

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

**Item No.** 4e  
**Date of Meeting** November 4, 2014

**DATE:** October 15, 2014  
**TO:** Theodore J. Fick, Chief Executive Officer  
**FROM:** Craig R. Watson, General Counsel  
Elizabeth Morrison, Director, Corporate Finance  
**SUBJECT:** Municipal Continuing Disclosure Cooperation

**ACTION REQUESTED**

Request Commission authorization for the Chief Executive Officer to submit information to the Securities and Exchange Commission (SEC) under the Municipal Continuing Disclosure Cooperation (MCDC) initiative and consent to settlement terms, if any, applicable under the MCDC initiative.

**SYNOPSIS**

In March of 2014, the SEC initiated the MCDC program to encourage issuers and underwriters to voluntarily disclose misstatements in bond official statements regarding continuing disclosure compliance. Issuers who participate in the program will be offered favorable settlement terms, if applicable, potentially including a cease and desist order, but no monetary penalties. The Port has always filed the operating and financial report as required, but inadvertently did not file the audited financial statements for 2006, 2007 and 2009 at the same time. This was corrected and disclosed to investors in 2011. Prior to the discovery of this oversight, the Port erroneously stated in several bond offering documents that it had fully complied with its continuing disclosure requirements. This misstatement occurred in three official statements in 2010 and early 2011. Staff recommends that the Port also submit this information to the SEC under the MCDC program.

**BACKGROUND**

Issuers of municipal bonds, including the Port, are required to provide continuing disclosure to the market. This consists of annually submitting an update of the operating and financial information originally disclosed in the initial offering document and audited financial statements. For the Port, this information must be posted by June 30, for the prior year. In addition, issuers must submit material event notices if any one of 14 specified events occur; notices must be posted within 10 days of the occurrence.

Initially, issuers submitted disclosure to multiple Nationally Recognized Municipal Securities Information Repositories (NRMSIRs). These were private companies that were accessible by fee only and were inconsistent in the storage and dissemination of information. Widespread

## **COMMISSION AGENDA**

Theodore J. Fick, Chief Executive Officer

October 15, 2014

Page 2 of 3

dissatisfaction with this system led to the creation of the Electronic Municipal Market Access (EMMA) system. Unlike the NRMSIRs, EMMA is accessible on the Internet at no cost. EMMA became the sole repository in July 2009 and the Port made its first annual disclosure submission to the site in June 2010.

The Port initiated a review of its disclosure on EMMA in 2011 as an effort to clean up naming conventions and organize information in a more accessible way. As part of the review, the Port discovered that the 2009 audited financial statements had not been posted on EMMA by the June 30, 2010, deadline. The 2009 audit had been posted on EMMA 20 days after the deadline as part of a bond official statement and was available on the Port's website. The Port took corrective action and posted the 2009 audit in May of 2011. The Port also added prior years' disclosure information (including the audited financial statements for 2006 and 2007) in an effort to provide easier access to investors.

In November 2011, in preparation for a bond sale, the Port's underwriter undertook a review of the Port's continuing disclosure that included a review of the postings on both EMMA and the NRMSIRs. The underwriter discovered that the Port's audited financial statements for 2006 and 2007 were not posted on the NRMSIRs. The official statement for the bond offering (and all subsequent bond offerings) included disclosure that the Port had not posted the audited financial statements for 2006, 2007, and 2009 along with the operating and financial report.

Although the posting errors were discovered, corrected and disclosed in 2011, there were three bond offerings prior to the discovery that misstated the Port's compliance with its continuing disclosure requirements. The MCDC program is seeking information about these types of misstatements and providing issuers with the opportunity to provide this information under favorable terms. The deadline for underwriters to file MCDC reports of misstatements was in September and the senior managing underwriters for the Port's three affected transactions provided their information to the SEC at that time. The deadline for submission by issuers is December 1, 2014. Staff recommends submitting information pursuant to MCDC.

The Port has engaged Applied Best Practices (ABP) to do an independent review of the Port's continuing disclosure posting on both EMMA and the NRMSIRs. Based on ABP's report, there are no other substantive issues. The report has been reviewed by counsel and submission will be prepared as appropriate.

## **FINANCIAL IMPLICATIONS**

There are no financial implications. In the event the SEC deems the Port's reported information "material," it can recommend a settlement consisting of a cease and desist order that may include compliance with certain conditions, such as the development of policies, procedures and training regarding continuing disclosure obligations. No monetary penalties would be incurred as a result of reporting under the MCDC Initiative.

## **COMMISSION AGENDA**

Theodore J. Fick, Chief Executive Officer

October 15, 2014

Page 3 of 3

## **ATTACHMENTS TO THIS REQUEST**

- None

## **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- None