

# **Municipal Securities**

## **Post-Issuance**

## **Disclosure Policy**

**DRAFT**

**North Carolina Turnpike Authority**

**1 South Wilmington Street  
(1578 Mail Service Center)  
Raleigh, NC 27699-1578**

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## **A. Purpose**

The North Carolina Turnpike Authority (the “Authority”) is committed to providing timely and consistent dissemination of financial information in accordance with Securities and Exchange Commission (“SEC”) Rule 15c2-12 (the “Rule”) and the Authority’s continuing disclosure undertakings.

This policy affirms the Authority’s commitment to provide post-issuance disclosure. The goal is to establish and maintain guidelines for presenting related financial reports, documents and events to interested third parties, financial institutions and the general public in compliance with the Rule and the Authority’s continuing disclosure undertakings.

This policy applies to all public debt issues in which the Authority is the “issuer” or an “obligated person” under the Rule. In such situations, even though the Authority is a part of the North Carolina Department of Transportation (“NCDOT”), no consideration is given with respect to events which may affect NCDOT but do not apply to or affect the Authority or the particular debt issue.

## **B. Scope**

This policy covers all Authority employees and officials of the Authority. It covers disclosure documents filed with the SEC and the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access service (“EMMA”), statements made in the Authority’s Audited Financial Statements and in any unaudited interim reports, as well as public statements made by authorized Authority officials.

## **C. Responsibility of the Disclosure Working Group**

The Authority has established a Disclosure Working Group (“DWG”) consisting of the Authority’s Director of Finance and Budget and Financial Analyst. The DWG will establish appropriate written policies and procedures, which this document provides, and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws. In connection with each primary offering subject to the Rule, as well as annually and periodically when necessary in connection with its continuing disclosure filings required by the Rule, the DWG will systematically review filings, reports and other public statements to determine compliance and whether any filing, updating or correcting of information is appropriate. The DWG will react to developments and events that affect the Authority and notify its dissemination agent and others, as and when appropriate.

The Authority’s official primarily responsible for the Authority’s financial information, debt and financings, and other financial reports and events is the Authority’s Director of Finance and Budget (the “Disclosure Representative”). The Disclosure Representative shall be responsible for ensuring compliance by the Authority with its continuing

disclosure policies and procedures and shall be responsible for implementing and maintaining a record (including attendance) of related training. Others within the Authority may, from time to time, be designated by the Disclosure Representative as spokespersons on behalf of the Authority and respond to specific inquiries. It is essential that the DWG be fully apprised of all material developments of the Authority in order to evaluate and discuss those events and determine the appropriateness and timing for release.

The Disclosure Representative or its designated agent will provide, or cause to be provided, continuing disclosure documents and related information to EMMA or the SEC, as appropriate. The continuing disclosure documents, which include annual financial statements, operating data of the Authority (and any obligated persons, where applicable) and event notices, will be posted to the EMMA website by the Authority's Disclosure Dissemination Agent, Digital Assurance Certification, LLC ("DAC"), or its successor.

#### **D. Continuing Disclosure Agreements and Requirements**

Appendix A contains the Continuing Disclosure Agreements and the disclosure requirements for the Authority's public debt issues which are subject to the Rule. The CUSIP numbers for each of these public debt issues are attached as Appendix B. For a current list of the Authority's material financial obligations, please see Appendix C. "Financial obligation" as used in this policy is defined in the Rule as (i) a debt obligation; (ii) derivative instrument entered into in connection with, or pledged as a security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii), but does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

#### **E. Event Notice Requirements**

1A. For any public debt issues (subject to SEC Rule 15c2-12) issued on or after December 1, 2010, notice of the following events would need to be provided to the Authority's Disclosure Dissemination Agent, for further filing with EMMA, *within ten (10) business days of their occurrence*.

