



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
MARKET REGULATION

October 3, 2007

Laura Slaughter  
Executive Director  
Municipal Advisory Council of Texas  
600 West 8th Street  
Austin, Texas 78701

Re: [www.DisclosureUSA.org](http://www.DisclosureUSA.org) – Texas MAC’s Central Post Office

Dear Ms. Slaughter:

In your letter dated August 1, 2007, you request confirmation, on behalf of the Municipal Advisory Council of Texas (“Texas MAC”), that certain changes to Disclosure USA, Texas MAC’s internet-based electronic filing system or “central post office,” required in connection with the settlement of certain patent litigation, will not impact the interpretive guidance issued in 2004 by staff of the Division of Market Regulation (“2004 Staff Interpretive Letter”).<sup>1</sup> The 2004 Interpretive Letter was issued in response to Texas MAC’s 2004 interpretive request (“2004 Interpretive Request”) with respect to the use of Disclosure USA in connection with the satisfaction of obligations incurred as a result of Rule 15c2-12 under the Securities Exchange Act of 1934.

Specifically, your letter notes the following changes to the operation of Disclosure USA:

1. Disclosure USA has removed the “Return Receipt from NRMSIRs/SIDs” column appearing on the distribution status page of the website and no longer collects or processes return receipts from the NRMSIRs/SIDs.
2. Disclosure USA has discontinued sending the daily log file to the NRMSIRs and SIDs.
3. Disclosure USA will no longer offer an optional electronic “tickler” system to notify persons making filings of upcoming filing deadlines. Disclosure USA no longer permits users to create reminders and, after June 30, 2008, will no longer send any previously requested reminders.

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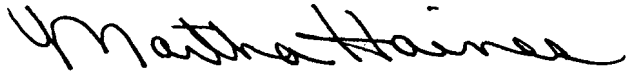
<sup>1</sup> Letter dated September 7, 2004 from Martha Mahan Haines, Chief of the Office of Municipal Securities, Division of Market Regulation, to W. David Holland, Chairman, Texas MAC, and John M. McNally, Hawkins Delafield & Wood LLP.

Based on the facts and representations set forth in the 2004 Interpretive Request, as modified by your letter, the staff reaffirms its interpretive position set forth in the 2004 Staff Interpretive Letter.

This interpretation continues to be expressly conditioned on the current and continuing accuracy of the facts and representations contained in the 2004 Interpretive Request and your letter; any different facts or conditions might require a different response. This position is based on current laws, rules, and regulations governing participants in, and the markets for, municipal securities. Any changes in such laws, rules, or regulations may supersede this interpretation or require the staff to reevaluate its position. In addition, Texas MAC shall advise the Division of any significant change in the operations, procedures or functions of Disclosure USA described in the 2004 Interpretive Request, as modified by your letter of August 1, 2007, and, if possible, Texas MAC shall provide such information 60 days prior to any contemplated change, to enable staff to reevaluate this interpretation in light of such change.

This interpretation is subject to modification or revocation at any time staff determines that such action is necessary or appropriate. Division staff may, from time to time, request that Texas MAC provide it with information concerning Disclosure USA in addition to that referred to in the 2004 Interpretive Request and your letter of August 1, 2007.

Sincerely,

A handwritten signature in black ink, appearing to read "Martha Mahan Haines". The signature is written in a cursive, flowing style.

Martha Mahan Haines  
Chief, Office of Municipal Securities,  
Division of Market Regulation

**Board of Directors, 2006-2007**

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Dan A. Black

August 1, 2007

**Martha Mahan Haines**  
Chief, Office of Municipal Securities  
Assistant Director, Division of Market Regulation  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: [www.DisclosureUSA.org](http://www.DisclosureUSA.org) - Texas MAC's Central Post Office

Dear Ms. Haines:

As you know, Digital Assurance Certification LLC (DAC) and the Municipal Advisory Council of Texas (Texas MAC) have reached a global settlement of DAC's patent infringement lawsuit based on Texas MAC's operation of the Central Post Office (CPO), DisclosureUSA. Texas MAC's objective in negotiating this settlement with DAC was to preserve the core services DisclosureUSA provides to the municipal market. We believe this has been accomplished.

We enclose for your reference the Consent Permanent Injunction and Dismissal Order on Settlement Agreement with Reservation of Jurisdiction, Consent Injunction Pendente Lite and the Settlement Agreement which have been entered into by the parties. Pursuant to Section 7 of the Settlement Agreement, we have agreed to "submit to the SEC information that fully discloses all of the changes to the CPO required by this Agreement and the Consent Injunction to determine if any modification to or other action is necessary regarding MACT's interpretative letter from the SEC regarding the CPO". Providing you with the enclosed copies fulfills this requirement.

