OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

107-0102021-002

Agenda Item **No. 5(c)**
Meeting of June 1, 2021

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Sally Oerth, Interim Executive Director

SUBJECT: Approving a Municipal Finance Disclosure Policies and Procedures for the Office of Community Investment and Infrastructure

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EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure ("OCII") issues debt for enforceable obligations consistent with the Redevelopment Dissolution Law or the Community Facilities Act (each defined below) and currently has a debt portfolio consisting of $922.0 million in aggregate principal amount of tax allocation, hotel tax, and Mello-Roos (or community facilities district) bonds. OCII as a local governmental entity issues bonds that are classified as municipal bonds.

Municipal bonds and other municipal securities, while generally exempt from the registration requirements of federal and state securities laws, are subject to securities law disclosure rules, which are generally referred to as "antifraud rules." These rules apply to statements of municipal issuers in connection with its issuance and sale of municipal securities, its annual and continuing disclosures and as well as certain other statements of the issuer that are reasonably expected to reach investors and the market. According to the Government Finance Officers' Association, municipal issuers should adopt a disclosure policy, specific to the entity, to inform their staff, executive team and governing bodies of their disclosure obligations and of the issuers' related practices and procedures for the preparation and dissemination of disclosure documents and statements.

OCII staff recommends that the Commission approve the proposed OCII Disclosure Policy.

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BACKGROUND

OCII may only issue debt for purposes permitted by the Redevelopment Dissolution Law (Cal Health and Safety Code commencing with Section 34170) or under the Mello-Roos Community Facilities Act (Cal Government Code 53311-53368) (the "Community Facilities Act"). Pursuant to Redevelopment Dissolution Law, OCII may issue municipal securities to refund outstanding municipal debt, subject to certain limitations described in the law, and to fund certain enforceable obligations that obligate OCII to issue bonds and that include an irrevocable pledge of property tax increment. (Cal. Health and Safety Code Section 34177.5(a)). In addition, the state legislature adopted special legislation for San Francisco that allows OCII to issue bonds for certain affordable housing and infrastructure obligations. (Cal. Health and Safety Code Section 34177.7). OCII may also issue municipal securities under the Community Facilities Act to fund authorized facilities and services within a community facilities district ("CFD").

OCII currently has a municipal securities debt portfolio consisting of tax allocation, hotel tax, and Mello Roos (CFD) bonds. OCII or its predecessor, the former San Francisco Redevelopment Agency, issued these bonds to fund infrastructure projects and affordable housing in the City's Redevelopment Project Areas and CFDs or to refinance debt related thereto. As of August 1, 2020, the date of the last principal payment, this portfolio consisted of $922.0 million in outstanding principal amount comprised of nineteen series of tax allocation bonds, one series of hotel tax occupancy bonds, and seven series of CFD bonds.

Municipal bonds and other municipal securities, while generally exempt from the registration requirements of federal and state securities laws, are subject to securities law disclosure rules, which are generally referred to as "antifraud rules." Municipal issuers, such as OCII, must ensure that the investing public is provided with the necessary comprehensive and accurate information about the issuer and the securities to make informed investment decisions. According to the Government Finance Officers' Association ("GFOA"), and consistent with guidance from the Securities and Exchange Commission, municipal issuers should adopt a disclosure policy and practices, specific to the entity, to inform their staff, executive teams and governing bodies of their disclosure obligations and of the issuers' related procedures for the preparation and dissemination of disclosure documents.

In practice, OCII currently follows the disclosure portion of the Debt Policy of the City and County of San Francisco, last adopted September 14, 2011 ("City Disclosure Policy"). Building from the City Disclosure Policy, OCII has now developed its own practices and procedures and seeks to adopt its own Municipal Finance Disclosure Policies and Procedures (the "OCII Disclosure Policy").

DISCUSSION

The OCII Disclosure Policy establishes a policy for practices, review processes and controls, and workflow approvals to assist OCII in ensuring that its staff's approach to disclosure is consistent and that its disclosures are accurate, comply with all applicable securities laws (including the antifraud rules), and are consistent with industry best practices.

The OCII Disclosure Policy describes the processes that OCII will undertake in connection with its various disclosure obligations to better ensure that the information it discloses to the market is complete and accurate in all material respects and does not contain any untrue statement of material fact or omit to state a necessary material fact so that that the information provided is not misleading. Specifically, the OCII Disclosure Policy identifies the critical roles and responsibilities related to disclosure, the process for reviewing and approving primary, continuing, and voluntary disclosures, and the related administrative tasks such as training and whistleblower complaints.

Roles and Responsibilities

The OCII Disclosure Policy identifies a Debt Manager and the Disclosure Practices Working Group ("DPWG") as the key parties involved in OCII's disclosure program. The Debt Manager is an OCII staff member designated by the OCII Executive Director and is responsible for managing OCII's disclosure process and procedures. Specifically, the Debt Manager manages the review process for primary, continuing and voluntary disclosure documents and implements most of the administrative procedures of the OCII Disclosure Policy. In connection with the preparation and/or review of the primary, continuing and voluntary disclosure documents, the Debt Manager will work closely with Contributors and Disclosure Counsel. Contributors are individuals (typically OCII staff, such as project managers, but may also include third parties, such as developers) who possess relevant knowledge needed for accurate disclosure. The Debt Manager will ensure that the appropriate Contributors have reviewed and signed off on all disclosure documents. The Debt Manager will ensure that the DPWG, which is composed of the Debt Manager, the Deputy Director of Finance and Administration and the General Counsel (or his/her designee), reviews and signs off on all disclosure documents before they are released. Both the Debt Manger and the DPWG will receive technical legal advice, including document drafting support and policy interpretation from Disclosure Counsel, which will be one or more outside legal counsel engaged by OCII with specialized knowledge and experience related to municipal bond disclosure.