Unless otherwise specified, the Disclosure Representative will be responsible for monitoring the occurrence of these events, determining (if necessary) their materiality upon advice of members of the DWG, and notifying the Disclosure Dissemination Agent of the occurrence of an event for further filing with EMMA:

- Principal and interest payment delinquencies
- Non-payment related defaults, if material

- Unscheduled draws on debt service reserves reflecting financial difficulty
- Unscheduled draws on credit enhancements reflecting financial difficulty
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices of determination with respect to the tax status of the security or other material events affecting the tax status of the security
- Modifications to rights of security holders, if material
- Bond calls, if material, and tender offers
- Defeasances
- Release, substitution, or sale of property securing repayment of the securities, if material
- Rating changes
- Bankruptcy, insolvency, receivership or similar event of the obligated person
- The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
- Appointment of a successor or additional trustee or the change of name of a trustee, if material
- Legislation shall be filed with the North Carolina General Assembly by the Governor of North Carolina or legislation is reported out of a committee in either body of the General Assembly which, if adopted in the form so filed or reported, would result in a reduction or delay in the receipt of [\$25 million (for Triangle Expressway)] [\$24 million (for Monroe Expressway)] in State Appropriated Revenues in any Bond Year. (Note: notice of such event is not required by the Rule, but is required pursuant to certain of the Authority's continuing disclosure undertakings).
- An administrative action is taken by the Governor of North Carolina, NCDOT or any other agency or authority of the State which will result in a reduction or delay in the receipt of [\$25 million (for Triangle Expressway)] [\$24 million (for Monroe Expressway)] in State Appropriated Revenues in any Bond Year. (Note: notice of such event is not required by the Rule, but is required pursuant to certain of the Authority's continuing disclosure undertakings).

1B. For any public debt issues (subject to SEC Rule 15c2-12) issued on or after February 27, 2019, notice of the following additional events 15 and 16 would need to be provided to the Authority's Disclosure Dissemination Agent, for further filing with the EMMA, *within ten (10) business days of their occurrence*.

- Incurrence of a financial obligation of the Authority (and any obligated person, where applicable), if material<sup>1</sup>, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation the Authority (and any obligated person, where applicable), any of which affect security holders, if material; and
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Authority (and any obligated person, where applicable), any of which reflect financial difficulties.

Note, (i) this Paragraph 1.B. might apply before February 27, 2019 if the Authority enters into a continuing disclosure undertaking before that date that requires reporting of these additional events 15 and 16, and (ii) *after its initial public debt issuance on or after February 27, 2019*, Authority may choose to comply with the foregoing event notices 1 through 16 in connection with all outstanding debt issues (subject to SEC Rule 15c2-12) regardless of the date of issuance of such debt.

2. For any debt issues (subject to SEC Rule 15c2-12) issued prior to December 1, 2010, notice of the following events, *if determined to be material*, would need to be provided to the Authority's Disclosure Dissemination Agent, for further filing with EMMA, "in a timely manner."

Unless otherwise specified, the Disclosure Representative will be responsible for monitoring the occurrence of these events, determining their materiality upon advice of the DWG, and notifying the Dissemination Agent of the occurrence of an event for further filing with EMMA:

- Principal and interest payment delinquencies
- Non-payment related defaults
- Unscheduled draws on debt service reserves reflecting financial difficulty
- Unscheduled draws on credit enhancements reflecting financial difficulty
- Substitution of credit or liquidity providers, or their failure to perform

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<sup>1</sup> Absent unusual circumstances, the Authority will treat the incurrence of a financial obligation as "material" only if such obligation is in excess of \$10 million.

- Adverse tax opinions, or events affecting the tax-exempt status of the security
  - Modifications to rights of security holders
  - Bond calls
  - Defeasances
  - Release, substitution, or sale of property securing repayment of the securities
  - Rating changes
  - Legislation shall be filed with the North Carolina General Assembly by the Governor of North Carolina or legislation is reported out of a committee in either body of the General Assembly which, if adopted in the form so filed or reported, would result in a reduction or delay in the receipt of \$25 million in State Appropriated Revenues in any Bond Year. (Note: notice of such event is not required by the Rule, but is required pursuant to certain of the Authority's continuing disclosure undertakings); and
  - An administrative action is taken by the Governor of North Carolina, NCDOT or any other agency or authority of the State which will result in a reduction or delay in the receipt of \$25 million in State Appropriated Revenues in any Bond Year. (Note: notice of such event is not required by the Rule, but is required pursuant to certain of the Authority's continuing disclosure undertakings).
3. In addition, the Disclosure Representative will be responsible for providing notice, in a timely manner, of a failure to provide any of the Authority's required annual financial information by the date specified in the continuing disclosure undertaking.

