

John A. Alessi
Partner
Direct Dial: 716.848.1567
Direct Facsimile: 716.819.4660
jalessi@hodgsonruss.com



Jeffrey W. Stone
Partner
Direct Dial: 716.848.1327
Direct Facsimile: 716.819.4649
jstone@hodgsonruss.com

September 29, 2017

VIA E-MAIL: jbrucato@ktufsd.org

John J. Brucato, Assistant Superintendent for Finance
Kenmore-Town of Tonawanda Union Free School District
1500 Colvin Boulevard
Buffalo, New York 14223

Dear John:

Re: Kenmore-Town of Tonawanda Union Free School District; Erie County, New York;
Bond and Note Financings—Post-Issuance Tax Compliance Procedures

Following from our earlier discussions, we are writing to remind you of an IRS initiative that urges issuers of tax-exempt bonds and notes to establish formal written procedures to monitor post-issuance compliance with federal tax rules.

As was discussed when the District implemented interim post-issuance compliance procedures a few years ago, the IRS Form 8038-G that is filed for every bond and note issue now asks the District to check a box confirming whether the District has established such written procedures. We believe that the IRS will then use this information in scheduling its audit activities. Therefore, we believe that it is important for the District to have in place written post-issuance compliance procedures, so that the appropriate confirmation can continue to be made to the IRS.

While the District has had interim procedures in place, we recommend moving forward to adopt more comprehensive, permanent, procedures. To minimize the risk of future IRS audit (or to be best able to respond to one), we recommend that the District put in place a more in-depth regimen for recordkeeping, due diligence, training, education and monitoring/compliance. This can be done by the Board of Education at one of the upcoming meetings.

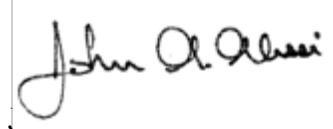
John J. Brucato, Assistant Superintendent for Finance
Kenmore-Town of Tonawanda Union Free School District
September 29, 2017
Page 2

Please forward this document to any other District officials as you see fit.

As a reminder, our firm has been offering an ongoing series of training sessions at which these procedures are addressed.

If you are in agreement with our recommendation, we ask that you please have the Board of Education adopt the attached resolution. Please forward two copies of the executed resolution at your earliest convenience. If you would like to discuss this in more detail, please call either one of us. Thank you.

Very truly yours,



Jeffrey W. Stone

Jeffrey W. Stone

JAA/JWS
Enclosures

cc: Marla Waiss, Esq.
Emily A. Dinsmore, Esq.

To: John A. Alessi, Esq.
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202

Re: Kenmore-Town of Tonawanda Union Free School District; Erie County, New York;
Bond and Note Financings—Post-Issuance Tax Compliance Procedures

Date: _____, 2017

I hereby enclose the following legal documents:

_____ two (2) certified copies of the extract of minutes containing the resolution regarding post-issuance tax compliance procedures

Forwarded by: _____ phone: _____

Questions:

	<u>Phone</u>	<u>Fax</u>	<u>E-mail</u>
John A. Alessi, Esq.	716.848.1567	716.819.4660	jalessi@hodgsonruss.com
Jeffrey W. Stone, Esq.	716.848.1327	716.819.4660	jstone@hodgsonruss.com
Emily A. Dinsmore, Esq.	716.848.1729	716.819.4660	edinsmor@hodgsonruss.com

**KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT
ERIE COUNTY, NEW YORK**

EXTRACT OF MINUTES

A meeting of the Board of Education of the Kenmore-Town of Tonawanda Union Free School District, Erie County, New York (the “District”) was convened in public session at the _____ in the District, on _____, 2017 at _____ o’clock p.m., local time.

