

September 7, 2004

Mr. W. David Holland
Chairman, Texas MAC
P.O. Box 2177
600 West 8th Street
Austin, Texas 78701

Mr. John M. McNally
Hawkins Delafield & Wood LLP
601 Thirteenth Street, N.W.
Suite 800 South
Washington, DC 20005

Re: www.DisclosureUSA.org - Texas MAC's Central Post Office

Dear Messrs. Holland and McNally:

This responds to your letter of September 1, 2004 (the "Request") in which you request the concurrence of staff of the Division of Market Regulation with your position that if the Municipal Advisory Council of Texas ("Texas MAC") performs the functions and undertakes the responsibilities described in the Request, then (i) a Participating Underwriter (as defined in Rule 15c2-12 of the Securities Exchange Act of 1934¹ [the "Rule"]) may reasonably determine that an undertaking by an Issuer² in a written agreement or contract to provide the continuing disclosure filings specified by paragraph (b)(5)(i) of the Rule by transmitting such filings, either directly or indirectly through an indenture trustee or a designated agent, to DisclosureUSA for submission to the NRMSIRs and any applicable SID (without also separately submitting such filings to the NRMSIRs and any applicable SID by some other means) is an undertaking described in such paragraph, and (ii) an Issuer that chooses to satisfy an existing undertaking (that does not reference DisclosureUSA) by the method described in clause (i) is acting in a manner consistent with the intent of the Rule.

Based upon your Request, subsequent discussions and our review of the web site at www.DisclosureUSA.org, staff concurs with your position. In reaching this conclusion, staff notes in particular the following:

1. There will be no charge to Issuers or their trustees or designated agents to make electronic filings, obtain confirmation that their filings have been sent,

¹ 17 CFR §240.15c2-12

² "Issuer" as used in this letter refers to the governmental issuer of a municipal security, the issuer of any separate security, and any obligated person that has undertaken the contractual obligation in a continuing disclosure agreement to provide the information specified in the Rule.

obtain confirmation of receipt of their filings by the NRMSIRs or SIDs, or register in the DisclosureUSA tickler system for electronic reminder notices.

2. There will be no charge to NRMSIRs or SIDs for transmission of filings to their respective FTP sites.
3. Filings will be transmitted to NRMSIRs and SIDs in a random order and as close to simultaneously as possible. No preference or priority will be accorded to any NRMSIR or SID over another.
4. We express no opinion regarding the optional scanning and filing services for paper and facsimile documents to be provided by Texas MAC for a fee. Texas MAC is one of many commercial businesses and others which may provide such services.

This interpretation is expressly conditioned on the current and continuing accuracy of the facts and representations contained in the Request; any different facts or conditions might require a different response. This position is based on current laws, rules, and regulations governing participants in, and the markets for, municipal securities. Any changes in such laws, rules, or regulations may supersede this interpretation or require staff to reevaluate its position. In addition, Texas MAC shall advise the Division of any significant change in the operations, procedures or functions of DisclosureUSA described in the Request, and, if possible, shall provide such information 60 days prior to any contemplated change, to enable staff to reevaluate this interpretation in light of such change.

This interpretation is subject to modification or revocation at any time staff determines that such action is necessary or appropriate. Division staff may, from time to time, request that Texas MAC provide it with information concerning DisclosureUSA in addition to that referred to in the Request.

Sincerely,

Martha Mahan Haines
Chief, Office of Municipal Securities
Assistant Director, Division of Market
Regulation

Enclosure (1)

MMH;hs

Board of Directors, 2003-2004

W. David Holland, Chairman
Coastal Securities

Mark M. McLiney, Vice-Chairman
Southwest Securities

David K. Medanich, Immediate Past Chairman
First Southwest Company

Nora W. Chavez
A.G. Edwards & Sons, Inc.

Jorge A. Garza
Citigroup Global Markets, Inc.



Buddy Kempf
Morgan Keegan & Company, Inc.

Gary P. Machak
RBC Dain Rauscher, Inc.

Larry McCormick
SAMCO Capital Markets

Mark A. Seal
M.E. Allison & Co., Inc.

