

June 10, 1999

**To:** Board of Directors (Budget and Finance Committee—Action)  
(Legal and Claims Committee—Action)

**From:** General Counsel \_\_\_\_\_

**Subject:** Selection of Disclosure Counsel

### RECOMMENDATION(S)

It is recommended that the Board authorize the General Counsel to enter into an agreement with the law firm Cox, Castle & Nicholson LLP for disclosure counsel services from the date of the execution of the contract through December 31, 2001.

### EXECUTIVE SUMMARY

Metropolitan's most recent agreement for disclosure counsel services with Hawkins, Delafield and Wood was originally scheduled to expire December 31, 1998, and for this reason the Request for Proposal (RFP) described below was initiated. Since significant work had been performed on three refunding issues then pending, that agreement was extended on a limited basis, to apply only to those pending refundings, and only until they were sold. It now appears that current market conditions will preclude the completion of those refundings at any time in the near future, certainly not before our preliminary official statements published last April become stale and obsolete. Regardless of the status of the proposed refunding issues, however, there will be a need to initiate the process for additional new financing before year's end. Accordingly, the Board should now designate new Disclosure Counsel pursuant to the completed RFP process to assist in future debt financings anticipated to begin within the next several months. The Detailed Report section summarizes the content, distribution and response of and to the RFP and the review process, leading to the majority recommendation by a panel of directors and staff to select Cox, Castle & Nicholson LLP as Metropolitan's Disclosure Counsel for the remainder of the term specified in the RFP, i.e., through December 31, 2001.

### DETAILED REPORT

In October 1998, the General Counsel initiated a Request for Proposal (RFP) to select a law firm to act as Metropolitan's designated Disclosure Counsel. The legal services to be provided by Disclosure Counsel are anticipated to include:

- (1) Assisting in the preparation of Metropolitan's preliminary and final official statements and other disclosure documents in connection with the issuance and sale of its bonds and other securities;

- (2) Rendering an opinion to the underwriters of such debt instruments (a) as to the exemption of such bonds and other securities from registration under the Securities Act of 1933 and qualification under the Trust Indenture Act of 1939 and (b) that, based upon their participation in the financing, nothing came to their attention which led them to believe that the official statement or other disclosure document contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading, pursuant to Rule 10b-5 under the Securities Exchange Act of 1934, as amended;
- (3) Assisting in the preparation and filing of Metropolitan's annual reports and any notices of material events pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934, as amended; and
- (4) Providing additional advice on disclosure matters, as may be requested from time to time by the General Counsel.

The RFP specifically requested proposed fee schedules, a detailed description of the firm's experience in advising municipalities or underwriters of California municipal bonds with regard to official statements and other forms of disclosure, and a representative list of clients in that field, with examples of official statements or other disclosure document prepared by the firm. Specific reference was made to a demonstrated history of acceptance of the firm's Rule 10b-5 opinions in nationwide municipal markets as a prerequisite to a successful proposal. Each firm was instructed to evaluate existing engagements which could present a conflict with the interests of Metropolitan or its underwriters and to list all litigation pending against the firm with respect to disclosure matters and against its municipal and corporate clients with respect to matters in which the firm provided advice on securities or disclosure matters. They were also instructed to describe the limits of their errors and omissions coverage. The RFP stated that Metropolitan maintains a policy of equal employment opportunity for qualified persons and that the General Counsel expects all proposing firms to be committed to and have an established affirmative action plan in force. Finally, Metropolitan reserved the right to reject any or all submittals and to waive irregularities in any submittal if it was determined to be in the best interest of Metropolitan, and stated that Metropolitan would not be responsible for any cost of preparation of a proposal or cost incurred should an interview opportunity be offered.

Copies of the RFP were sent to the 57 firms in The Bond Buyer's directory of nationally recognized bond counsel with listed offices within our service area (excluding O'Melveny & Myers, our current lead bond counsel). Fifteen firms responded to the RFP and those proposals were made available for review by Directors Barbosa, Huntley and Miller as well as former Senior Deputy General Counsel Sydney Bennion and Assistant Chief Financial Officer Antoinette Christovale. After extensive review of these proposals, four panelists of the five concluded that Cox, Castle & Nicholson LLP was the appropriate choice as Disclosure Counsel, based upon their determination that the firm had substantial expertise in the field, there were no conflicts of interest or relevant litigation, insurance coverage was substantial, and the proposed rate structure compared favorably with other proposers.

JWM:mg