earlier CDI System with CDINet. CDINet was approved by the Commission in December 1996¹⁰ and, among other things, is designed to accept and disseminate material event notices submitted as a result of the Rule. Once a document has been accepted and processed by CDINet, it is broadcast to subscribers¹¹ and made available in the MSRB's public access facility.¹²

II. MSRB Petition

In a recent letter to the Commission,¹³ the MSRB petitioned the Commission to remove the MSRB as a recipient of material event notices under the Rule.¹⁴ According to the MSRB petition, CDINet was designed to permit Issuers to satisfy their material event undertakings through a single submission to the MSRB, rather than through separate filings to each of the NRMSIRs. However, the MSRB states that relatively few Issuers have opted to use CDINet and, in recent years, usage of CDINet has diminished. According to the MSRB, in 1997, CDINet

⁹ CDI System Approval Order.

¹⁰ Securities Exchange Act Release No. 38066 (December 19, 1996), 61 FR 68322 (December 27, 1996) ("CDINet Approval Order").

¹¹ The MSRB has represented to the Commission that CDINet has only two subscribers. See *infra* notes 18 and 19.

¹² The MSRB has represented to the Commission that, as of September 2005, no one has requested CDINet information at the MSRB's public access facility for at least the last five years.

¹³ Letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, Commission, dated September 8, 2005 ("MSRB Petition").

¹⁴ 17 CFR 240.15c2-12.

received over 10,000 material event notices. Since that time, submissions to the MSRB have dropped considerably, ranging from 1,000 to 2,500 annually.¹⁵

A review conducted by the MSRB of the material event notices received by CDINet in the first half of 2004 showed that, of the 1,104 notices received in that time period, 504 were bond calls, 213 were defeasances, and 145 were rating changes.¹⁶ The MSRB also recently reviewed a sample of 100 material event notices received by CDINet in June 2005.¹⁷ The MSRB believes that most of the material event notices received by CDINet also are provided to, or otherwise obtained by, the NRMSIRs.¹⁸ In its petition, the MSRB also expressed concern that the notices filed exclusively with the MSRB may not be reaching the broader market as intended

¹⁵ MSRB Petition at 2.

¹⁶ The remaining notices included the following categories: Failure to File Annual Report (70 notices); Information not specifically required under SEC Rule 15c2-12 (70); Bond Calls and Defeasances (56); Annual Report and CAFR Related Information (13); Various multiple categories indicated (10); Release, Substitution, or Sale of Property Securing Repayment of Securities (5); Principal and Interest Payment Delinquencies (4); Substitution of Credit or Liquidity Providers, or Their Failure to Perform (4); Non-Payment Related Defaults (3); Adverse Tax Opinions or Events Affecting the Tax-Exempt Status of the Security (3); Unscheduled Draws on Debt Service Reserves Reflecting Financial Difficulties (2); Unscheduled Draws Credit Enhancements Reflecting Financial Difficulties (1); and Modifications to the Rights of Security Holders (1). See Attachment to MSRB Petition.

¹⁷ MSRB Petition at 2-3.

¹⁸ Definitive information on 90 of the June 2005 notices was found by the MSRB in a review of information available from NRMSIRs that do not subscribe to CDINet. CDINet only has two NRMSIR subscribers: Kenny S&P and Thomson Financial Services. MSRB Petition at 2, note 7. The MSRB presumed that the remaining ten notices were not provided directly to all the NRMSIRs. These notices included six notices regarding failure to provide an annual financial statement, two bond calls, one rating change and one relating to “other information.” The MSRB believes that there is some evidence, however, that at least one NRMSIR may have received some of the notices of failure to provide an annual financial statement but subsequently superseded such information with the annual financial statements themselves once these were received. MSRB Petition at 3, note 8.

by the Rule because not all NRMSIRs subscribe to CDINet and the information may not otherwise be widely distributed.¹⁹

In addition, the MSRB believes that the need for CDINet has also been lessened because an alternative document delivery system has become available to Issuers and dissemination agents who prefer to send their filings to a single location for delivery to all of the NRMSIRs and any appropriate SID.²⁰ In its petition to the Commission, the MSRB stated that it believes that the number of documents submitted to CDINet will further decrease and that the continued operation of CDINet would provide minimal continuing benefit to the marketplace.²¹ Finally, because of the age of the CDINet system, the MSRB states that upgrades at an estimated cost of \$500,000 to \$1 million would be necessary to keep the system operational.²²

III. Discussion

The Commission proposes to amend Rule 15c2-12²³ to delete references to the MSRB as an alternative recipient of material event notices filed by Issuers. Under the proposal, Issuers and their dissemination agents instead would undertake to send material event notices to each NRMSIR and the appropriate SID, if any. The Commission believes that, given the limited usage of the MSRB's CDINet system and the MSRB's petition for rulemaking, the proposed elimination of the option of filing material event notices with the MSRB is warranted. The relatively small number of filings made with CDINet indicates that there is little demand for the MSRB filing option. The Commission believes that requiring Issuers to send their material event

¹⁹ MSRB Petition at 3.