Michele F. Vobach
Merrill Lynch

Executive Director
Dan A. Black

1934 Act/Rule 15c2-12

September 1, 2004

Martha Mahan Haines, Chief
Office of Municipal Securities
Division of Market Regulation
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: www.DisclosureUSA.org - Texas MAC's Central Post Office

Dear Ms. Haines:

The Municipal Advisory Council of Texas ("Texas MAC") has established the Internet-based electronic filing system described below (hereinafter, the "CPO" or "DisclosureUSA") for purposes of facilitating Issuer¹ compliance with continuing disclosure agreements entered into to satisfy underwriters' obligations under Rule 15c2-12 (the "Rule") of the Securities Exchange Act of 1934 (17 CFR §240.15c2-12). DisclosureUSA functions as a conduit to receive filings from Issuers and to submit such filings electronically to the nationally recognized municipal securities information repositories ("NRMSIRs") and state information depositories ("SIDs") as required by continuing disclosure agreements. Texas MAC is seeking staff interpretative guidance that if it performs the functions and undertakes the responsibilities outlined below, then (i) a Participating Underwriter (as defined in the Rule) may reasonably determine that an undertaking by an Issuer in a written agreement or contract to provide the continuing disclosure filings specified by paragraph (b)(5)(i) of the Rule by transmitting such filings, either directly or indirectly through an indenture trustee or a designated agent, to DisclosureUSA for submission to the NRMSIRs and any applicable SID (without also separately submitting such filings to the NRMSIRs and any applicable SID by some other means) is an undertaking described in such paragraph, and (ii) an Issuer that chooses to satisfy an existing undertaking (that does not

¹ "Issuer" as used in this letter refers to the governmental issuer of a municipal security, the issuer of any separate security, and any obligated person that has undertaken the contractual obligation in a continuing disclosure agreement to provide the information specified in the Rule.

MUNICIPAL ADVISORY COUNCIL *of* TEXAS

P.O. Box 2177 • 78768-2177 • 600 West 8th Street, Austin, Texas 78701 • (512) 476-6947 • FAX (512) 476-6403

www.mactexas.com • mac@mactexas.com

reference DisclosureUSA) by the method described in clause (i) is acting in a manner consistent with the intent of the Rule.

Background

Texas MAC established DisclosureUSA in response to a Request for Proposals issued by the Muni Council. The Muni Council is an informal working group composed of representatives of approximately 20 municipal securities industry groups,² which meets periodically to discuss potential improvements to the municipal securities markets and continuing disclosure system. In these discussions, Muni Council participants have expressed concerns regarding the effectiveness and efficiency of the current NRMSIR system. Observations have included the following:

1. The same documents are not consistently available from each NRMSIR.
2. The number of documents in the collections of the NRMSIRs vary significantly.
3. Document retrieval requests to NRMSIRs yield inconsistent and sometimes inaccurate results.

Although the reasons for these problems with the NRMSIRs' document collections have not been confirmed and quantified, they may be due to a number of factors. For example, the number and identity of the NRMSIRs have changed over time. These changes may have resulted in documents not being filed with all current NRMSIRs. In addition, there is no requirement that CUSIP numbers³ or other information necessary to create accurate indices be included with each

² The following groups are members of the Muni Council: American Bankers Association; American Bar Association – Section of State and Local Government Law; American Institute for Certified Public Accountants; Association of Investment Management and Research; Council of Infrastructure Financing Authorities; Government Finance Officers Association; Healthcare Financial Management Association; Investment Counsel Association of America; Investment Company Institute; National Association of Bond Lawyers; National Association of Independent Public Finance Advisors; National Association of State Auditors, Comptrollers and Treasurers; National Association of State Treasurers; National Council of Health Facilities Finance Authorities; National Council of State Housing Agencies; National Federation of Municipal Analysts; Regional Municipal Operations Association; and The Bond Market Association. The Municipal Securities Rulemaking Board is a member of the Muni Council, but did not participate in the CPO proposal. Representatives from the Securities and Exchange Commission's Office of Municipal Securities participated in these meetings as well. Representatives of the Muni Council have reviewed this letter, and have asked us to advise that this letter should not be viewed as a request by municipal issuers that the Securities and Exchange Commission regulate directly or indirectly the issuance of municipal securities.

