August 12, 2014

To: Chief School Administrators
   School Business Administrators

From: Yut’se Thomas, Director
       Office of School Finance

Subject: Secondary Bond Market Continuing Disclosure Commitments Relative to District Bond Issuances

School business officials and district superintendents should be aware of the Securities and Exchange Commission’s (SEC) Enforcement Division announcement, dated March 10, 2014, of the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative to provide issuers and underwriters the opportunity to self-report instances of material misstatements in bond offering documents regarding the issuer’s prior compliance with its continuing disclosure obligations. The last date for self-reporting under the MCDC Initiative is September 10, 2014. You may access program information at the US Securities and Exchange Commission Division of Enforcement webpage at http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml.

At this time, it is critically important that chief school administrators and school business administrators review Local Finance Notice (LFN) 2014-9 issued by the Department of Community Affairs, Division of Local Government Services on July 23, 2014 to determine whether immediate action in the form of self-assessment is warranted. The LFN is available on the Department of Community Affairs, Division of Local Government Services website at www.nj.gov/dca/divisions/dlgs/lfns/14/2014-09.pdf. The notice reminds local governments of their obligations, encourages them to achieve compliance, and apprises them of the MCDC amnesty program for bond issuances between September 2009 and September 2014. The amnesty program is available through September 10, 2014.

The MCDC Initiative offers predetermined and more lenient settlement terms than otherwise available. The department is urging districts to exercise caution and encourages familiarization with the details of the initiative and, while not required, encourages consultation with an experienced professional to assist or undertake self-assessment prior to consenting to engage in the program. There is a five-year statute of limitations for securities law violations, so the MCDC Initiative covers bond transactions dating back to September 2009; however, since final
official statements must disclose compliance failures for the five years prior, the scope of the initiative actually looks back to 2004.

Underwriters are known to now be conducting internal compliance investigations for all bonds underwritten over the last five years and associated with continuing disclosure filing data to confirm that the official statements for this period accurately described the issuer’s prior compliance with continuing disclosure requirements. Underwriters that discover non-compliance and elect to self-report have their penalties capped at $500,000 per incident. As a result of this incentive, some underwriters are expected to participate in the program and submit listings identifying bond issuers that may have been out of compliance with continuing disclosure requirements, but indicated they have been in compliance in official statements. The associated risk to a district board of education (BOE) that fails to coordinate with their underwriter(s) in deciding to self report is appearance on an underwriter’s non-compliance list. Please be aware that underwriters are under no obligation to contact issuers.

A district BOE that has issued bonds during this period and through self-examination or through a discussion with counsel or an underwriter, discovers that the final official statement potentially contains inaccurate statements relative to past compliance with continuing disclosure obligations should contact their bond or disclosure counsel to assess the materiality of the misstatement and assess whether self-reporting under the MCDC Initiative is advisable and consider a correction to any prior noncompliance. All district boards of education must adopt or enhance policies and procedures to ensure compliance with continuing disclosure obligations going forward, including a policy and procedure to document and maintain all filings on the Municipal Securities Rulemaking Board’s Electronic Municipal Marketplace Access website (EMMA) www.emma.msrb.org.

The department’s position is that a district board of education may disregard the MCDC Initiative if the BOE has not issued bonds within the last five years. A BOE that has issued bonds in the last five years should discuss participation in the MCDC initiative with counsel. That discussion should include, but not necessarily be limited to, the following: bonds that were issued in the last five years; whether there is personal knowledge and supporting documentation that all required continuing disclosure filings have been made; whether policies and procedures are in place to ensure compliance; and, whether an outside vendor or counsel is engaged under contract to assist with continuing disclosure compliance for the five-year period in question.

Be advised that self-reporting under the MCDC Initiative does not limit the personal liability of the board of education officials and may expose an issuer or official to further SEC investigation and enforcement. Self reporting under the MCDC Initiative requires an issuer to sign and submit a questionnaire available on the SEC website. The questionnaire will affirm that the issuer agrees to cooperate with the SEC and testify in the event of an SEC investigation; and, consents in advance to all settlement terms. For districts that have issued bonds during the last five-year period, (September 2009-September 2014) the decision to self-report or not must be supported by a board of education resolution of 2/3 majority of the board.
The SEC and financial markets are closely monitoring local government issuers of outstanding debt that do not comply with legal obligations to publicly disclose, on a regular basis, information about their finances. SEC and financial market actions may result in diminished access to credit markets for district boards of education that fail to come into compliance. In an effort to assist and encourage compliance with disclosure requirements, beginning with the 2015-2016 budget process, the chief school administrator and school business administrator will be required to attest, as part of the budget submission to the executive county superintendent, that appropriate steps are being taken to ensure compliance with continuing disclosure requirements. Also, school district auditing firms are reminded that noncompliance with continuing disclosure requirements is an instance of noncompliance with prevailing laws, statutes, regulations, contracts and agreements that is required to be reported under Government Auditing Standards.

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c: Members, State Board of Education  
  David Hespe  
  Senior Staff  
  Yut’se Thomas  
  Bernie Piaia  
  Glenn Forney  
  Michael Mindlin  
  Executive County Superintendents  
  Executive Directors for Regional Achievement Centers  
  Executive County School Business Administrators  
  State Monitors  
  Lee Group  
  Garden State Coalition  
  Pam Castellanos  
  Independent Audit Firms (Distribution Listing)