

## MEMORANDUM

**TO:** Town Manager and Town Councilors, Town of Windham, Maine

**FROM:** Bonnie L. Martinolich, Bond Counsel

**SUBJECT:** Certain Federal Securities Law Requirements Applicable to Publicly Offered Bonds

**DATE:** January 7, 2021

**CC:** Susan Rossignol, Joseph Cuetara and Kristin Collins

This memorandum provides information about two federal securities law requirements related to the public offering of the Town of Windham, Maine (the “Town”) 2021 bonds: 1) disclosure obligations applicable to sale of the 2021 bonds and 2) the obligation to make annual filings (“continuing disclosure”) regarding the Town’s finances and operations until the 2021 bonds are paid off.

### **A. BOND ISSUE DISCLOSURE**

The United States Securities and Exchange Commission (“SEC”) has set forth its view of the federal securities law responsibilities of members of a governmental authority (including the Town Council members) who have authorized bond issue disclosure documents (i.e., the Preliminary Official Statement and the subsequent final Official Statement (collectively, the “OS”), a draft of which is being provided to you prior to your January 12, 2021 meeting) in an SEC report concerning Orange County, California (the “Orange County Report”). The Orange County Report emphasizes the responsibilities of the Trustees under the federal securities laws and the critical role that the Trustees play with respect to the information in the OS. In particular, the Orange County Report states that:

“A public official who approves the issuance of securities and related disclosure documents may not authorize disclosure that the public official knows to be materially false or misleading; nor may the public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading. When, for example, a public official has knowledge of facts bringing into question the issuer’s ability to repay the securities, it is reckless for that official to approve disclosure to investors without taking steps appropriate under the circumstances to prevent the dissemination of materially false or misleading information regarding those facts. *In this matter, such steps could have included becoming familiar with the disclosure documents and questioning the issuer’s officials, employees or other agents about the disclosure of those facts.*” (emphasis added)

In addition, the Orange County Report states that:

“Despite their knowledge of the County’s increasing use of interest income from the County [investment] Pools to balance the discretionary budget, the Supervisors approved the Official Statements for the various offerings without taking steps to assure disclosure of this information.

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*They never received or asked to receive a copy of any Preliminary Official Statement once finalized, or any final Official Statement; nor did they question the County's officials, employees or other agents concerning the disclosure regarding the County's financial condition.” (emphasis added)*

## **B. CONTINUING DISCLOSURE**

SEC rule 15c2-12 provides that an underwriter shall not purchase or sell the Town's 2021 bonds unless the underwriter has determined that the Town has undertaken in a written agreement to provide certain annual financial information regarding the Town, including annual audited financial statements, and notice if any one of the sixteen events listed in rule 15c2-12 occurs. Two additional reporting events were added in February of this year and are set forth in the footnote below.<sup>1</sup> The events include payment delinquencies, adverse tax events relating to the tax-exempt status of the 2021 bonds and any change of any rating of the 2021 bonds. The Town's continuing disclosure obligations are further described in the POS under the heading "Continuing Disclosure." Included with this memorandum is a copy of the Continuing Disclosure Certificate delivered by Town in connection with the Town's 2011 bonds. A substantially similar Certificate, adding the two new disclosure events, will be included as Appendix C to the POS and delivered by the Town at time of the closing of the 2021 bonds.

### C. COMMENTS TO THE PRELIMINARY OFFICIAL STATEMENT

The POS is substantially complete, but will undergo additional minor edits prior to being finalized and circulated to the Town's rating agency and to potential investors.

We welcome the Town Manager's and each Councilor's questions, comments, and concerns related to the POS. If any arise after the meeting on January 12, 2021, we respectfully ask that such items be communicated to the following person by January 15, 2021, so that we may address them prior to finalizing the POS.

Barry A. Tibbetts batibbetts@windhammaine.us 207-892-1907  
Town Manager/Treasurer

The OS will be substantially similar to the POS, but will be issued after the bond sale and will include information about the final terms of sale, including interest rates.

As they become available, the final POS and the final OS will be provided electronically to each Town Council member.

Please let us know if there is any question, or if you would like additional information, regarding the subject of this memorandum. Thank you.

<sup>1</sup> Two new reporting events: (1) incurrence of a financial obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Town, any of which affect the holders of the Bonds, if material; and (2) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Town, any of which reflect financial difficulties.