NJHCFFA
NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY

AUTHORITY NOTE$

2014 SERIES B Fall

MESSAGE FROM THE EXECUTIVE DIRECTOR

In August, I celebrated my 10th anniversary at the Authority. I must say that the past 10 years have truly been wonderful. I have had the opportunity to work with great forward thinking administrations, many dedicated Members of the Authority's governing board and a staff full of devoted and talented individuals, all of whom have made my job very easy and rewarding. Every day I look forward to coming to the office knowing that I have a great team who shares a common goal.

The work we do here at the Authority is important, not just to New Jersey's hospitals and other health care facilities but to New Jersey's health, both physically and economically. When we finance a health care construction or equipment project we are creating both temporary construction and permanent health care jobs. When we issue bonds for a refunding, we enable our hospitals to free up funds to purchase equipment or hire employees. Our work translates to much more than bricks and mortar!

In our own unique way, we help our health care facilities contribute to New Jersey's economy.

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Municipalities Continuing Disclosure Cooperation Initiative for Conduit Health Care Borrowers

by Scott Kobler (Partner - Newark) and Jennifer Sullivan (Associate - Boston) McCarter & English, LLP

The Securities Exchange Commission's Enforcement Division announced a major enforcement action targeting the municipal finance market in March 2014. This enforcement action has the potential to affect many health care organizations that have issued bonds in public offerings over the past five years. The program, called the ***Municipalities Continuing Disclosure Cooperation (MCDC)*** initiative, invites bond issuers, underwriters and other obligated persons to self-report possible SEC rule violations stemming from statements in disclosure documents relating to the issuer or obligated person's track record for continuing disclosure compliance. In return for their participation in the MCDC initiative, the SEC is offering standardized settlement terms and a "clean slate" going forward.

MCDC is voluntary, which means that participation in the program is not mandatory. However, the details of MCDC and considerations about whether to participate are complex. Many tax-exempt conduit borrowers are just becoming aware of the initiative and have questions about what MCDC is and whether they should participate.

What is MCDC? MCDC is a voluntary self-reporting initiative being conducted by the SEC's Enforcement Division. Under MCDC, issuers, underwriters and conduit borrowers may voluntarily report any material misstatements in bond offering documents regarding prior compliance with continuing disclosure obligations in the past five years.

The initiative arises in a context of heightened SEC scrutiny and enforcement activity in the area of municipal market disclosure. The SEC's stated purpose for the MCDC is "to address potentially widespread violations of the federal securities laws by municipal issuers and underwriters of municipal securities in connection with certain representations about continuing disclosures in bond offering documents." Bond offering documents, usually called official statements, are prepared in connection with bond issues and are considered securities offering documents under federal law.

Statements contained in an official statement must adhere to strict legal standards for securities disclosure. It is unlawful to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in a bond offering document.

The MCDC is specifically concerned

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FINANCING NOTE$

Deborah Heart & Lung Center

On May 13, 2014, the NJHCFFA closed on a $16,148,000 direct placement of bonds on behalf of the Deborah Heart & Lung Center. The proceeds of the issuance were used to effectuate the current refunding and redeeming of all outstanding Deborah Heart & Lung Center Revenue Bonds, Series 1993 bonds; the funding of a debt service reserve fund for the Series 2014 bonds; and the payment of certain costs incidental to the issuance and sale of the Series 2014 Bonds. The transaction resulted in net present value savings of $1.32 million or 7.47% of the refunded bonds. The all-in TIC for this transaction was 4.637%. §

RWJ Robert Wood Johnson University Hospital

Recently, on September 10, 2014, the Authority closed on an $85,925,000 issuance of Bonds on behalf of RWJUH. The proceeds of the bonds were used primarily to repay loans made to RWJUH and to retire Somerset Medical Center's Series 2003 and 2008 Bonds tied to their recent merger with RWJUH. The bonds were comprised of two series – a Fixed Rate series approximating $55 million and a $30 million variable rate series. JPMorgan served as Senior Manager on the fixed rate bonds and sole book runner on the variable rate bonds.