³ The CUSIP (Committee on Uniform Security Identification Procedures) Service Bureau is operated by Standard & Poor's for the American Bankers Association. The CUSIP number consists of nine characters: a base number of six digits that identifies all related securities of a particular bond issuer (e.g., all general obligation bonds) and a three digit suffix that identifies each particular maturity of each bond issue.

filing. Issuers have noted that they are unable to confirm that their submissions have been received and indexed properly, and have expressed concern that inadequate filing or indexing of reports may result in the impression that an Issuer did not file its reports, when, in fact, it did file them. This makes it difficult for Issuers to document their compliance with their respective continuing disclosure agreements.⁴

DisclosureUSA has been designed to address these problems and concerns, and is expected to significantly improve the efficiency and effectiveness of NRMSIRs and SIDs, thereby enhancing the availability of continuing disclosure information to investors, brokers, dealers, issuers, and other municipal market participants. On November 12, 2003, the Muni Council unanimously recommended that the Securities and Exchange Commission (the "SEC") take appropriate action to make filings at DisclosureUSA created by Texas MAC satisfy the Rule.

Texas MAC

Texas MAC was created in 1954 and currently operates as a non-profit trade association comprised of 86 regional and national broker-dealer member firms. Texas MAC is governed by a ten member Board of Trustees. Texas MAC is a SID for purposes of the Rule that maintains financial disclosure and other information on more than 3,600 issuers in the State of Texas. That information is available on-line at the Texas MAC website, www.mactexas.com. In addition, Texas MAC publishes (i) *Texas Municipal Reports*, credit reports on Texas issuers with outstanding debt, (ii) *Texas Bond Reporter*, a weekly publication that reports the activities of the Texas municipal securities industry, and (iii) *MAC Insights*, a quarterly newsletter with articles pertinent to public finance.

The mission of Texas MAC is to promote effective and efficient investment banking, underwriting, trading and sales of municipal securities by collecting, maintaining and distributing information pertaining to municipal securities issuers. The creation of DisclosureUSA is in furtherance of that mission, and at a meeting on October 17, 2003, the Texas MAC Board unanimously approved the proposal that was submitted to the Muni Council for the operation of DisclosureUSA. The proposal approved and submitted was for the operation of DisclosureUSA without charge to Issuers, NRMSIRs or SIDs. The expectation is that the fees received from the optional scanning and filing services described below during the first three

⁴ Documentation of compliance is critical for two principal reasons. First, paragraph (b)(5)(i) of the Rule requires an underwriter to have "reasonably determined" that an issuer or obligated person has entered into a continuing disclosure agreement that meets the requirements of the Rule. Such a reasonable determination requires an investigation of an issuer's or obligated person's prior undertakings. See SEC Rel. No. 34-34961, text accompanying fn. 23. Second, the definition of "final official statement" in the Rule requires the inclusion of any failures to comply in the previous five years, in all material respects, with prior continuing disclosure undertakings.

years of operation will cover the costs incurred by Texas MAC of operating DisclosureUSA for the initial five-year period. In the event the costs of operation exceed such scanning fees, Texas MAC will invest its own reserves to cover any shortfall.

DisclosureUSA Features

DisclosureUSA includes the following features:

- Electronic Filings
 - Issuers may electronically submit filings (annual financial information, audited financial statements, material event notices, failure to file notices, and other documents) free of charge for delivery to each NRMSIR and any applicable SID by uploading them to www.DisclosureUSA.org.⁵
 - Filings are immediately transmitted electronically to the FTP (File Transfer Protocol) sites of each NRMSIR and any applicable SID.
 - Texas MAC will not charge a fee to the NRMSIRs or SIDs to which filings are electronically transmitted.
- Filing Transmittals and Return Receipts
 - Any person registered to file information on behalf of an issuer must certify that he or she is an authorized representative. Each person so registered will be able to view at the DisclosureUSA website the names and contact information for other persons so registered for a particular issuer.
 - Filings will be transmitted to NRMSIRs and SIDs in a random order and as close to simultaneously as possible. No preference or priority will be accorded to any NRMSIR or SID over another.