We have removed the "Return Receipt from NRMSIRs/SIDs" column appearing on the distribution status page of the website and no longer collect or process return receipts from the NRMSIRs/SIDs. We have also discontinued sending the daily log file to the NRMSIRs and SIDs. In addition, DisclosureUSA will no longer offer an optional electronic "tickler" system to notify persons making filings of upcoming filing deadlines. As of July 2, 2007, DisclosureUSA no longer permits users to create reminders and after June 30, 2008 we will no longer send any previously requested reminders.

**MUNICIPAL ADVISORY COUNCIL of TEXAS**

P.O. Box 2177 • 78768-2177 • 600 West 8th Street, Austin, Texas 78701 • (512) 476-6947 • FAX (512) 476-6403

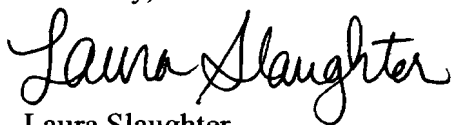
[www.mactexas.com](http://www.mactexas.com) • [mac@mactexas.com](mailto:mac@mactexas.com) • [www.DisclosureUSA.org](http://www.DisclosureUSA.org)

DisclosureUSA will continue to provide issuers and their agents with a reliable, no-cost, internet based system for making NRMSIR and SID filings at a single location. DisclosureUSA will continue to transmit the filings along with indexing information, including CUSIP numbers to the NRMSIRs and SIDs. DisclosureUSA will continue to have a searchable index of filing submissions available to the public free of charge. In addition, beginning December 11, 2008, DAC has agreed to transmit all documents and indexing information submitted on the DAC system to DisclosureUSA for inclusion in the index. This will enable DisclosureUSA to be one step closer to having a master index of secondary market disclosure filings.

Please confirm that the changes to DisclosureUSA required by the enclosed Settlement Agreement and Consent Injunction do not affect the advice provided in your letter to Texas MAC dated September 7, 2004.

If you have any questions about any of the changes required under the enclosed settlement agreement and consent injunction, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Laura Slaughter".

Laura Slaughter  
Deputy Executive Director

Enclosures

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

Digital Assurance Certification, LLC,	)	
	)	
<i>Plaintiff.</i>	)	Civil Action No.: 6:07-cv-94-Orl-22DAB
	)	
v.	)	
	)	
Municipal Advisory Council of Texas,	)	
	)	
<i>Defendant.</i>	)	
	)	

**CONSENT PERMANENT INJUNCTION AND DISMISSAL ORDER ON SETTLEMENT AGREEMENT WITH RESERVATION OF JURISDICTION**

WHEREAS, on May 22, 2007 at 10:25 a.m., this Court entered its Consent Injunction Pendente Lite [Doc. 72], a copy of which is annexed hereto, on the Joint Motion for Entry of Consent Injunction of the parties [Doc. 70].

WHEREAS, the Parties have entered into a Settlement Agreement on June 11, 2007, in order to effectuate a global resolution between the Parties.

WHEREAS the Parties have filed a Joint Motion requesting entry of this Consent Injunction and Dismissal Order and have further jointly moved this Court to approve and retain jurisdiction to enforce the Settlement Agreement and this Consent Permanent Injunction and Dismissal Order with Reservation of Jurisdiction.

THEREFORE, IT IS STIPULATED AND JOINTLY MOVED by the Parties, and the Court hereby orders and adjudges, based on the Settlement Agreement, as follows:

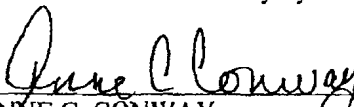
1. The Settlement Agreement is hereby ratified and approved by the Court, and the Court retains jurisdiction to enforce the terms of the Settlement Agreement.

2. The Defendant, MACT, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice hereof, are hereby PERMANENTLY ENJOINED AND PROHIBITED from operating the CPO or any other system inconsistent with the provisions contained in the Consent Injunction Pendente Lite and/or the Settlement Agreement between the Parties.

3. Consistent with the Settlement Agreement, DAC and MACT jointly stipulate and move this Court for dismissal with prejudice of all pending and unasserted claims and counterclaims that were brought, or which could have been brought, by and between DAC and MACT. This Court hereby approves the foregoing dismissal of all such pending and unasserted claims and counterclaims with prejudice, each party to bear its own attorneys' fees and costs. This foregoing dismissal with prejudice is as a consequence of the Settlement Agreement of the Parties, *and is without prejudice as to the enforcement of the Settlement Agreement as well as to the permanent injunctive relief awarded herein.* The rights, duties and obligations of the parties set forth in the Settlement Agreement are reserved, and this dismissal is not intended to prejudice any claims against non-parties to the Settlement Agreement.

IT IS SO ORDERED.

This 18<sup>th</sup> day of June, 2007, at the time noted for service electronically by CM/ECF.