The all-in TIC on the fixed rate bonds with a premium structure of 5% was 4.36%; however, when factoring in the variable rate bonds with an interest rate of 0.033%, the all-in TIC was 3.94%. §

Municipalities Continuing Disclosure Cooperation Initiative for Conduit Health Care Borrowers (continued from page 1)

with statements in bond offering documents ***about the issuer or borrower's compliance with its continuing disclosure obligations.*** Continuing disclosure obligations are the obligations incurred by a bond issuer or obligated person to provide certain annual financial and operating information and information regarding certain significant events. These obligations are entered into at the time of issuance of the bonds and are memorialized in a written contract usually called a continuing disclosure agreement or undertaking. The specific information required to be filed and the applicable deadlines are contained in the continuing disclosure agreement (or in the New Jersey Health Care Facilities Financing Authority's case, in the loan agreement.) Under SEC rules, underwriters may not underwrite bonds unless they have reasonably determined that the issuer of the bonds or another obligated person will enter into a continuing disclosure or similar agreement. SEC rules also require all final official statements to report any instances in the previous five years in which there was a failure to comply, in all material respects, with any previous continuing disclosure undertakings. The SEC is concerned about the potential for material misstatements and possible omissions in required statements about the continuing disclosure compliance history appearing in official statements. The SEC's 2012 ***Report on the Municipal Securities Market*** suggested that *"many issuers have not been complying with their obligation to file continuing disclosure documents and that federal securities law violation involving false statements concerning such compliance may be widespread."*

Who is eligible to participate in MCDC? The program is open to bond issuers, underwriters and conduit borrowers. Participants in MCDC must submit a questionnaire detailing instances of possible material misstatements in bond offering documents regarding the issuer or borrower's prior compliance with its continuing disclosure obligations. The questionnaire requires information about the entity making the filing, details about the bond issue(s) that are subjects of the filing and the identities of the transaction parties in the affected bond issues, including the underwriter, financial advisor, bond counsel, underwriter's counsel and disclosure counsel, if any. The questionnaire also affords an opportunity for the submitting party to provide additional information to explain the circumstances that may have led to the potentially inaccurate statement(s). As part of the submission, the self-reporting entity must affirm that it intends to consent to the applicable settlement terms under the initiative. The form of the questionnaire is available on the SEC's website: http://www.sec.gov/divisions/enforce/mcdc-initiative-questionnaire.pdf.

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The Authority enables building, buying and hiring in New Jersey.

That is something that the Members of the Authority, the Authority staff and I point to with pride.

Thank you for a great 10 years!

- Mark E. Hopkins

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Officers and staff of issuing or borrowing entities, legal advisors, financial advisors, and other individuals are not eligible to participate in the MCDC, nor are they eligible for the favorable settlement terms offered as part of the initiative. As a result, such entities and individuals may be subject to enforcement action for any violations self-reported by bond issuers, underwriters or conduit borrowers.

What is the deadline for participation? In order to self-report under the initiative, underwriters must have submitted an accurately completed questionnaire before September 10, 2014, essentially no later than midnight on September 9, 2014. Many underwriters have already performed significant due diligence regarding the bond issues underwritten during the period covered by the MCDC. Issuers and conduit borrowers may have heard or received correspondence from their underwriters, either seeking information or informing them of the underwriter's intentions with respect to participation in the MCDC.

The deadline for self-reporting by issuers and conduit borrowers has been extended from September to December 1, 2014, or no later than midnight on November 30, 2014.

What are the settlement terms being offered by the SEC? The SEC wants to encourage participation in the MCDC by offering pre-determined, more lenient settlement terms to those who come forward to self-report. The SEC staff has also indicated that those who do not self-report under MCDC will be subject to more significant penalties after the MCDC ends, if they are found to have made materially inaccurate statements in bond offering documents relating to continuing disclosure compliance. The standard settlement terms for issuers and conduit borrowers are as follows:

• Issuer/obligated person neither admits nor denies SEC findings and enters into a cease and desist proceeding with the SEC.

