

OMB APPROVAL	
OMB Number: . . . . .	3235-0686
Expires: . . . . .	August 31, 2014
Estimated average burden hours per response. . . . .	1

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM TCR  
TIP, COMPLAINT OR REFERRAL**

<b>A. INFORMATION ABOUT YOU</b>			
<b>COMPLAINANT 1:</b>			
1. Last Name	Platten	First	Christopher E.
2. Street Address	2125 Canoas Garden Avenue		Apartment/ Unit # 120
City	San Jose	State/ Province	CA
		ZIP/ Postal Code	95125
		Country	United States
3. Telephone	(408) 979-2920	Alt. Phone	(408) 482-7613
		E-mail Address	cplatten@wmpriaw.com
4. Occupation	Attorney		
<b>COMPLAINANT 2:</b>			
1. Last Name		First	
		M.I.	
2. Street Address			Apartment/ Unit #
City	State/ Province	ZIP/ Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	Preferred method of communication
4. Occupation			
<b>B. ATTORNEY'S INFORMATION (If Applicable - See Instructions)</b>			
1. Attorney's Name			
2. Firm Name			
3. Street Address			
City	State/ Province	ZIP/ Postal Code	Country
4. Telephone	Fax	E-mail Address	

**C. TELL US ABOUT THE INDIVIDUAL OR ENTITY YOU HAVE A COMPLAINT AGAINST**

INDIVIDUAL/ENTITY 1:

If an individual, specify profession: Mayor, City of San Jose, California

1. Type: ☒ Individual ☐ Entity

If an entity, specify type:

2. Name **Chuck Reed, Mayor**

3. Street Address **200 East Santa Clara Street**

Apartment/  
Unit # **18th Floor**

City **San Jose**

State/  
Province **CA**

ZIP/  
Postal Code **95113**

Country **United States**

4. Phone **(408) 535-4800**

E-mail Address **mayoremail@sanjoseca.gov**

Internet address **www.sanjoseca.gov/mayor**

INDIVIDUAL/ENTITY 2:

If an individual, specify profession:

1. Type: ☐ Individual ☒ Entity

If an entity, specify type:

**City of San Jose, California, a municipal corporation**

2. Name **City of San Jose**

3. Street Address **200 East Santa Clara Street**

Apartment/  
Unit # **17th Floor**

City **San Jose**

State/  
Province **CA**

ZIP/  
Postal Code **95113**

Country **United States**

4. Phone **(408) 535-3500**

E-mail Address

Internet Address **www.sanjoseca.gov**

**D. TELL US ABOUT YOUR COMPLAINT**

1. Occurrence Date (mm/dd/yyyy):     /     /

2. Nature of complaint:

**See Attached**

3a. Has the complainant or counsel had any prior communication(s) with the SEC concerning this matter?

YES ☐

NO ☒

3b. If the answer to 3a is "Yes," name of SEC staff member with whom the complainant or counsel communicated

4a. Has the complainant or counsel provided the information to any other agency or organization, or has any other agency or organization requested the information or related information from you?

YES ☐

NO ☒

4b. If the answer to 4a is "Yes," please provide details. Use additional sheets if necessary.

4c. Name and contact information for point of contact at agency or organization, if known

5a. Does this complaint relate to an entity of which the complainant is or was an officer, director, counsel, employee, consultant or contractor?

YES ☐

NO ☒

5b. If the answer to question 5a is "yes," has the complainant reported this violation to his or her supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations?

YES ☐

NO ☐

5c. If the answer to question 5b is "yes," please provide details. Use additional sheets if necessary.

5d. Date on which the complainant took the action(s) described in question 5b (mm/dd/yyyy):

/ /

6a. Has the complainant taken any other action regarding your complaint?

YES ☐

NO ☒

6b. If the answer to question 6a is "yes," please provide details. Use additional sheets if necessary.

7a. Type of security or investment, if relevant

Up to \$315 million Series 2011B/C Airport Revenue Bond

7b. Name of issuer or security, if relevant

City of San Jose

7c. Security/  
Ticker Symbol or CUSIP no.

8. State in detail all facts pertinent to the alleged violation. Explain why the complainant believes the acts described constitute a violation of the federal securities laws. Use additional sheets if necessary.

See attached Statement

9. Describe all supporting materials in the complainant's possession and the availability and location of any additional supporting materials not in complainant's possession. Use additional sheets, if necessary.