  
\_\_\_\_\_  
ANNE C. CONWAY  
United States District Judge

Copies furnished to all counsel of record by CM/ECF

CONSENTED TO BY:

/s/Thomas Todd Pittenger

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/s/Albert F. Tellechea

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*Co-counsel for Defendant*



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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Digital Assurance Certification, LLC, )  
 )  
 ) Civil Action No.: 6:07-cv-94-Orl-22DAB  
 )  
 ) *Plaintiff,* )  
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 ) v. )  
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 ) Municipal Advisory Council of Texas, )  
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 ) *Defendant.* )  
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CONSENT INJUNCTION PENDENTE LITE

WHEREAS Plaintiff Digital Assurance Certification, LLC ("DAC") has filed a motion for preliminary injunction to preclude infringement of claim 13 of DAC's United States Patent No. 7,155,408 by the Central Post Office ("CPO") system, which is operated by Defendant Municipal Advisory Council of Texas ("MACT"), and oral argument on DAC's motion is set for June 5, 2007;

WHEREAS nothing herein should be construed as an admission on MACT's part that the '408 patent is valid or enforceable; that MACT has engaged in any infringing activity with respect to the '408 patent; or that injunctive relief *pendente lite* is necessary; and

WHEREAS nothing shall be construed as an admission by DAC that the '408 patent is invalid or unenforceable, that MACT's system or the modified system has not or does not infringe one or more claims of the '408 patent, or that injunctive relief *pendente lite* is not necessary.

WHEREAS this Consent Injunction Pendente Lite is viewed as a first step in a multi pronged effort to attempt to resolve the current litigation and all other differences between the parties, if possible, and whereas DAC and MACT have agreed to continue good faith negotiations to attempt to resolve these matters and the parties have agreed that such conversations shall be governed by Rule 408 of the Federal Rules of Evidence;

THEREFORE, to avoid the need for such hearing and in lieu of the requested preliminary injunction, the parties have agreed to a consent injunction *pendente lite*, to be entered by the Court, on the following terms:

1. MACT shall modify its CPO system, within 48 hours of this pleading being signed by both parties, to:

a) remove all software and/or functionality in the CPO system relating to displaying information relating to a Nationally Recognized Municipal Securities Information Repository ("NRMSIR") or State Information Depository ("SID") providing acknowledgement of whether or when the NRMSIR or SID received a filing transmitted through the CPO system;

b) refrain from generating, maintaining or displaying any data relating to a NRMSIR's or SID's acknowledgement or attempt to provide acknowledgement of whether or when it received a filing transmitted through the CPO system, including without limitation displaying the Return Receipt column as currently used by the CPO system (or other indicator of whether or when such an acknowledgement was received);

c) ensure that, if any acknowledgement of receipt data is received by the CPO from any NRMSIR or SID, the CPO system shall permanently delete such data prior to any processing of that data by the CPO system or MACT;

d) remove all software and/or functionality that determines, on a nightly or other basis, whether filings transmitted from the CPO to any NRMSIR or SID were acknowledged as having been received by the NRMSIR or SID;

e) remove all software and/or functionality that generates or displays any alert or notification, to any user or machine, if acknowledgement of receipt of a filing made through the CPO system is not received from any NRMSIR or SID; and

f) refrain from sending (electronically or otherwise) to the NRMSIRs or SIDs logs (daily or otherwise) of filings made through the CPO.

To avoid doubt in the interpretation of the agreed to changes, after the changes, MACT shall not display or process any information relating to whether or when a filing was actually received by a NRMSIR or SID. Provided, however, nothing herein shall impact MACT's ability to operate as a SID, and nothing herein shall be construed to require MACT to refrain from displaying on the CPO the date and times that documents are sent to any NRMSIR or SID.

2. MACT further agrees that for any of the software and/or functionality to be removed from the CPO system pursuant to Paragraph 1 above, MACT shall not provide any other mechanism or service (electronic or otherwise) to replace the removed functionality or offer any other system that includes such software and/or functionality.

3. Within 48 hours of the parties executing this pleading, MACT shall

contact each NRMSIR and SID, in writing (with a copy to DAC), stating that MACT does not wish to receive from each NRMSIR or SID any electronic or other acknowledgement of receipt of filings made through the CPO system to the NRMSIR or SID, and requesting that as soon as reasonably possible, the NRMSIR or SID discontinue any process (electronic or otherwise), disable any functionality that provides acknowledgement of receipt of such filings made through the CPO system, and notify MACT that such steps have been taken. MACT shall provide notice to DAC if and when each NRMSIR or SID complies with this request. MACT shall in no way be held to have violated this consent injunction solely because a NRMSIR or a SID other than the MACT refuses to comply with this request.