## **F. Voluntary Disclosure Requirements**

In addition to preparing annual reports and event notices, the Authority may wish to keep investors informed by providing information that is not required to be provided under the Rule or its continuing disclosure undertakings. Examples of such types of information are investments, interim financial information, capital improvement plans, fund balance policies, etc. and financial forecasts.

Because providing this information is voluntary, the Disclosure Representative will monitor for events which may affect the Authority, so that a determination can be made if the event should be disclosed.

The below list is comprised of events and financial disclosure which the MSRB has suggested issuers may wish to voluntarily disclose. Some of these are not applicable to

the Authority's public debt issues and financial obligations, but the DWG may wish to consider providing some of these to the Authority's Disclosure Dissemination Agent for further filing with EMMA:

1. "amendment to continuing disclosure undertaking;"
2. "change in obligated person;"
3. "notice to investors pursuant to bond documents;"
4. "certain communications from the Internal Revenue Service;"
5. "secondary market purchases;"
6. "bid for auction rate or other securities;"
7. "capital or other financing plan;"
8. "litigation/enforcement action;"
9. "change of tender agent, remarketing agent, or other on-going party;"
10. "other event-based disclosures;"
11. "quarterly/monthly financial information;"
12. "change in fiscal year/timing of annual disclosure;"
13. "change in accounting standard;"
14. "interim/additional financial information/operating data;"
15. "budget;"
16. "investment/debt/financial policy;"
17. "information provided to rating agency, credit/liquidity provider or other third party;"
18. "consultant reports;" and
19. "other financial/operating data."

Also, if the Authority maintains an "Investor Relations" website, or routinely posts Authority meeting agenda packages, including interim financial information, capital

improvement plans, etc. on its website, the Authority's Disclosure Representative should review and, in some cases, the DWG should "reissue" the posted material with an explanatory note (e.g., the interim financial information is presented on a cash, as opposed to accrual basis).

## **G. Third Party Information/Quarterly Disclosure Requirements**

Currently, the Authority is not required to file interim financial information. In the future, if such filings are required in continuing disclosure undertakings, the Authority's Disclosure Representative will notify the Disclosure Dissemination Agent for assistance when these filings become necessary.

## **H. Coordinating Continuing Disclosure with Primary Disclosure**

It is expected that the DWG will be responsible for collecting and reviewing information set forth in official statements prepared in connection with new bond offerings. In connection with the preparation of continuing disclosure filings, the DWG shall review this policy and confirm that such filings comply with the guidelines set forth herein.

The "Management's Discussion and Analysis" from the prior year's audited financial statements will be reviewed to ensure that the unaudited information which was provided in that portion of the financial statements is updated to include added public debt and material financial obligations. Coordination with the Authority's auditors will be essential.

Careful review of the long-term debt notes in the financial statements and the checking of all bond ratings before each EMMA filing should be made. Measures should be taken to assure information publicly available to investors is accurate.

The DWG shall review all obligations entered into or amended by the Authority and determine if notice of the incurrence or amendment of such obligation must be posted in accordance with Section E(1B).

Further coordination between the DWG and the Authority's website manager is essential before posting of any financial information is made.

## **I. Website Disclosure**

It is expected that the Authority will be responsible for monitoring website content and reviewing the information set forth on such website. Appropriate "disclaimer" language on the website will be considered in order to educate the viewer regarding information intended for investors can be found and the investor's acknowledgement of the limitations

of such reliance. Coordination between the DWG and Authority officials will occur before the release of any public statements about any financial condition of the Authority.

#### **J. Training for Employees and Issuer Officials**

For Authority officials, compliance with federal securities law should be considered as important as compliance with local public meetings and records laws. To further this goal, the Disclosure Representative shall call a meeting for an annual review or, if necessary, an interim review, of the continuing disclosure policies of the Authority; which all members of the DWG and additional invited officials and employees are expected to attend. The Disclosure Representative shall be responsible for keeping a record of attendance. Furthermore, the members of the DWG and such invited officials and employees are expected to attend training sessions, at least annually, called by the Disclosure Representative. Again, the Disclosure Representative will be responsible for retaining a record of such sessions including attendance.

