



February 1, 2018

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Washington, DC 20549

RE: Possible Municipal Bond Fraud Relating to Climate Risks In Potential Violation of 15 U.S.C. § 77q(a)(2)

Dear Ms. Gaunt:

It has come to our attention that various municipalities expect substantial future financial harm, but have either explicitly disclaimed the ability to determine such harms or at the least omitted these potential harms when informing bond investors. We wish to notify the SEC of these potential problems so that they can be properly investigated with appropriate action taken to protect investors.

A number of California cities and counties have recently filed lawsuits against several oil and gas companies, claiming that these companies failed to disclose the alleged risks of climate change. However, in these lawsuits the plaintiff cities and counties apparently describe these climate risks in ways that are far different than how they described them in their own bond offerings. In our view, this inconsistency raises serious questions of municipal bond fraud under 15 U.S.C. § 77q(a)(2).

For example, in their lawsuits many of the municipalities claim to be able to accurately be able to predict sea level rise caused by climate change. Under the California Code of Civil Procedure § 128.7, these statements are certified to be true to the “best of the person’s knowledge, information, and belief” and to “have evidentiary support.” However, some of the bond offerings of these municipalities state that such predictions were not possible.

The discrepancy between these statements raise the clear possibility that the bond offerings contained misleading statements. Under 15 U.S.C. § 77q(a)(2), it is forbidden to offer a bond using interstate commerce “to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” According to the Supreme Court, the language of 15 U.S.C. § 77q(a)(2) “is devoid of any suggestion whatsoever of a scienter requirement.” *Aaron v. Sec. & Exch. Comm’n*, 446 U.S. 680, 696 (1980). By comparison, several circuit courts have construed this provision to constitute a negligence requirement. E.g., *S.E.C. v. Shanahan*, 646 F.3d 536, 545 (8th Cir. 2011). But regardless of which standard is applied, the examples described below raise a clear possibility that the bond offerings contained misleading information.

The City of San Francisco claims to predict “0.3 to as much as 0.8 feet of additional sea level rise by 2030.” *San Francisco v. BP P.L.C. et al.*, No. CGC-17-561370, ¶ 8 (Cal. Super. filed Sept. 19, 2017). The City claims to expect short-term costs of \$500 million and long-term costs of \$5 billion. *Id.* at ¶ 89(a). Meanwhile the City is telling investors: “The City is *unable to predict* whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur.” City and County of San Francisco, Tax-Exempt General Obligation Bonds, Series 2017A, 12 (Jan. 8, 2017) (emphasis added). Either the City can predict such sea-level rise, as it tells the court, or it cannot, as it tells investors.

The City of Oakland claims that there is an “ongoing and increasingly severe sea level rise harms to Oakland” *Oakland City v. BP P.L.C et al.*, RG17875889, ¶ 55 (Cal Super. filed Sept. 19, 2017). That “by 2050 a ‘100-year flood’ in the Oakland vicinity is expected to occur . . . once every 2.3 years . . . by 2100. . . almost once per week.” *Id.* at ¶ 86. That the City expects “66 inches of sea level rise by 2100” *Id.* at ¶ 87. Finally, that the total cost for these harms to the City is “between \$22 and \$38 billion.” *Id.* And yet, the City’s bond offering to investors claims that “The City is *unable to predict* when seismic events, fires or other natural events, such as *sea rise* or other impacts of climate change or *flooding* from a major storm, could occur, when they may occur.” 2017 Oakland General Obligation Bond, A-48–49 (Aug. 1, 2017) (emphasis added). Either the City can predict such sea-level rise, as it tells the court, or it cannot, as it tells investors. An expected expense of between \$22 and \$38 billion, if that is accurate as the County claims, is something that should be disclosed to potential bond investors.