⁵ A fee will be charged to Issuers who do not directly upload their filings but use Texas MAC's scanning and filing services described below.

- DisclosureUSA provides the date and time a filing was transmitted to each NRMSIR and SID on a confirmation supplied to the person making an electronic filing.
 - The FTP sites of each NRMSIR and SID notify DisclosureUSA of the time and date that each filing is received.
 - The date and time that each filing is transmitted to and received by each NRMSIR and SID is available to the general public through an index of filings on www.DisclosureUSA.org. However, the documents that have been filed may not be viewed or downloaded from the DisclosureUSA website.
- Indexing Information
 - Filings with DisclosureUSA require filers to supply certain information, such as the name of the issuer, the identity of the securities to which the filing relates (including CUSIP numbers), the name and date of the document being filed, the type of filing and, if the filing is a material event notice, the nature of the material event.⁶
 - Pursuant to an agreement between Texas MAC and the CUSIP Service Bureau, the CUSIP Service Bureau is providing DisclosureUSA with a complete database of municipal CUSIP data, and a daily feed to update the database.⁷ The CUSIP Service Bureau has also set up a website (www.CUSIP.com) for municipal issuers to access and obtain a list of the CUSIP numbers assigned to their respective municipal securities.
 - Tickler System
 - DisclosureUSA includes an optional electronic “tickler” system to notify persons making filings of upcoming filing deadlines. A filer can enroll in the service by accessing the DisclosureUSA website and keying in the requested information (e.g., reminder date, e-mail address, subject line,

⁶ However, if paper filings are received by Texas MAC for scanning and filing without CUSIPs or any of the other required information and DisclosureUSA is unable to promptly obtain such information, such a filing will be transmitted to the NRMSIRs and SIDs without such information. If such information subsequently becomes available, the documents will be retransmitted with it by Texas MAC to the NRMSIRs and SIDs.

⁷ The agreement has an initial term that ends on December 31, 2009, and the agreement provides that it is automatically renewed for successive one year terms unless either party notifies the other of a decision not to extend.

and text of tickler message). DisclosureUSA sends an e-mail with that message to the designated e-mail address on the date(s) requested.

- Optional Services for Non-Electronic Filings
 - Issuers will be encouraged to upload filings in an electronic format directly to the DisclosureUSA website. Beginning on the date Texas MAC receives the requested interpretative guidance from the SEC staff, for a fee Texas MAC will accept filings on paper or by facsimile transmission, convert them into an electronic (PDF) format and send them electronically to the FTP sites of the NRMSIRs and SIDs by uploading them through the DisclosureUSA system. In addition, for a fee Texas MAC will accept documents delivered to it by e-mail and send them electronically to the FTP sites of the NRMSIRs and SIDs by uploading them through the DisclosureUSA system. Filers who desire to use these scanning and/or filing services will be charged a flat fee per document (a single filing may consist of more than one document): in year 1 (which will run through December 31, 2005) after establishment of DisclosureUSA, \$25; year 2, \$35, and year 3, \$45. Only filings uploaded directly to the DisclosureUSA website will be accepted after year 3.
 - Paper filings will be scanned, forwarded to NRMSIRs and SIDs, and added to DisclosureUSA's index no later than five business days from receipt, provided that the processing of material event notices shall be completed within 24 hours from receipt.
 - Issuers who need to have their documents scanned in order to file them with DisclosureUSA are not required to use Texas MAC for this service. There are a multitude of commercial document scanning services and other means available to Issuers to convert their paper documents into an electronic format. In most cases, electronic versions of documents will be available from an Issuer's auditors, lawyers, financial advisors, printers and other preparers.