Primary, Continuing and Voluntary Disclosure Review Process

The OCII Disclosure Policy addresses three types of disclosures: Primary Disclosure, Continuing Disclosure and Voluntary Disclosure.

Primary Disclosure. In connection with the issuance of bonds and any other municipal securities, OCII is required to provide accurate and relevant information to the market about OCII and the specifics of the bond issuance, including, but not limited to, the authority for the issuance of the bonds, the proposed use of the bond proceeds, the source of repayment of the bonds and any risks associated with the issuance of, or an investment in, the bonds. This information, sometimes referred to as "primary disclosure" is generally provided through offering documents prepared by OCII in consultation with Disclosure Counsel and the other consultants of OCII working on the transaction (e.g. bond counsel and municipal financial advisor), in the form of the Official Statement ("OS") (and in its preliminary form the Preliminary Official Statement ("POS")) (the "Primary Disclosure Documents").

The antifraud rules require that the Primary Disclosure Documents be accurate and include all material facts (and not omit any material fact necessary to make the statements in the document, in light of the circumstances under which they were made, not misleading), all with the goal of ensuring that potential purchasers of the bonds receive the necessary information to make an informed investment decision. The POS is then submitted to the market for review by potential purchasers. Prior to its release to the public, the POS is presented to the Commission for its review and approval as part of OCII's bond approval package.

After the sale of said bonds, the POS is updated (which includes the incorporation of the final numbers and information arising from the sale of the bonds) and put into final form as the OS and is made available to the public, the purchasers and to the Municipal Standards Rulemaking Board ("MSRB") via their website known as EMMA.

Continuing Disclosure. In connection with the purchase of most municipal securities, the underwriters, as part of their federal securities obligations, require OCII to contractually agree to provide ongoing disclosure in the form of an annual update of certain operating and financial data related to the applicable series of bonds together with OCII's then current annual financial statement as well as notices of the occurrence of certain listed events ("Continuing Disclosure Documents"). Continuing Disclosure Documents keep bondholders informed about current financial and operating information and significant events that could impact the financial condition of OCII and its ability to timely satisfy its bond payment obligations.

Voluntary Disclosure. Primary and Continuing Disclosure Documents are not the only ways in which OCII communicates information to bondholders and potential investors. Public statements, press releases, and website postings and hyperlinks may also be considered communications that "speak to the market." As such, the antifraud provisions of the federal securities law apply to these communications. Communications in this category should follow the same review and approval process described above. From time to time, OCII may choose to submit Voluntary Disclosure Documents to the MSRB via EMMA. Voluntary Disclosure Documents may include updates on issues that affect OCII's budgetary, financial, or economic position, changes in rating outlooks, or other information OCII believes may be important to investors. OCII last made a voluntary disclosure in July 2020, when it made a voluntary statement regarding the impact of COVID-19.

The review process for Voluntary Disclosure is largely the same for Primary Disclosure Documents, and Continuing Disclosure Documents. First, the Debt Manager works with the Disclosure Counsel and relevant Contributors to obtain the necessary information and draft the applicable disclosure document. The Debt Manager then ensures that Contributors review the document for accuracy and sign-off on the document's accuracy and completeness. Next, the Debt Manager facilitates review and approval of the document by the DPWG and Executive Director. Following Executive Director review and sign-off, the Debt Manager distributes the document by posting it to EMMA and the OCII website.

Administrative Procedures

In addition to managing the primary, continuing, and voluntary disclosure process, the Debt Manager is responsible for managing the administrative procedures of OCII's disclosure program. Specifically, the Debt Manager will ensure OCII staff, as well as Commission and Oversight Board members, receive disclosure training every three years. The Debt Manager will also ensure that disclosure documents are retained by maintaining an electronic transcript of Primary Disclosure Documents and Continuing Disclosure Documents for a time not less than the term the bonds are outstanding, plus ten years. The Debt Manager will retain Voluntary Disclosure documents for a period of no less than five years from the date that the disclosure document was made publicly available. Finally, parties who have disclosure-related questions or concerns may anonymously \submit the questions or concern to the Whistleblower Program at https://sfcontroller.org/how-file-complaint, which will maintain the party's anonymity and submit the issue to the Debt Manager for review.

RECOMMENDATION

As recommended by the GFOA and consistent with guidance from the Securities and Exchange Commission, the proposed OCII Disclosure Policy is specific to the entity, informs staff, executive teams and governing bodies of their disclosure obligations and of the issuers' related procedures for the preparation and dissemination of disclosure documents. As such, staff recommend the Commission adopt the proposed OCII Disclosure Policy.

(Originated by Bree Mawhorter, Deputy Director of Finance and Administration)

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