4. By May 31, 2007, MACT agrees to modify its product literature, including information available on the CPO website, to accurately reflect the modifications to the CPO set forth above. Further, MACT agrees not to state in its product literature or on the CPO system that users or filers may verify on the CPO system that the data sent to the CPO has been received by the NRMSIRs or any applicable SID. In the "FAQs" on the DisclosureUSA website, MACT agrees to affirmatively state that the CPO system does not obtain or display a confirmation of receipt received from the NRMSIRs or SIDs for filings made through the CPO system.

5. To the extent that DAC, in good faith, believes it desirable to verify MACT's compliance with the terms of this agreement, MACT shall permit DAC to have an independent expert accompanied by a patent attorney of DAC's choosing, bound by a confidentiality agreement, inspect and audit the CPO system to ascertain whether such

compliance has occurred and MACT shall reasonably cooperate with that expert and attorney to provide information necessary to facilitate such inspection and audit. Such expert and attorney shall maintain in confidence any and all information about the CPO system and shall initially report to DAC only a determination of whether or not such compliance has occurred. In the event that the determination is that there is a lack of compliance, the expert/attorney may provide sufficient information to enable DAC to seek enforcement of the alleged non-compliance. To avoid doubt, any and all information about the CPO may be used solely for the purpose of verifying compliance with the terms of this Consent Injunction, including use in Court if necessary, but under no circumstance may any copy of MACT's source code be shown to DAC.


**THEREFORE, IT IS STIPULATED BY THE PARTIES, AND THE COURT ORDERS:**

1. Defendant, MACT and its agents, heirs, and assigns, and all those in active concert or participation with Defendant are enjoined and restrained *pendente lite* from operating the CPO or any other system inconsistent with the provisions contained in the above paragraphs.
2. This Consent Injunction without bond shall remain in place for the duration of this civil action or unless otherwise ordered by this Court, and the Court retains jurisdiction to supervise and enforce this Consent Injunction.
3. Either party may move the Court to have this Consent Injunction vacated or amended in whole or part, for good cause shown.

IT IS SO ORDERED.

This 22<sup>nd</sup> day of May, 2007, at the time noted for service electronically by CM/ECF.

10:25 AM

  
ANNE C. CONWAY  
United States District Judge

Copies furnished to all counsel of record by CM/ECF

CONSENTED TO BY:

/s/Thomas Todd Pittenger

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*Co-counsel for Defendant*

*Co-Counsel for Plaintiff*

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement"), effective as of the 11th day of June, 2007 (the "Effective Date"), is made by and between Digital Assurance Certification LLC ("DAC"), a Florida LLC having a principal place of business at 390 North Orange Avenue, Suite 1750, Orlando, Florida 32801-1674, and the Municipal Advisory Council of Texas ("MACT"), a Texas non-profit corporation with a principal place of business at 600 West 8<sup>th</sup> Street, Austin, Texas 78701 (collectively referred to herein as the "Parties").

WHEREAS the Parties are currently involved in a lawsuit in the United States District Court for the Middle District of Florida, *Digital Assurance Certification, LLC. v. Municipal Advisory Council of Texas*, Case No. 6:07-cv-94-Orl22DAB ("the Lawsuit");

WHEREAS the Parties jointly submitted, and the Court entered, a Consent Injunction *Pendente Lite* ("Consent Injunction"); and

WHEREAS the Parties now desire to resolve all remaining issues in the Lawsuit and address other non-patent related business issues as part of a global settlement,

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree to a global settlement on the following terms:

### 1. DEFINITIONS

1.1. "Documents" means secondary market disclosure documents required to be filed by issuers pursuant to SEC Rule 15c2-12, as it currently exists and as may be amended.



1.2. “CPO” means the Central Post Office system currently operated by MACT, or any other system operated by or on behalf of MACT (or any successor permitted by this Agreement) for use in making secondary market disclosure filings for municipal bonds, and which is currently available on the Internet at [www.disclosureusa.org](http://www.disclosureusa.org).

1.3. “DAC System” means the secondary market disclosure filing system currently operated by DAC (or any successors to DAC) and which is available on the Internet at [www.dacbond.com](http://www.dacbond.com).

1.4. “The ‘408 Patent Family” means United States Patent No. 7,155,408 and any patent that issues based on a patent application that claims priority to that patent directly or indirectly through another patent that claims priority to that patent.

1.5. “Cover Sheet” means a document created for use in connection with filing a Document to enable indexing of the Document by a NRMSIR, SID or other repository.

1.6. “Reminders” means any notice to an issuer or other party regarding when a filing Document is due.

1.7. “Filer” means any person or entity that files a Document through the CPO website, including, for example, an issuer, obligor or its agent.

1.8. “Filing Summary Information” means filing summary information that is currently entered on the CPO to identify a filing or any summary filing information that is required pursuant to Rule 15c2-12 in the future.