The meeting was called to order by _____ and, upon roll being called, the following members were:

PRESENT:

ABSENT:

ALSO PRESENT:

The following resolution was offered by _____ and seconded by _____ to-wit:

**RESOLUTION, DATED _____, 2017, OF THE BOARD OF
EDUCATION OF THE KENMORE-TOWN OF TONAWANDA UNION
FREE SCHOOL DISTRICT, ERIE COUNTY, NEW YORK (THE
“DISTRICT”) ADOPTING POST-ISSUANCE TAX COMPLIANCE
PROCEDURES**

WHEREAS, the Internal Revenue Service has issued regulations requiring issuers of tax-exempt obligations to certify on various forms that they actively monitor compliance with federal tax rules following the issuance of such obligations; and

WHEREAS, the District is a periodic issuer of tax-exempt obligations and thus is subject to the aforementioned compliance requirements which are critical for the preservation of the preferential tax status of those obligations; and

WHEREAS, it is therefore in the best interest of the District to adopt formal written procedures to ensure such compliance and to designate an official responsible for ensuring that such procedures are followed; and

WHEREAS, the District previously adopted interim post-issuance tax compliance procedures (the “Original Procedures”); and

WHEREAS, it was intended that the Original Procedures would be periodically updated and supplemented; and

WHEREAS, Hodgson Russ LLP, as bond counsel to the District, has prepared and has recommended that the District adopt updated and more comprehensive post-issuance tax compliance procedures;

NOW THEREFORE, BE IT RESOLVED, that the District hereby adopts the updated and more comprehensive post-issuance tax compliance procedures that are attached hereto as “Schedule A” and resolves to be governed thereby; and be it further

RESOLVED, that such Schedule A will be placed in its entirety in the official records, files and minutes of the District and adhered to going forward; and be it further

RESOLVED, that this resolution shall take effect immediately upon its adoption.

The question of the adoption of the foregoing resolution was duly put to a vote, which resulted as follows:

AYES:

NOES:

ABSENT:

The resolution was thereupon declared duly adopted.

Schedule A

KENMORE-TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT, ERIE COUNTY, NEW YORK

Post-Issuance Tax Compliance Procedures for Tax-Exempt Bonds and Notes

Statement of Purpose

These Post-Issuance Tax Compliance Procedures (the “Procedures”) set forth specific procedures of the **Kenmore-Town of Tonawanda Union Free School District, Erie County, New York** (the “Issuer”) designed to monitor, and ensure compliance with, certain requirements of the Internal Revenue Code of 1986, as amended (the “Code”) and the related Treasury regulations, promulgated thereunder, post-issuance tax compliance with the Internal Revenue Service (“IRS”) in connection with the Issuer’s issuance of tax-exempt bonds and notes (“Obligations”).

These Procedures describe various systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations to ensure that the interest on such Obligations is eligible for exclusion from gross income for federal income tax purposes. The federal tax law requirements applicable to the Obligations will be described in the tax questionnaire and/or tax certificate prepared by bond counsel and signed by officials of the Issuer. These Procedures establish a permanent, ongoing structure of practices that will facilitate compliance with the requirements for individual borrowings.

To ensure compliance with applicable federal tax requirements, the Issuer must monitor the various direct and indirect uses of proceeds of the obligation and the investment of such proceeds, including but not limited to:

- (1) Monitoring the use of financed property over the life of the obligation.
- (2) Determining the sources of debt service payments and security for the obligation.
- (3) Calculating the percentage of any nonqualified use of the financed property.
- (4) Calculating the yield on investments of proceeds.
- (5) Determining appropriate restrictions on investments.
- (6) Determining the amount of any arbitrage on the investments.
- (7) Calculating any arbitrage rebate payments that must be paid to the U.S. Treasury.

The Issuer recognizes that compliance with the pertinent law is an on-going process, necessary during the entire term of the Obligations. Accordingly, the implementation of the Procedures

will require on-going monitoring and consultation with bond counsel and the Issuer's accountants and advisors.

General Procedures

The following procedures relate to monitoring post-issuance tax compliance generally.