²⁰ The Commission understands that there may be other entities that have developed or are developing services related to Rule 15c2-12.

²¹ MSRB Petition at 3.

²² MSRB Petition at 3.

²³ 17 CFR 240.15c2-12.

notices only to each of the NRMSIRs and any appropriate SIDs would simplify the Rule and compliance by Issuers with their undertakings, because Issuers would be required to file material event notices at the same locations that annual financial information is required to be filed pursuant to undertakings in accordance with subsection (b)(5)(i)(A) of the Rule.²⁴ In addition, the Commission believes that eliminating the MSRB filing option would better assure that material event notices are widely disseminated to the market, since it appears that CDINet data may not be broadly distributed.²⁵ Requiring that each NRMSIR and the appropriate SID, if any, receives all material event notices should help assure the completeness and consistency of information available from those repositories.

Finally, the Commission notes the MSRB's statement that the upgrading of CDINet required to maintain the system would cost approximately \$500,000 to \$1 million.²⁶ In light of the current alternative options under Rule 15c2-12 for Issuers to file with NRMSIRs and SIDs and the lack of demand for the MSRB filing alternative—both by Issuers and information users—the Commission believes that the MSRB's proposal to cease CDINet's operations is reasonable. The Commission notes that the MSRB has committed to forward material event notices to the NRMSIRs and applicable SIDs for a period of one year from the date CDINet ceases operations.²⁷ The MSRB has also agreed to alert senders of such notices of the fact that CDINet is ceasing operations, and ask that such senders comply with their undertakings by sending future material event notices to the NRMSIRs and applicable SIDs.

²⁴ 17 CFR 240.15c2-12(b)(5)(i)(A).

²⁵ As the MSRB's recent review showed, a portion of the notices received by the MSRB may not have been fully disseminated to the wider market, since there are only two subscribers to the MSRB's CDINet. See supra notes 18 and 19.

²⁶ MSRB Petition at 3.

²⁷ MSRB Petition at 4; Letter from Diane G. Klinke, General Counsel, MSRB, to Martha Mahan Haines, Chief, Office of Municipal Securities, Commission, dated April 20, 2006.

IV. Request for Comment

The Commission seeks comment on the proposed amendments to the Rule. Specifically, comment is requested on whether, in light of the alternative filing options available to Issuers and dissemination agents, there is still a need for the MSRB to be a recipient of material event notices. The Commission also requests comment on whether there exist any applicable continuing disclosure agreements which require issuers or other obligated persons to file material event notices solely with the MSRB that might require modification were the Commission to amend the Rule as proposed. It is the staff's understanding that such agreements often contain a requirement to file notices with both the (1) NRMSIRs and applicable SIDs and (2) MSRB. The Commission seeks comment on whether any such agreements require filings solely with the MSRB.

In addition, the Commission seeks comment on whether the proposed amendment would in fact simplify compliance with undertakings in accordance with the Rule, and better assure widespread dissemination of material event notices.

V. Paperwork Reduction Act

The proposed amendment to the Rule, contains no new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").²⁸ The title of the current information collection as required and under the Rule is Municipal Securities Disclosure (17 CFR 240.15c2-12) (OMB Control No. 3235-0372).

VI. Costs and Benefits of Proposed Amendments to Rule 15c2-12

The Rule currently requires Participating Underwriters to reasonably determine that Issuers have undertaken to submit material event notices to (1) each NRMSIR or the MSRB and

²⁸ 44 U.S.C. 3501 et. seq.

(2) the appropriate SID, if any. The proposed amendments would remove the MSRB as an option for the filing of such notices, thereby requiring submission, pursuant to the undertakings, to each NRMSIR and the appropriate SID, if any.

A. Benefits

The Commission preliminarily believes that the proposed amendments to the Rule should improve the disclosure of material event information to the municipal securities marketplace. Because the MSRB's CDINet system currently only has two subscribers, it is not clear that all material event notices submitted to the MSRB are fully distributed to the marketplace. Requiring that each NRMSIR and the appropriate SID, if any, receives all material event notices should help assure the completeness and consistency of information available from those repositories. The Commission also preliminarily believes that the elimination of the MSRB as a filing option would simplify compliance by Issuers with their undertakings in accordance with the Rule. If the proposed amendments are adopted, Issuers would be required to file, pursuant to their undertakings, material event notices at the same locations—each NRMSIR and the appropriate SID, if any— that annual financial information is required to be filed. Finally, the Commission preliminarily concludes that the proposed amendments could save the MSRB substantial funds, represented by the MSRB to be approximately \$500,000 to \$1 million,²⁹ by not requiring it to perform certain upgrades to its CDINet system which would otherwise be required in order for the system to be maintained. As the costs of the MSRB are paid primarily from fees paid by brokers, dealers and municipal securities dealers, those parties and their customers would benefit from this savings.

²⁹ MSRB Petition at 3.