1.9. “Reminder Creation Feature” means any functionality to enable the creation of reminders (e.g., by users, automatically by the CPO or otherwise).

1.10. “NRMSIR” shall mean any Nationally Recognized Municipal Securities Information Repository.

1.11. “SID” shall mean any State Information Depository.

## **2. SCOPE OF INJUNCTION**

2.1. All terms of the Consent Injunction, a copy of which is attached as Exhibit A, are hereby incorporated into this Agreement by reference and shall become permanent for the Term of this Agreement. To the extent any terms of this Agreement modify terms of the Consent Injunction (e.g., acknowledgement of validity), this Agreement shall control. MACT hereby certifies that it has made all changes required by the Consent Injunction.

### **2.2. Cover Sheets**

2.2.1. MACT shall remove from the CPO, and refrain from subsequently providing via the CPO, the capability of generating Cover Sheets by any user of the CPO or by the CPO itself.

2.2.2. MACT shall change the title and wording on all relevant web pages on the CPO (and other marketing materials) to delete any reference to the ability to use the CPO for the creation of Cover Sheets.

2.2.3. MACT shall not transmit to any repository (NRMSIR, SID, or repository) any Cover Sheet generated by the CPO or by a user

using the CPO, but can forward with a filing Document a Cover Sheet manually created by a Filer using a method or system other than the CPO.

2.2.4. Filers on the CPO shall be permitted to enter on the CPO Filing Summary Information. MACT shall be permitted to display Filing Summary Information on the CPO to identify a filing, and MACT shall be permitted to transmit XML data (or the equivalent) to the NRMSIRs and SIDs representing such Filing Summary Information.

### 2.3. Reminders

2.3.1. MACT shall: i) remove any Reminder Creation Feature from the CPO; ii) refrain from subsequently providing any Reminder Creation Feature on the CPO; and iii) terminate the sending of Reminders or other notices of when filings are due, on the following schedule:

i) by July 11, 2007, MACT shall disable its current Reminder Creation Feature and shall thereafter for the Term of this Agreement refrain from subsequently providing any functionality that permits a user to create any new Reminders via the CPO;

ii) for any Reminder that is created in the CPO after July 11, 2007, MACT shall be permitted to send a Reminder

via the CPO until July 11, 2008, but shall thereafter cease sending any Reminders via the CPO or otherwise; and

iii) MACT shall immediately post a notice on the CPO that after July 11, 2007, the CPO will no longer permit users to create Reminders and that after July 11, 2008 the CPO will no longer send any Reminders even if a request for such a Reminder was previously created on the CPO.

#### 2.4. Access to Documents

2.4.1. MACT shall not display or enable access to any Documents on or through the CPO (e.g., via links from the CPO to other websites), except that MACT may continue its current practice of displaying only to the Issuers or Obligor (but not dissemination agents or other filers) Documents filed by that Issuer or Obligor within the past 30 days.

2.4.2. Except as expressly provided above, MACT shall eliminate, for the Term of this Agreement, any link from the CPO to any website of a dissemination agent or other entity to prevent users from accessing Documents, directly or indirectly, via the CPO; however, MACT can provide a link from the "Filing Summary Information" and the "Filing Search Results" pages on the CPO to the URL indicated by the Filer as being the issuer's / obligor's homepage of their website. MACT shall have no responsibility to police the accuracy of URL information provided by a Filer, however, if

MACT becomes aware or if DAC informs MACT of an error or incorrect URL information or a URL that links to anything other than an issuer's or obligor's homepage, MACT shall take immediate action to correct or remove the link. MACT shall include in the CPO user guide and instructions, and on all relevant data entry pages, instructions to the Filer to enter only the issuer's / obligor's homepage as the URL.

2.4.3. After June 11, 2013, MACT shall be permitted to make available, only to MACT members and subscribers, through the MACT website ([www.mactexas.com](http://www.mactexas.com)), Documents filed through the CPO.

2.4.4. Except as expressly provided in Paragraphs 2.4.1 and 2.4.3 above, MACT shall not make stored Documents, which were filed on the CPO, available via the CPO, including for purposes of record retention for Issuer access or for providing filed Documents to issuer as proof of filing (or subsequent display); however, MACT shall be permitted to use stored Documents for mining data available in those Documents.

2.5. MACT further agrees that for any of the software/functionality to be removed from the CPO pursuant to this Agreement, MACT shall not provide any other mechanism or service (electronic or otherwise) to replace the removed functionality, offer any other system that includes such software and/or functionality, or collaborate with any entity or system to provide the functionality, unless expressly permitted under the terms of this Agreement.