• Issuer/obligated person must undertake the following:

- Establish policies, procedures, and training regarding continuing disclosure obligations within 180 days.

- Comply with existing continuing disclosure obligations and update past delinquent filings within 180 days.

- Cooperate with any subsequent SEC investigation.

- Disclose terms of SEC settlement agreement in all future offering documents for the next five years.

- Provide SEC with a compliance certification of above requirements on the one year anniversary of proceedings.

• No civil penalties (i.e. no monetary penalties).

SEC staff will recommend the standard settlement terms, but cannot guarantee that the SEC will offer such terms.

How should conduit borrowers respond to MCDC? There are significant legal and factual issues that will inform whether or not an entity should participate in the MCDC. Here are some guidelines to follow in crafting a response to MCDC:

1. Determine whether the MCDC applies to your organization.

• Have you issued or been the obligated person on a public issue of municipal bonds in the past five years (on or after December 1, 2009)? **If the answer is no,** you may disregard the MCDC. It is not applicable to your organization.

• If the answer is yes, you should proceed to a compliance review.

2. Perform compliance review. Third party service providers, such as financial advisors and other disclosure compliance specialists, may be able to help you conduct a thorough review of your organization's continuing disclosure obligations, your compliance history with those obligations and the accuracy of official statement disclosure about that compliance history. Such a review will entail the following steps:

• Obtain copies of the following:

- all official statements and other public disclosure documents (offering memoranda, offering circulars, etc.) dated on or after December 1, 2009.

- all continuing disclosure undertakings to which your organization is a party or under which it is obligated to provide information, relating to any bonds outstanding in the period beginning December 1, 2004 to date.

(Note: the continuing disclosure agreements included in this inquiry **may be dated prior to December 1, 2004;** in order to determine if your organization has complied with all such agreements, you must first examine all the agreements in effect in the period. This may include some agreements relating to bonds that have been redeemed or have matured and are no longer outstanding at the present.)

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NJHCFFA STAFF NOTES

Anniversary

In August, Executive Director **Mark Hopkins** completed his tenth year at the helm of the NJHCFFA.

Originally appointed by then-Gov. James McGreevey in 2004, Mark has administered over $7.5 billion in financing to New Jersey's health care facilities.

Retirement

Arvella *"Archie"* King retired on July 11, 2014 after five years of service with the Authority, most recently as its Assistant Director of Research, Investor Relations and Compliance.

Best wishes for a great retirement!

Welcome

Frank Troy, CPA joined the Authority in July as the Assistant Director of Research, Investor Relations and Compliance.

Frank most recently served as the Accounting Manager for Pocono Health System in East Stroudsburg, PA. Frank previously served as the Chief Financial Officer for Cadbury Senior Services in Cherry Hill, NJ and the Vice President, Planning and Finance at New Life Management and Development, Inc. in Mt. Laurel, NJ.

Frank's experience also includes serving as a manager in the healthcare advisory practice at KPMG, LLP and as controller for a continuing care retirement community and several acute care hospitals.

Frank received his Bachelor of Science in Accounting from the University of Scranton and an MBA from Fairleigh Dickinson University. Frank is a member of the American Institute of Certified Public Accountants and the Pennsylvania Institute of Certified Public Accountants.

and ...

Also hired in July was our new Communications Specialist **Chris Kniesler**.

Chris was most recently the Executive Director for Solutions for New Jersey a public policy think tank. Previously, Chris served as Deputy Director for the NJ Division of Motor Vehicles, as the Administrator for the Monmouth County Prosecutor's Office and as the Deputy Director for Marketing and Sales at the NJ State Lottery.

Prior to that, Chris was appointed as a Special Assistant to Governor Thomas H. Kean and served as the District Representative for Congressman Edwin B. Forsythe.

Chris holds a Bachelors Degree in American Government from the University of Virginia and a Master's degree in Politics from the Catholic University of America in Washington, DC.

Welcome to our new team members!