NRMSIR/SID Coordination

Over the last few months, Texas MAC has tested and refined DisclosureUSA. Texas MAC has worked with the NRMSIRs and SIDs to ensure compatibility of systems and documents and developed protocols designed to ensure prompt, efficient and effective transfer of data. Each NRMSIR and SID has established an FTP site to automatically receive the documents and indexing information transmitted by Texas MAC. The indexing information is sent in XML (eXtensible Markup Language) format, which allows the NRMSIRs and SIDs to

automatically import the information into their system. Upon receiving a filing, the computers at the NRMSIRs and SIDs automatically send a return receipt to the DisclosureUSA website. This receipt is posted on the DisclosureUSA website so that Issuers, as well as the general public, can view both the time the filing was sent to the NRMSIRs and SIDs and the acknowledgement from the NRMSIRs and SIDs of the time the filing was received. A daily log is sent by DisclosureUSA to each NRMSIR and SID advising what filings DisclosureUSA has sent to them over the past 24 hours. This allows them to determine if they received every filing DisclosureUSA sent to them. If they are missing a filing, they can send a "reorder" message to DisclosureUSA and it will automatically resend the filing to them.

Filing Process

The process for an Issuer to file documents is clear, straightforward, and largely automatic. First, a representative of the Issuer (a "filer") creates an account on www.DisclosureUSA.org with contact information, including an e-mail address. The system then generates a password and e-mails it to the filer at the e-mail address provided. After logging in, the filer keys in a six-digit CUSIP number, and the system displays the name of the Issuer related to that CUSIP number for verification. The filer is then given a list of bond issues associated with the six-digit CUSIP. Upon selecting a bond issue, every nine-digit CUSIP belonging to each maturity of that bond issue is included in the filing (excluding, however, CUSIP numbers associated with secondary market derivatives). Filers have the option to select or deselect maturities, and can repeat this process for each bond issue for which they are making a filing.

Once a filer has selected all CUSIPs associated with a filing, he may upload all documents associated with the filing. The filer is presented with a confirmation page that shows all of the information that describes the filing. If a filer needs to make changes, he can; if not, the filer clicks a button that "completes" the filing. When the filer clicks the "Complete and Send to NRMSIRs" button, the system generates a separate job for each of the NRMSIRs and applicable SID. Another application, running on a separate server, has a timer that activates every ten seconds to see if there are any new filings to process. When it detects a new filing, it generates an XML version of the electronic filing coversheet, and combines it with all of the documents the Issuer uploaded to the system into a compressed ZIP file. It then retrieves a listing of all of the NRMSIRs and appropriate SID and sends the ZIP file to each one of them sequentially in a random order. It records the date and time the ZIP file was sent. The NRMSIRs and SIDs have developed systems that automatically send an electronic receipt back to DisclosureUSA, which processes the receipt and records the date and time they received the filing.

It is possible for multiple filers to be associated with an Issuer's six-digit CUSIP(s). Whenever a filing is made, all filers who have registered for the same six-digit CUSIP will receive an e-mail notice that a filing has been made.

Beta Testing

The DisclosureUSA website has been operational and in beta testing mode since February 23, 2004. The purpose of the beta testing is to determine any operation problems and to solicit suggestions for improvement from test filers. At this point, to our knowledge, all operational problems have been corrected. In addition, many helpful suggestions have been incorporated.

As of August 15, 2004:

- 230 test accounts
- 2,661 filings, which include 3,095 documents
- 349 filings from non-Texas issuers
- 90 suggestions received (comments e-mailed from beta testers)

Term

Texas MAC has agreed to perform the CPO services for an initial five-year period ending December 31, 2009, and has agreed to give the Muni Council and the staff of the SEC's Division of Market Regulation at least one year's notice if it determines at any time to discontinue CPO services. At the end of the five-year period, if either the Muni Council recommends another entity to operate the CPO to the SEC, or Texas MAC decides not to continue to operate the CPO, Texas MAC has agreed that (1) it will convey all right, title and interest in and to the CPO data to the successor operator of the CPO system and to any subsequent successors approved by the Muni Council (while retaining a copy of such data for its own use) and (2) Texas MAC will own all rights to the CPO software that it has developed, but would grant to operators of the CPO system a long-term royalty-free license to use, copy and create derivative works in the CPO software.