**3. MARKETING**

- 3.1. Whenever MACT (including its employees, agents, attorneys or other representatives) presents information about the features, functions or services available on the CPO, it shall be clear as to what the CPO does and does not do and MACT shall not commingle any such presentation with a presentation of MACT's services as a SID in any way that confuses the distinctions between the two. To avoid doubt, MACT shall be able in a single presentation to state that it operates the CPO and it provides services as a SID and to describe each separately and accurately in a way that does not cause confusion about the distinction between the two. No MACT marketing material or information shall commingle its SID services and CPO services in any way that confuses the distinctions between the two. For clarity, the effect and intent of this provision is to prevent MACT from juxtaposing a description of its services as a SID with the CPO to create the perception that the CPO has features or capabilities that it does not have. Additionally, each of the Parties can factually describe any SEC letter it has and whether any existing letter changes or not as a result of this Agreement. MACT agrees that it shall not state that its current interpretative letter from the SEC regarding the CPO is the same as DAC's no-action letter from the SEC.
- 3.2. MACT agrees within 30 days of the Effective Date to modify its website instructions, user manuals, FAQs and marketing literature to accurately reflect the changes to the CPO required by this Agreement.

**4. JOINT PRESS RELEASE**

4.1. The Parties shall issue a joint press release in the form attached hereto as Exhibit B and shall not otherwise comment to the press about this Agreement other than to direct interested parties to the Agreement on the Parties' websites. This Agreement and the Press Release shall be posted to both Parties' websites.

**5. DAC'S COOPERATION WITH THE CPO**

5.1. For all filing Documents submitted on the DAC system, by or on behalf of issuers, DAC shall continue to forward those Documents to the relevant repositories (e.g. the NRMSIRs and any applicable SID). Beginning December 11, 2008, DAC shall begin to also transmit such Documents, as well as any necessary indexing information, to the CPO in same or equivalent format used by MACT to accept filings from other dissemination agents, or other mutually agreed upon format, to enable MACT to create on the CPO a master index of secondary market disclosure filings. The Parties shall cooperate to implement this procedure in a practical manner. MACT shall not submit to any repository (e.g., any NRMSIR, SID or other repository) any filing Documents forwarded to the CPO by DAC.

**6. TRANSITION PERIOD**

6.1. Except where expressly stated otherwise, the Parties hereby agree to a 30 day period from the Effective Date of this Agreement in which to make any necessary changes to the structure, function, and operation of their

respective systems (CPO and the DAC System) or other business practices.

**7. MACT'S SEC LETTER**

7.1. MACT agrees that within 60 days of the Effective Date (or other time period as required by the SEC, if sooner) it shall submit to the SEC information that fully discloses all of the changes to the CPO required by this Agreement and the Consent Injunction to determine if any modification to or other action is necessary regarding MACT's interpretative letter from the SEC regarding the CPO.

**8. "ACCESS EQUALS DELIVERY"**

8.1. Nothing herein shall preclude MACT or DAC from pursuing what is presently termed as an "Access Equals Delivery" service or system for Official Statements for new bond issues, but no license or covenant not to sue is granted to MACT with respect to this feature.

**9. MACT'S SID SERVICES**

9.1. Nothing herein shall impact MACT's ability to operate as a SID, but no license or covenant not to sue is granted for these activities.

**10. MONETARY DAMAGES**

10.1. In the event of any material breach of this Agreement by MACT, DAC shall be entitled, at its sole discretion, to injunctive relief, specific performance and/or liquidated damages. Liquidated damages, if elected, shall be in the following amounts:



- i) in the event of a first material breach of this Agreement: a) if MACT fully cures the breach within 30 days of receiving notice of breach, then no liquidated damages; and b) if MACT does not fully cure within 30 days of receiving notice of breach, then liquidated damages of: \$100 x number of days from the notice of breach x the Average Number of Filings per day made on the CPO for the preceding 12 month period (“Liquidated Damages”).
- ii) in the event of a second or subsequent material breach of this Agreement: a) if MACT fully cures the breach within 15 days of receiving notice of breach, then no liquidated damages; and b) if MACT does not fully cure within 15 days of receiving notice of breach, then Liquidated Damages as defined above.

10.2. In the event MACT or DAC successfully enforces a breach of this Agreement against the other party, then the breaching party shall pay to the other party an amount equal to the attorney’s fees and expenses incurred in enforcing this Agreement with respect to such breach.

## **11. MUTUAL RELEASE OF LIABILITY**

11.1. MACT hereby releases DAC, its current and past officers, directors, and employees for liability for any claim made or which could have been made by MACT, based on any acts or omissions occurring prior to the Effective Date, whether such acts or claims are known or not as of the Effective Date of this Agreement.

11.2. DAC hereby releases MACT, its current and past officers, directors, and employees for liability for any claim made or which could have been made by DAC, based on any acts or omissions occurring prior to the Effective Date whether such acts or claims are known or not as of the Effective Date of this Agreement.