See attached Statement

10. Describe how and from whom the complainant obtained the information that supports this claim. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

See attached Statement

11. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity would be revealed if the documents were disclosed to a third party.

See attached Statement

12. Provide any additional information you think may be relevant.

#### E. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer or employee of the Department of Justice, the Securities and Exchange Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision; the Public Company Accounting Oversight Board; any law enforcement organization; or any national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board?

YES ☐ NO ☒

2. Are you, or were you at the time you acquired the original information you are submitting to us, a member, officer or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. §78c(a)(52))?

YES ☐ NO ☒

3. Did you acquire the information being provided to us through the performance of an engagement required under the federal securities laws by an independent public accountant?

YES ☐ NO ☒

4. Are you providing this information pursuant to a cooperation agreement with the SEC or another agency or organization?

YES ☐ NO ☒

5. Are you a spouse, parent, child, or sibling of a member or employee of the SEC, or do you reside in the same household as a member or employee of the SEC?

YES ☐ NO ☒

6. Are you providing this information before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, (ii) in connection with an investigation, inspection or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or (iii) in connection with an investigation by the Congress, any other authority of the federal government, or a state Attorney General or securities regulatory authority?

YES ☐ NO ☒

7. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information you are submitting to the SEC?

YES ☐ NO ☒

8. Did you acquire the information being provided to us from any person described in questions E1 through E7?

YES ☐ NO ☒

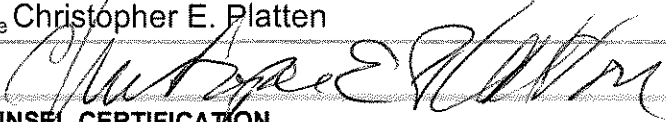
9. Use this space to provide additional details relating to your responses to questions 1 through 8. Use additional sheets if necessary.

## F. WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the SEC, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious, or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry.

Print name Christopher E. Platten

Signature



Date February 27, 2012

## G. COUNSEL CERTIFICATION

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the whistleblower, in my records. I further certify that I have obtained the whistleblower's non-waiveable consent to provide the Commission with his or her original signed Form TCR upon request in the event that the Commission requests it due to concerns that the whistleblower may have knowingly and willfully made false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false fictitious or fraudulent statement or entry; and that I consent to be legally obligated to do so within 7 calendar days of receiving such a request from the Commission.

Signature

Date

Attachment to United States Securities and Exchange Commission  
**FORM TCR (TIP, Complaint or Referral)**

Complainant	Christopher E. Platten Wylie McBride Platten & Renner 2125 Canoas Garden Avenue Suite 120 San Jose, CA 95125 (408) 979-2920 - telephone (408) 979-2934 - facsimile
Email	cplatten@wmprlaw.com
Date of Occurrence	November 15, 2011
Nature of Complaint	Violation of Section 17(a) Omission of Material Facts in Offer and Sale of Bond Securities

**I. Introduction**

Public entities that issue securities are primarily liable for the content of their disclosure documents and are subject to federal securities laws against false and misleading information contained in their disclosure documents. Public entities also have an affirmative obligation to include any and all information in their disclosure documents that a “reasonable investor” would deem relevant to their respective decision to invest in said security. In addition to the governmental entity issuing municipal securities, public officials of the issuer who have ultimate authority to approve the issuance of securities and related disclosure documents have responsibilities under the federal securities laws as well. In authorizing the issuance of securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may a public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading. When, for example, a public official has knowledge of facts bringing into question the issuer's ability to repay the securities, it is reckless for that official to approve disclosure documents to investors without taking steps appropriate under the circumstances to prevent the dissemination of materially false

or misleading information regarding those facts. In this matter, such steps were not taken and bond disclosure documents were produced, discussed in open session of the San Jose City Council and ultimately approved for distribution and publication. These documents, as you will read, did not include any reference that pension costs in the City of San Jose could reach \$650 million dollars, or more, in FY 15-16.

**II. The Mayor of the City of San Jose, Chuck Reed and the City's Ability to Repay Its Securities Impacted by \$650 Million in Pension Costs by Fiscal-Year 2016.**

In this case, the Mayor of the City of San Jose, Chuck Reed, the City Council and other San Jose managerial and policymaking employees, including, but not limited to City Manager Debra Figone, City Retirement Services Director Russell Crosby, former City Finance Director Scott Johnson and former City Retirement Actuary Michael Moehle prepared, issued, ratified and/or condoned official bond disclosure documents that did not disclose that the City of San Jose's pension costs were projected to reach \$650 million dollars in FY 15-16.