- A. **The Assistant Superintendent for Finance (currently, John J. Brucato) (the “Compliance Officer”)** shall be responsible for monitoring post-issuance tax compliance issues.
- B. The Compliance Officer will coordinate procedures for record retention and review of such records.
- C. All documents and other records relating to Obligations must be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable IRS requirements, such as those contained in Revenue Procedure 97-22 (see the reference materials presented herewith, referred to herein as “Reference Materials”).
- D. The Compliance Officer shall be aware of remedial actions under Section 1.141-12 of the Treasury Regulations (see Reference Materials) and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program (VCAP) and take such corrective action when necessary and appropriate.
- E. The Compliance Officer will review post-issuance tax compliance procedures and systems on a periodic basis, but not less than annually.
- F. The Compliance Officer will be responsible for training any designated officer or employee who is delegated any responsibility for monitoring compliance pursuant to this procedure. To the extent the Compliance Officer needs training or has any questions with respect to any item in this procedure, he or she should contact bond counsel and/or Issuer's accountants and advisors. The IRS recognizes that the Compliance Officer and any delegated individual are not expected to act as lawyers who know the proper response to all compliance situations that may arise, but they should be familiar enough with federal tax issues that they know when to ask for legal or other compliance advice.

Issuance of Obligations: Documents and Records

With respect to each issue of Obligations, the Compliance Officer will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").
- B. Confirm that the applicable information reports (e.g., Form 8038 series) for such issue are filed timely with the IRS. Issuer should consult with their accountants and/or bond counsel with questions regarding the filing of such forms.

- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations.

Arbitrage

The following procedures relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
- B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.
- C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
- D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
- E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations (see Reference Materials).
- F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
- G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
- H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

- I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.
- J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.
- M. Arrange for timely computation and payment of "yield reduction payments" (as such term is defined in the Code and Treasury Regulations), if applicable.

Private Activity: Use of Proceeds

The following procedures relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

- A. Maintain records for determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.
- B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
- C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.
- D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
 - 1. Sale of the facilities, including sale of capacity rights;
 - 2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
 - 3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
 - 4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);

5. Joint-ventures, limited liability companies or partnership arrangements;
6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
7. Development agreements which provide for guaranteed payments or property values from a developer;
8. Grants or loans made to private entities, including special assessment agreements; and
9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis but not less than annually; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt debt, the Compliance Officer will consult with bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

Reissuance

The following procedures relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

Record Retention

The following procedures relate to retention of records relating to the Obligations issued.

The Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.

- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- C. Coordinate with staff to generally maintain the following:
 - 1. The Transcript relating to the transaction (including any arbitrage or other tax questionnaire, tax regulatory agreement, and the bond counsel opinion);
 - 2. Documentation evidencing expenditure of proceeds of the issue;
 - 3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation;
 - 4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
 - 5. Documentation evidencing all sources of payment or security for the issue; and
 - 6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.
- E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

CERTIFICATE OF THE DISTRICT CLERK

The undersigned hereby certifies that:

1. The undersigned is the duly qualified and acting District Clerk of the Kenmore-Town of Tonawanda Union Free School District, Erie County, New York (the "District") and the custodian of the records of the District, including the minutes of the proceedings of the Board of Education of the District (the "Board"), and is duly authorized to execute this certificate.

2. A meeting of the Board was duly convened and held on _____, 2017, and minutes of the meeting have been duly recorded in the minute book kept by me in accordance with law for the purpose of recording the minutes of meetings of the Board.

3. I have compared the attached extract with the recorded minutes and the extract is a true, correct and exact copy of the minutes and of the whole thereof insofar as the minutes relate to the subject matters referred to in the extract.

4. The extract of minutes correctly states the members of the Board who attended and voted at the meeting.

5. Such resolution was duly adopted in all respects in accordance with law and the regulations of the District and has not since been rescinded, revoked, annulled or modified and is in full force and effect. A legally sufficient number of members voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under law, such regulations, or otherwise, incident to such meeting and the adoption of the resolution, including any publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

6. The seal appearing below constitutes the official seal of the District and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of
_____, 2017.

(SEAL)

District Clerk