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January 19, 2005

Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Rulemaking to Consider Financial Reporting Rules
Docket Nos. A-021178 and TO-030288

Ladies and Gentlemen:

The Bond Market Association ("TBMA")[1] and The Securities Industry Association (the "SIA")[2], are furnishing this letter in furtherance of our letter dated September 22, 2004 and in response to your request for comments from persons with professional expertise regarding (1) the consequences that will result from the proposed requirement in WAC 480-120-365 to file information on anticipated financings by non-investment grade issuers five days before the securities are issued and (2) resulting disclosure concerns.

1. If the existence of the filings is not kept confidential, the requirement to file information about anticipated financings would likely increase the cost of financings and, in some cases, damage the ability of non-investment grade issuers to complete financings.

We stated in our September 2004 letter, and continue to believe, that issuers who announce new financings frequently see their existing securities "sell off" during the period between announcement and pricing, which has the effect of increasing the cost of issuing new securities because newly-issued securities are priced with reference to the

[1] TBMA is a global trade organization that represents approximately 200 securities firms and banks that underwrite, trade, and distribute approximately $22 trillion in debt in the United States and international markets. TBMA's members deal in a wide variety of public and fixed-income securities. Its member firms collectively represent in excess of 95 percent of the initial distribution and secondary market trading of municipal bonds, corporate bonds, mortgage, and other asset-backed securities and other fixed-income securities. More information about TMBA is available on its website: www.bondmarkets.com.

[2] The SIA brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry employs 790,600 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated $213 billion in domestic revenue and an estimated $283 billion in global revenues. (More information about SIA is available at: www.sia.com.)

market price of an issuer's already-outstanding securities. In general, the longer such period, the greater the likelihood that the sell off will occur and the greater the magnitude of the sell off. Where a pronounced sell-off occurs, an issuer may be compelled to delay the financing, with the result being that the prices of its outstanding securities will continue to be held down by the "overhang" from the anticipated new supply, which will likely affect the cost of the new financing when it is later executed, even if ultimately executed as a bought or overnight deal. **These effects are likely to be <u>most</u> pronounced for <u>non</u>-investment grade issuers, whose securities tend to be the most volatile, due to their smaller investor pools.** Accordingly, we opined in our September 2004 letter, and continue to believe, that it is critical that the existence of any filings under WAC 480-120-365, and the contents of the filings, be kept confidential.

2. <u>Even if the existence of the filings under WAC 480-120-365 would be kept confidential, such filings could nevertheless prevent non-investment grade issuers from completing certain financings and could also lead to disclosure concerns for these issuers.</u>

We stated in our September 2004 letter, and continue to believe, that even if such filings were kept confidential, the requirement to make a filing in advance of issuance would create a new "speedbump" in the issuance process and therefore affect the ability of issuers to access the markets expeditiously and to take advantage of unexpected financing opportunities. **This would affect non investment grade issuers as well as investment grade issuers. Issuers in both categories often make the decision to finance on the very day of a new issuance.** Often, this is because general market conditions present an unforeseen opportunity to finance or because investors suddenly indicate an appetite to purchase securities of the issuer (the latter is known as a "reverse inquiry" financing). A five-day prior notice requirement would eliminate the flexibility to respond to these unforeseen opportunities and reverse inquiries, causing some issuers to miss a financing window.

In addition, we stated in our September 2004 letter, and continue to believe, the filing requirement raises disclosure concerns, even if kept confidential: specifically, an issuer might be compelled to disclose to the market the fact that it is planning a financing, especially if the issuer is disclosing other information to the market at or around that time. (For example, many issuers commence offerings shortly after publicly announcing their latest earnings results, but generally do not disclose the possibility of an offering in their earnings announcements.) Disclosure of a potential offering is often deemed by counsel not to be legally required if the issuer has not made a definitive decision to proceed with the financing (i.e., if the financing is dependent upon market conditions). The filing requirement could change this analysis, because the filing would appear to evidence that a decision to finance has in fact been made. It is quite possible that some counsel could conclude that an issuer that has made a filing under WAC 480-120-365 should disclose its financing plans to the market, which, in turn, could lead to the undesirable outcomes described above. Alternatively, failing to disclose the potential financing could, especially when viewed in hindsight, expose an issuer to allegations of incomplete disclosure.

3. <u>The separate requirement under the proposed rules to file the terms of the financing before issuance would raise its own set of logistical difficulties for non-investment grade issuers.</u>

The proposed requirement to file the actual terms of the proposed financing before issuance of the proposed security is impractical because the terms generally are not determined until the time of the issuance. This proposed requirement should be amended along the lines of SEC Rule 424, which generally does not require the filing of a final prospectus until two business days after the pricing of an offering.

If you have any questions regarding the foregoing or desire any additional information, please do not hesitate to contact Michele David at TBMA at (646) 637-9220, George Kramer at SIA at (202) 216-2047, or Marin Gibson at SIA at (212) 618-0617.

Sincerely,

/s/ *Michele C. David*

Michele C. David
Vice President and
Assistant General Counsel
The Bond Market Association

/s/ *George Kramer*

George Kramer
The Securities Industry Association