**12. COVENANT NOT TO SUE**

12.1. Provided MACT remains in compliance with the terms of this Agreement and the consent injunction incorporated herein by reference, DAC hereby grants a personal covenant not to sue MACT for infringement of the '408 Patent Family by the CPO.

12.2. No right or covenant not to sue under any DAC patent or patent application other than those in the '408 Patent Family is granted by this Agreement. No license, express or implied, of any kind is granted by this Agreement.

12.3. This covenant not to sue is personal to MACT and shall not be transferable or assignable to any other entity without DAC's consent.

**13. ACKNOWLEDGMENT OF VALIDITY**

13.1. MACT hereby acknowledges the validity of the '408 Patent Family and agrees that it shall not directly or indirectly challenge the validity of any patent in the '408 Patent Family. Nor shall MACT voluntarily assist others in challenging the validity of the '408 Patent unless, and only to the extent, required by Court Order.

**14. SUBSEQUENT FINDING OF INVALIDITY OF THE '408 PATENT**

14.1. Because this is not a patent license and is a business resolution to the patent and non-patent issues set forth above, should any or all of the claims of the '408 Patent or any patent in the '408 Patent Family be subsequently invalidated or rendered unenforceable, such invalidation or enforceability shall have no impact on the terms of this Agreement and all terms of this Agreement shall remain in full force and effect for the Term.

**15. TERM AND TERMINATION**

15.1. The term of this Agreement ("Term") shall extend from the Effective Date of this Agreement until the earlier of: i) the expiration (or voluntary lapse for intentional non-payment of maintenance fees) of the last to expire (or lapsed) patent in the '408 Patent Family; or ii) DAC or any successors-in-interest to DAC voluntarily ceases to operate the DAC System or other system for secondary market disclosure filings. To avoid doubt, in the event that any legislative or other governmental action mandates exclusive use of a system for secondary market disclosure filings and DAC or any successor ceases to operate the DAC System as a result, this would not be deemed a voluntary cessation of operation.

**16. DISPUTE RESOLUTION**

16.1. In the event of any alleged breach of this Agreement or other dispute relating to the subject matter of this Agreement: i) the aggrieved Party shall provide written notice to the other Party, and the other Party shall have a chance to cure or otherwise address the alleged breach within 30

days; ii) the Parties agree to promptly and diligently confer in good faith in an attempt to resolve the issue without the need for judicial intervention; and iii) in the event the Parties cannot resolve the dispute within 30 days, the Parties shall conduct a non-binding mediation, prior to the filing of any lawsuit. The parties shall select a mediator in Florida within 10 calendar days, who has availability to initiate mediation of this matter within 30 days from selection and conclude such mediation within 60 days.

**17. CONSENT INJUNCTION AND DISMISSAL OF LAWSUIT**

17.1. Upon execution of this Agreement by both Parties, counsel for the Parties shall jointly submit to the Court a request for Consent Injunction and Dismissal of the Lawsuit, with prejudice. This Agreement shall be filed with the Court for purposes of enabling the Court to retain jurisdiction as set forth below.

17.2. Following entry of an order dismissing the Lawsuit, DAC shall promptly notify the recipients of 3rd party subpoenas that there is no need to respond.

**18. RETENTION OF JURISDICTION AND GOVERNING LAW**

18.1. The United States District Court for the Middle District of Florida, Orlando Division (the "Middle District Court"), shall retain jurisdiction to supervise and enforce the terms of this Agreement and the Consent Injunction entered herein, and shall be the exclusive venue for all matters relating in any manner to the enforcement of this Agreement, or litigating any dispute, controversy or claim arising out of or in connection with this Agreement, or breach thereof, as well as any dispute, controversy or claim arising out of or

related to the Consent Injunction entered herein. In the event that the Middle District Court lacks subject matter jurisdiction over any dispute arising under this Agreement, the dispute shall be submitted to a Florida state court for resolution. Each party consents and submits to the personal jurisdiction of the Middle District Court (or a Florida state court, if the Middle District Court finds that it lacks subject matter jurisdiction) and waives any and all defenses inconsistent with this Section. The Parties agree to file a Joint Motion requesting entry of the Consent Injunction and retention of jurisdiction as well as the dismissal with prejudice called for herein.

18.2. This Agreement and performance hereunder shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts of law principles.

18.3. To the extent either Party files a lawsuit relating to this Agreement, such lawsuit may only be brought in the Middle District Court (or, if the Middle District Court finds that it lacks subject matter jurisdiction, a Florida state court).

## **19. SUCCESSORS AND ASSIGNS**

19.1. DAC and any successors to DAC may assign or transfer this Agreement without approval from MACT, but only in conjunction with a transfer of rights in all of the patents in the '408 Patent Family, and the assignee/transferee agrees to be bound by the terms and covenants not to sue of this Agreement.