It is anticipated that on-going education will involve guest speakers, webinars and conference attendance, as well as continuing legal and accounting education courses. Note that DAC offers 15-20 hours of CPE credit annually on topics related to municipal securities, in which the Authority's employees and officials may participate. Updated schedules of webinars are available on [www.dacbond.com](http://www.dacbond.com).

Applicable policies and procedures will be updated by the Authority to reflect required changes on an as-needed basis.

#### **K. Disclosure Dissemination Agent**

The SEC has recognized Digital Assurance Certification as a source of information that may be relied on with the issuance of a "No Action" Letter. A copy of this SEC letter is posted to DAC's website at [www.dacbond.com](http://www.dacbond.com) and is included as Appendix D.

#### **L. Effective Date**

This Policy shall become effective immediately.

## Appendix A

### Continuing Disclosure Agreements and Requirements

(Refer to the CDA link below the Policies and Procedures icon.)

## Appendix B

### CUSIPs

(Refer to the CUSIPs link below the Policies and Procedures icon.)

## Appendix C

### Financial Obligations

(Refer to the Inventory of Financial Obligations Not Reportable on EMMA - Draft link  
below the Policies and Procedures icon.)

Appendix D  
Digital Assurance Certification  
Securities and Exchange Commission  
No Action Letter  
Dated: September 21, 2001



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

September 21, 2001

Monty Humble, Esq.  
Vinson & Elkins LLP  
3700 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201-7700

Re: Digital Assurance Certification L.L.C.

Based on your representations and the facts presented in your letter dated September 7, 2001 (the "Request"), the Division of Market Regulation will not recommend any enforcement action to the Commission against any broker, dealer, or municipal securities dealer (each, a "dealer") for violation of Subsection (c) of Rule 15c2-12 of the Securities Exchange Act of 1934 because the dealer uses the DAC Database as its source of Information in the procedures it establishes in order to have reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B) of Rule 15c2-12 for DAC Bonds.

For purposes of this letter, the "DAC Database" is an Internet-accessible database maintained by Digital Assurance Certification L.L.C. ("DAC") and a municipal security included in the DAC Database is a "DAC Bond." "Information" refers to the Annual Financial Information, Audited Financial Statements, Notice Event notices, and Voluntary Reports, as such terms are used in the Request.

In reaching this position, we note in particular that:

1. Pursuant to a Continuing Disclosure Agreement for a DAC Bond, the issuer or obligated person will name DAC as its exclusive dissemination agent. The issuer or obligated person will agree to provide DAC with the Annual Financial Information and Audited Financial Statements (certified by a designated representative of the issuer or obligated party) by deadlines described in the Agreement and with all Notice Events notices and Voluntary Reports (each certified by a designated representative of the issuer or obligated party) for filing with nationally recognized municipal securities information repositories, state information depositories and/or the Municipal Securities Rulemaking Board (collectively, "Repositories") as required by Rule 15c2-12. DAC will agree to make such filings promptly upon its receipt of the Information.

2. DAC will be irrevocably instructed by the issuer or obligated person to file Notice Event notices of failure to file annual financial information with the appropriate Repositories at the times and under the circumstances which you have described in the Request.
3. Information in the DAC Database, including Notice Event notices, will be identical to the information DAC files with the Repositories.
4. Whenever DAC enters into a Continuing Disclosure Agreement with respect to an issue of municipal securities that is already outstanding, it will use its best efforts to obtain all Information with respect to that issue from the Repositories and include that Information in the DAC Database.

This no-action position 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 no-action position or require the Division to reevaluate its position. In addition, DAC shall advise the Division of any material change in its standard form of Continuing Disclosure Agreement or the operations and procedures described in the Request, and, if possible, shall provide such information 30 days prior to any contemplated change, to enable the Division to reevaluate this no-action position in light of such change.

This no-action position is subject to modification or revocation at any time the Division determines that such action is necessary or appropriate. The Division may, from time to time, request that DAC provide it with additional information concerning the DAC Database and the DAC System referred to in the Request.

The position expressed herein is the Division's position on enforcement action only; it does not represent a legal conclusion on the question presented.

Sincerely,



Martha Mahan Haines, Chief  
Office of Municipal Securities

Digital Assurance Certification ("DAC") Securities and  
Exchange Commission No Action Letter