FINANCING NOTE$

CentraState Medical Center

In August, the Authority approved the issuance of $47,940,000 in bonds for CentraState Medical Center. The proceeds of the Series 2014 Bonds will be used by CentraState to refund the Authority's Series 1998 bonds and will provide over $10,000,000 for capital improvements, including the construction and equipping of a new information technology and data center, as well as improvements to the women's center and other facilities at the Medical Center's Freehold campus. The Bonds were issued in three series and were privately placed with TD Bank, N.A. and Siemens Financial Services Corp. §

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- all internal files that document continuing disclosure filings made pursuant to the continuing disclosure agreements in effect during the period beginning December 1, 2004 to the present, submitted to: the Nationally Recognized Municipal Securities Information Repositories **(NRMSIRs)** (prior to 2009) **and** to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access **(EMMA)** system (2009 - present).

• Compare the requirements of the continuing disclosure agreements with the information actually filed with the NRMSIRs and EMMA, as applicable. Were all required filings accurate, complete and timely? **If the answer is yes,** you may disregard the MCDC. It is not applicable to your organization.

• **If the answer is no,** review information in the official statements describing any instances of prior non-compliance with terms of continuing disclosure obligations then in effect. Usually this information is presented in official statements under a heading entitled *"Continuing Disclosure."* Did all of the official statements accurately and fully disclose any instances of non-compliance with continuing disclosure obligations that occurred in the five year period prior to the date of such official statement? **If the answer is yes,** you may disregard the MCDC. It is not applicable to your organization

• **If the answer is no**, or if you learn from an underwriter, financial advisor or other party that your organization has issued official statements that potentially contain inaccurate statements relating to prior compliance with continuing disclosure obligations, you should proceed to steps 3 and 4 below.

3. Correct any prior non-compliance, if possible, adopt enhanced compliance procedures going forward. The standard settlement undertakings that the SEC would impose under the MCDC are indicia of the best practices in this area.

4. Consider participation in the MCDC. Contact your counsel with experience in bond disclosure to verify the misstatement(s), to analyze the potential materiality of the misstatement(s) and discuss the merits and risks associated with participation in the MCDC. The SEC has provided limited guidance and no clear definition of materiality in this context. The legal consequences of participating in the MCDC are not insubstantial and include entering into a cease and desist order with the SEC and being required to disclose the settlement in your organization's official statement for five years. Expert legal advice (including monitoring possible changes in MCDC from the date this article was written) is advisable in this matter. §

MSRB
Municipal Securities Rulemaking Board

Keep up with the times: The NJHCFFA can help you buy the latest equipment

In today's world it is difficult to keep up with all of the new innovations, upgrades and the latest "new big thing."

The NJHCFFA has three (3) tax-exempt financing programs that will help your hospital or health care facility keep up with the latest advancements, surgical and diagnostic equipment, as well as computer and communications technology.

The Equipment Revenue Note Program ("ERN") is designed to offer both an easy and efficient method of financing and refinancing equipment purchases of $15 million or less. The security for the ERN program is provided through equipment liens and/or master indenture notes.

Under the ERN, the Authority offers a pre-negotiation with a bond counsel already selected by the Attorney General's office and utilizes the pre-approved negotiated private placement process. We use standardized documents, so it is possible to close on the deal within a month.

The Master Leasing Program is designed to meet the unique needs of New Jersey's health care systems (stand-alone facilities may also participate.) In the case of a System, the various members of that System can access tax-exempt equipment leases through a pre-arranged master lease financing. The Authority approves the System for a total dollar amount. The System's members enter into leases over a 10-year period, aggregated up to that dollar amount. The System must enter into a master lease agreement with each separate lessor/equipment vendor.

The Capital Asset Program ("CAP.") Under this program, loans are made at a low monthly variable interest rate from bonds issued prior to the 1986 tax law changes. The loans are continuously repaid, making fresh funds available to other health care organizations. The Authority makes this streamlined process available to 501 (c) (3) organizations who are credit qualified by the CAP credit provider.

To obtain more information about any of these programs, simply go to the Authority website:

http://www.njhcffa.com/njhcffa/what/programs_products.html

Or, reach out to an Authority Project management representative and get the process started.

The Authority is here to help you provide to best care to New Jersey residents. §

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