19.2. MACT may not assign or transfer this Agreement unless it receives written approval to do so from DAC, which approval shall be at DAC's

sole discretion. This, in part is due to the mutual recognition by the Parties that various terms agreed to by DAC are acceptable to DAC based on the recognition of MACT's status as a not for profit entity and the scope of the services it provides. Should MACT attempt to transfer or assign the CPO and/or any rights hereunder to a different entity (whether another non-profit, a commercial entity, a governmental or quasi-governmental entity or otherwise) the impact of such transfer on DAC may raise concerns by DAC and DAC shall not be required to consent to such a transfer of this Agreement.

- 19.3. Nothing in this Agreement shall prevent MACT's ability to physically transfer the CPO system and computers and computer records reflecting the Filing Summary Information (except any information provided by DAC to the CPO) to a new operator, provided at DAC's option, no such transfer shall occur unless the recipient agrees in writing to be bound by the terms of this Agreement. In any event, neither any original nor copies of any Documents filed through (or provided to) the CPO shall be transferred by MACT. In the event that MACT intends to make such a transfer, it shall provide DAC 30 days written notice of its intent and identification of the party to whom MACT intends to make the transfer, so DAC can inform MACT of its election. DAC shall make its election within 20 days.

## **20. AUDIT RIGHTS**

20.1. DAC shall have the same audit rights for purposes of this Agreement as set forth in Paragraph 5 of the Consent Injunction. Such Audit rights shall be used solely to verify compliance with this Agreement and take action for any breach as necessary.

**21. NOTICE**

21.1. All notices and other communications required or permitted to be given under the terms of this Agreement, shall be made in writing and shall be deemed to have been made and given if mailed by overnight delivery service, sent via facsimile transmission (with confirmation by overnight delivery service), or hand delivered to the party to receive such notice at the address specified below:

To DAC at the following address:

390 North Orange Avenue  
Suite 1750,  
Orlando, Florida 32801-1674  
Attn: Paula Stuart

And to MACT at the following address:

600 West 8<sup>th</sup> Street  
Austin, Texas 78701  
Attn: Executive Director

Either party may change such address by notice in writing to the other party at the address set forth in this Paragraph.

## 22. GENERAL PROVISIONS

- 22.1. Subject to the provisions of Paragraph 10.2, the Parties shall each bear their own legal fees and costs associated with this Agreement and the Lawsuit.
- 22.2. Nothing contained in this Agreement shall in any way be construed to create an agency relationship, partnership, or joint venture between the parties.
- 22.3. This Agreement contains the entire agreement and understanding between the parties regarding the subject matter herein and supersedes and replaces any prior agreements or understandings, except for the Consent Injunction which is incorporated herein.
- 22.4. Each party acknowledges that it has had the benefit and advice of independent legal counsel in connection with this Agreement and understands the meaning of each term of this Agreement and the consequences of signing this Agreement.
- 22.5. This Agreement may not be altered, amended, modified, or otherwise changed except by a writing duly signed by both of the parties hereto.
- 22.6. The Parties shall execute and deliver such other documents or instruments and take such other action as may be necessary to carry out the purposes of this Agreement.
- 22.7. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts collectively shall constitute but one and the same Agreement. This Agreement may be executed by



facsimile, and a facsimile signature shall have the same force and effect as an original signature on this Agreement.

22.8. Each party to this Agreement represents and warrants that it is under no disability, restriction, or prohibition affecting its ability to execute this Agreement or to perform its obligations hereunder and that the person designated below to sign this Agreement has the authority to act on its behalf and to agree to the terms and conditions of this Agreement.

22.9. This Agreement shall be deemed to be mutually drafted by the Parties and no ambiguity shall be deemed to be construed against either Party as the drafter of the Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, and having the power and authority to do so, the Parties have executed this Agreement as of the date first written above.

DIGITAL ASSURANCE CERTIFICATION, LLC

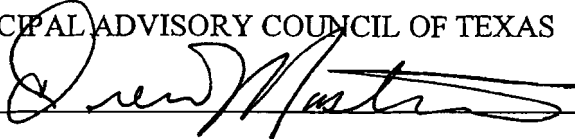
By: \_\_\_\_\_

Name: Paula Stuart

Title: Chief Executive Officer

Date: June 11, 2007

MUNICIPAL ADVISORY COUNCIL OF TEXAS

By:  \_\_\_\_\_

Name: Drew Masterson

Title: Chairman, Board of Trustees

Date: June 11, 2007

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DIGITAL ASSURANCE CERTIFICATION, LLC

By: 

Name: Paula Stuart

Title: Chief Executive Officer

Date: June 11, 2007

MUNICIPAL ADVISORY COUNCIL OF TEXAS

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