The County of San Mateo claims that it “The County anticipates and is planning for significant sea level rise over 1992 levels by 2100.” *County of San Mateo v. Chevron Corp. et al.*, No. 17-civ-03222, ¶ 13 (Cal Super. filed July, 17, 2017). According to the County, it is “particularly vulnerable to sea level rise.” *Id.* at ¶ 68. Such damage will, according to the County, cause flooding of “County land, breach flood protection infrastructure, and swamp San Francisco International Airport (located within the County), among other impacts.” Such increase, it claims, will cause it to “suffer increasing damage in the future through rising sea level.” *Id.* According to the county:

[T]here is a 93% chance that the County experiences a devastating three-foot flood before the year 2050, and a 50% chance that such a flood occurs before 2030. Average sea level rise along the County’s shores are expected to rise by almost three feet by the year 2100, causing multiple, predictable impacts, and exacerbating the impacts of extreme events.

Id. at ¶ 170. And yet the bond offerings of San Mateo County claim that the “County is *unable to predict* whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur.” San Mateo County Joint Powers Financing Authority Lease Revenue Bonds 2014 Series A, 71 (May. 6, 2014) (emphasis added); San Mateo County Joint Powers Financing Authority Refunding Lease Revenue Bonds 2016 Series A, 74 (Jan. 14, 2016) (emphasis added). Either the County can predict such sea-level rise, as it tells the court, or it cannot, as it tells investors. Other loan documents by the County even fail to even mention such risks to the investors.

The County of Santa Cruz claims there is “a 98% chance that the County experiences a devastating three-foot flood before the year 2050.” *County of Santa Cruz v. Chevron Corp.*, No. 17-cv-03242, ¶ 210 (filed Dec. 20, 2017). The property at risk, according to the County, is worth

“approximately \$742 million.” *Id.* at ¶ 211. Meanwhile the County is telling investors that it is unable to predict such floods, stating to investors that the County “may be subject to *unpredictable* climatic conditions, such as *flood*.” County of Santa Cruz, Limited Obligation Improvement Bonds, Assessment District No. 15-01, 27 (Feb. 10, 2016). The county tells the court that such floods are predictable, but at the same time it tells investors they are not.

The City of Imperial Beach claims that “Economic vulnerability associated with erosion’s impact on real property is valued at over \$106 million. Coastal flooding will impact 1,538 parcels, and cause over \$38 million in damages, primarily to residential and commercial buildings.” *The City of Imperial Beach v. Chevron Corp. et al.*, No. c17-01227, ¶ 170 (Cal. Super. filed Jul. 17, 2017). None of these risks are disclosed to investors in the city’s bond offerings. The City notes that a natural disaster such as a “flood . . . could cause a reduction in the Tax Revenues securing the Bonds,” but at the same time claims it is “not aware of any specific conditions which could have material impact on the collection of Tax Revenues.” Imperial Beach Redevelopment Agency Successor Agency, 2013 Tax Allocation Refunding Bonds (Nov. 19, 2013).

The County of Marin has stated in its filings in California Superior Court that “the County will suffer extreme injuries in the future. For example, there is a 99% risk that the County experiences a devastating three-foot flood before the year 2050, and a 47% chance that such a flood occurs before 2030.” *County of Marin v. Chevron Corp. et al.*, No. cv-1702586, ¶ 170 (Cal. Super. filed July, 17, 2017). Yet the county has failed to explicitly inform investors in its bond offerings of such a detailed devastating risk. *See, e.g.*, Dixie School District (Marin County, California), General Obligation Bonds, Election of 2014, Series A.

Investors across the country have relied upon the statements by these municipalities in choosing to invest in their bonds. They deserve accurate information as to the potential risks of their investments. Whether the predictions of sea level rise are correct or not, if they exist, the municipality should not hide these risks from investors. And they clearly should not be able to claim that such predictions do not exist if they do. We request that your office examine these bond disclosures and determine the appropriate actions to take to protect investors. If you have questions or need more information, please feel free to contact us.

Sincerely,

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