Quality Control and Ongoing Reports to the SEC

Texas MAC understands the need for SEC staff to monitor on a regular basis the operations of DisclosureUSA and of NRMSIRs, and will provide agreed-upon reports to the SEC.

Server Specifications

DisclosureUSA will be operational for uploading filings at all times (24/7/365), other than downtime for routine maintenance and unforeseen emergencies. Texas MAC has three

computer programmers on staff to respond to any problems with the operation of the website that arise between 8:00 am and 5:00 pm (Austin time), Monday through Friday.

To assure that DisclosureUSA operates with minimal or no down time, and to enhance the security of DisclosureUSA, the web servers are a cluster of load-balanced servers. If one server becomes inoperative, the other server(s) in the cluster would continue serving requests. The servers are located in a third-party data center with which Texas MAC has contracted to operate the web servers and provide support services to ensure maximum "uptime". By way of example, the data center (located off-site from Texas MAC, but in the Austin area) currently satisfies the following specifications:

- Redundant high-bandwidth connectivity
- Intelligent traffic load balancing among multiple servers
- 24x7 monitoring and support of network connection and server availability
- Fire detection and fire suppression systems with dry pipe pre-action sprinkler systems
- Redundant power supply providing dual power feeds and backup batteries, water coolant systems, and generators
- Redundant climate control providing primary and backup chiller units, cooling towers, and water storage
- Local network operations center monitors data center's operations
- Electronic access at all data center entrances, including biometric hand scanners

DisclosureUSA as Conduit

Texas MAC has agreed to perform the CPO functions described above at no charge (other than the fees for filings not directly uploaded to DisclosureUSA's website). The transmittal sheet⁸ by which the Issuers would transmit their materials to DisclosureUSA (i) authorizes Texas MAC as CPO to submit such materials to the NRMSIRs and SIDs, (ii) provides that there is no contractual, agency, fiduciary or other relationship between an Issuer and Texas MAC as CPO, and (iii) provides that Texas MAC as CPO has no responsibility to review the materials submitted to determine whether they satisfy an Issuer's continuing disclosure

⁸ The transmittal sheet would, for those that submit documents electronically, be a "click-through" agreement that could be completed on-line or, for those that submit paper filings, be a form that could be printed from the CPO website.

Martha Mahan Haines, Chief
September 1, 2004
Page 10

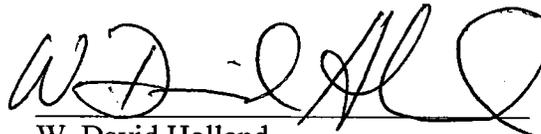
obligations. The CPO will function simply as a conduit that transmits to the NRMSIRs and the SIDs whatever filings are submitted by Issuers to DisclosureUSA.

Request

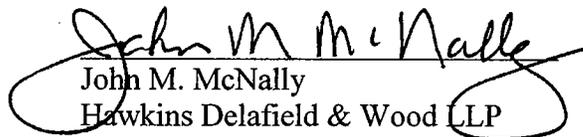
For all of the reasons summarized above, it is our position that if Texas MAC performs the functions and undertakes the responsibilities outlined above, then (i) a Participating Underwriter (as defined in the Rule) may reasonably determine that an undertaking by an Issuer in a written agreement or contract to provide the continuing disclosure filings specified by paragraph (b)(5)(i) of the Rule by transmitting such filings, either directly or indirectly through an indenture trustee or a designated agent, to DisclosureUSA for submission to the NRMSIRs and any applicable SID (without also separately submitting such filings to the NRMSIRs and any applicable SID by some other means) is an undertaking described in such paragraph, and (ii) an Issuer that chooses to satisfy an existing undertaking (that does not reference DisclosureUSA) by the method described in clause (i) is acting in a manner consistent with the intent of the Rule. We respectfully request the staff's concurrence in our position.

If you have any questions in connection with this request, please contact either Laura Slaughter of Texas MAC (512.476.6947) or John McNally of Hawkins Delafield & Wood LLP (202.682.1495), who assisted us in preparing this request.

Very truly yours,



W. David Holland
Chairman, Texas MAC



John M. McNally
Hawkins Delafield & Wood LLP