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August 14, 2007

Congressman Barney Frank, Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Frank:

I am writing to express my concerns regarding the reluctance of the Securities and Exchange Commission (the "SEC" or the "Commission")[1] to confront malfeasance by local officials in the issuance of municipal securities. As you know, SEC Chairman Cox recently submitted to your Committee a white paper entitled "Disclosure and Accounting Practices in the Municipal Securities Market." That paper highlighted a number of SEC enforcement actions against municipal issuers, including the City of San Diego. Among other things, Chairman Cox noted that "the City of San Diego failed to disclose the gravity of its enormous pension and retiree health liabilities or that those liabilities had placed the City in serious financial jeopardy" and advised that "the Commission is near to the statutory limits of its present authority to address the needs of investors in municipal securities for information upon which investment decisions may be made." He also expressed concern that although the SEC's report on Orange County

[1] It is not clear why the Commission has declined to act in the face of clear public malfeasance. The SEC seems to have privatized its investigative function, allowing former SEC attorneys and accountants to undertake so-called independent investigations more properly conducted by the SEC. This raises questions regarding the abdication by the SEC of its statutory duties and associated conflicts of interest. The City of San Diego has employed many former SEC officials throughout the time the City has been investigated by the Commission with a cost to City taxpayers in excess of $40 million.

"alerted municipal issuers and other participants to their responsibilities with respect to disclosure," that "this problem [failure of municipal officials to recognize their disclosure responsibilities] still remains."

I agree wholeheartedly with the Chairman's assessment of the situation but I do not feel that the Commission's actions to date are adequate to address the larger concerns about the municipal securities market in general or the particular situation in the City of San Diego. The SEC imposed a cease-and-desist order against the City of San Diego on November 14, 2006 (SEC Rel. Nos. 33-8751, 34-54745). In doing so, the SEC concluded that "[t]he City, through its officials, acted with scienter..." and that "City officials acted recklessly in failing to disclose material information regarding those liabilities [pension and retiree health care]." Despite such explicit conclusions regarding the culpability of City officials, no SEC enforcement actions have been brought against the City Council or other City officials. While securities fraud by City officials may not be unique, it is unusual that the SEC has found specific wrongdoing accompanied by a culpable state of mind without pursuing any enforcement actions.

If the SEC is serious about the concerns expressed by Chairman Cox in his white paper, the SEC must take action against individuals to bring home the fact that it is no longer acceptable for municipal issuers to ignore the obligations and duties that were so clearly enunciated in the Orange County 21(a) report (the "Orange County Report"). The failure by the SEC to impose penalties on City officials who violated federal securities laws, particularly those who remain on the City Council, has and will continue to hinder efforts by the City to ensure timely and accurate financial disclosure. Such inattention will also compromise SEC enforcement efforts in the municipal securities market generally.

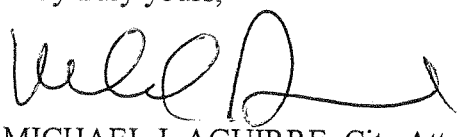
The SEC has never taken action against members of a municipal legislative body for violations of the federal securities laws. While such restraint may have been appropriate before the Orange County Report when issuers could plausibly argue that they were unaware of their responsibilities, in San Diego the Commission is confronted with a City Council that was made aware of the lessons of Orange County in both a written memorandum and an oral presentation from an outside law firm expert in federal securities law. For City officials and the City Council to claim they were unaware of their responsibilities under the federal securities laws is absurd and for the SEC to ignore such flagrant disregard for the law makes the fraud provisions of the federal securities laws all but meaningless in the municipal securities market.

The lack of enforcement in the municipal market is damaging to the taxpayers who ultimately bear the burden imposed by the fraudulent actions of their elected officials and undermines the integrity of the entire $14 trillion municipal bond market. Furthermore, without SEC action there is no meaningful deterrent to future public official misconduct. Since the SEC is responsible for ensuring the integrity of that market, I request that you ask the SEC why the Commission has ignored the illegal acts perpetrated by City officials in San Diego. The Commission initiated its investigation of the City in February 2004 and has yet to take any action against the fraudulent behavior of the City Council or other City officials.

The factual background surrounding the securities fraud in San Diego and the ongoing investigations is complex and I have intentionally omitted a significant amount of detail so as not to overwhelm the salient points of this letter. That being said, a number of independent investigations and reports on the situation in San Diego have been produced including seventeen interim reports prepared by the City Attorney's office. I am available to discuss the situation with you or your committee in greater depth at your convenience. Thank you for your attention

to this matter and do not hesitate to contact me should you have any questions concerning the subject of this letter.

Very truly yours,



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MJA:bcw

Cc: Deborah Silberman