B. Costs

The Commission preliminarily believes that the proposed amendments to the Rule should only minimally increase compliance costs for a few Issuers and may decrease overall compliance costs. Because some Issuers may currently be sending their material event notices only to the MSRB, the proposed amendments would require them to send such notices to each of the (currently four) NRMSIRs. However, the Commission believes that the cost of sending such notices to three additional locales would be minimal because such notices are generally short in length and would only encompass the additional costs of copying several pages, as well as the minor additional mailing costs. In addition, the MSRB has indicated that there is an alternative free document delivery system available to Issuers and dissemination agents who prefer to send their filings to a single location for delivery to all of the NRMSIRS and appropriate SIDs.³⁰ We request comment on whether this would result in any increased costs to issuers. Finally, the Commission preliminarily believes that those Issuers that currently send to their material event notices to each NRMSIR as well as the MSRB would reduce their costs because the proposed amendments would require those Issuers to send their material event notices to one fewer location.

To assist the Commission in evaluating the costs and benefits that may result from the proposed amendments to the Rule, the Commission requests comments on the potential costs and benefits identified in the release, as well as any other costs or benefits that may result from the proposed amendments to the Rule. In addition, the commenters should provide analysis and data to support their views on the costs and benefits.

³⁰ The Commission understands that there may be other entities that have developed or are developing services related to Rule 15c2-12.

VII. Consideration of Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act³¹ requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act³² requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes that the proposed amendments to the Rule would not impose any burdens on efficiency, capital formation, and competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed amendments are expected to simplify the material event notice delivery requirements for Issuers, in accordance with their undertakings, by eliminating the MSRB as an alternative. In doing so, the Commission preliminarily believes that municipal securities disclosure would be enhanced, as all Issuers would be required to send all NRMSIRs (and appropriate SIDs) such notices. Under the current disclosure system, Issuers may choose to send such notices to the MSRB. However, there is some evidence³³ that some of the notices sent to the MSRB are not fully disseminated to the entire marketplace. By requiring delivery of such notices to all NRMSIRs and appropriate SIDs, if any, the Commission preliminarily believes that the completeness and consistency of

³¹ 15 U.S.C. 78c(f).

³² 15 U.S.C. 78w(a)(2).

³³ MSRB Petition at 3.

information from these repositories would be improved, thereby promoting efficiency and having no adverse impacts on competition or capital formation. In fact, competition to establish alternative delivery systems in the private sector may be enhanced by the elimination of the MSRB as a single filing location.

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed amendments to the Rule would place a burden on competition, as well as the effect of the proposed amendments on efficiency, competition, and capital formation.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or “SBREFA,”³⁴ we must advise the Office of Management and Budget as to whether the proposed regulation constitutes a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. The Commission preliminarily believes that this proposed amendment is not a major rule.

If a rule is “major,” its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

³⁴ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

IX. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act (“RFA”), the Commission hereby certifies that the proposed amendments to the Rule, would not, if adopted, have a significant economic impact on a substantial number of small entities. Under the RFA, the term “small entity” shall have the same meaning as the RFA defined terms “small business,” “small organization,” and “small governmental jurisdiction.” According to Section 601(3) of the RFA, “the term “small business” has the same meaning as the term “small business concern” under Section 3 of the Small Business Act (15 U.S.C. 632), unless an agency, after consultation with the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” If the agency has not defined the term for a particular purpose, the Small Business Act states that “a small business concern...shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.” The Section 601(4) of the RFA defines a “small organization” to include “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” A “small governmental jurisdiction” is defined by Section 601(5) of the RFA to include “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”

It is likely that a substantial number of the Issuers required to submit material event notices are small governmental jurisdictions included in the RFA’s definition of small entities. However, in this regard, the proposed amendments to the Rule would either not require any additional work for such small entities if they do not currently send material event notices to the MSRB, or would simply require them to send such notices to each of the (currently four)

NRMSIRs. However, the Commission believes that the cost of sending such notices to three additional locales would be minimal because such notices are generally short in length and would only encompass the additional costs of copying several pages, as well as the minor additional mailing costs. Finally, the Commission preliminarily believes that those Issuers that currently send their material event notices to each NRMSIR as well as the MSRB would reduce their costs because, under the proposed amendments, the MSRB would no longer be available as a location to send such notices. Thus, while the proposed amendments may impact a small entity, such impact would likely not be significant.

For the above reasons, the Commission certifies that the proposed amendments to the Rule would not have a significant economic impact on a substantial number of small entities. The Commission requests comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact.

X. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 3(b), 15(c), 15B and 23(a)(1) the Commission is proposing the amendments to § 240.15c2-12 of Title 17 of the Code of Federal Regulations in the manner set forth below.

TEXT OF PROPOSED RULE

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

**PART 240 — GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE
ACT OF 1934**

1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.15c2-12 is amended by revising the introductory text of paragraph (b)(5)(i)(C) and paragraphs (b)(5)(i)(D) and (d)(2)(ii)(B) to read as follows:

240.15c2-12 Municipal securities disclosure.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) In a timely manner, to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any, notice of any of the following events with respect to the securities being offered in the Offering, if material:

* * * * *

(D) In a timely manner, to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any, notice of a failure of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information on or before the date specified in the written agreement or contract.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(B) In a timely manner, to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

* * * * *

By the Commission.

Nancy M. Morris
Secretary

Dated: December 4, 2006