Since approximately February 2011, Mayor Chuck Reed and the City of San Jose have maintained in a plethora of written documents, including the Mayor's May 13, 2011 memorandum calling for the declaration of a Fiscal Emergency, the Mayor's June 2011 Budget Message, numerous press releases, City Council meeting presentations, numerous media interviews, that future pension obligations for the City of San Jose "will", "could", "increase to \$650 million per year by Fiscal Year 15-16.

Mayor Reed's June 14, 2011 Budget Message, is illustrative:

"Unfortunately, the huge increase to fund retirement costs to date is just beginning. Using the most optimistic assumptions, retirement costs, if left

unchecked, will increase to \$400 million per year by 2016 – or almost 30% of the General Fund – and will continue to go up for another 10 or 15 years. Even greater increases in retirement costs are likely if actuarial assumptions, such as life expectancy, retirement ages, or rates of investment return, are modified by the retirement boards that are independent from the City and have fiduciary obligations to modernize assumptions and keep the plans solvent. That could cause retirement costs to jump to \$650 million per year by 2016.”<sup>1</sup>

In addition, Mayor Reed promulgated multiple documents from April, 2011 to present representing and attesting to the material fact that San Jose’s pension contribution costs were reasonably likely to increase to \$650 million by Fiscal Year 2016.<sup>2</sup>

In a February 15, 2012 letter to the City of San Jose Elections Commission, Mayor Reed stated:

---

<sup>1</sup> Mayor Reed’s June 2011 Budget Message is available online (see pages 2-3):

[http://www.sanjoseca.gov/mayor/news/memos/11JuneBudgetMessage\\_06032001.pdf](http://www.sanjoseca.gov/mayor/news/memos/11JuneBudgetMessage_06032001.pdf).

<sup>2</sup> Here are links to other documents in which Mayor Reed cited the “\$650 million” figure:

- Press Release: Mayor Reed and Vice Mayor Nguyen to Discuss Impacts of Pension Costs on San José Budget (4/13/2011): <http://www.sanjoseca.gov/mayor/news/releases/11April/ReedNguyenDiscussPensionCosts.pdf>

- Memo: Fiscal Reforms (5/13/2011, see page 5):

[http://www.sanjoseca.gov/mayor/news/memos/11May/FiscalReforms\\_05132011.pdf](http://www.sanjoseca.gov/mayor/news/memos/11May/FiscalReforms_05132011.pdf)

- Press Release: Mayor Reed Releases Fiscal Reform Plan (5/13/2011):

[http://www.sanjoseca.gov/mayor/news/releases/11May/FiscalReformPlan\\_05132011.pdf](http://www.sanjoseca.gov/mayor/news/releases/11May/FiscalReformPlan_05132011.pdf)

- E-Mail Blast: Mayor Reed Releases Fiscal Reform Plan (5/13/2011):

[http://www.sanjoseca.gov/mayor/news/Share/PU\\_FiscalReforms.asp](http://www.sanjoseca.gov/mayor/news/Share/PU_FiscalReforms.asp)

- Press Release: Mayor Reed Releases June Budget Message (6/3/2011, see page 2):

[http://www.sanjoseca.gov/mayor/news/releases/11June/JuneBudgetMsg\\_06032011.pdf](http://www.sanjoseca.gov/mayor/news/releases/11June/JuneBudgetMsg_06032011.pdf)

- Sacramento Bee OpEd: Why Pension Reform is Now a Top Priority in San Jose (7/3/2011):

<http://www.sacbee.com/2011/07/03/3742639/why-pension-reform-is-now-a-top.html>

*"Given the amount of misleading information published about my use of this \$650 million figure last year, it's important to keep a few critical facts in mind:*

*1. \$650 million was our retirement department's professional staff estimate of how high our retirement costs could reach if things got worse.*

*2. This \$650 million figure was cited alongside the official projection from the independent retirement boards' actuaries."*<sup>3</sup>

It appears that Mayor Reed told everyone about the \$650 million dollar projection except those entities and/or individuals he was required to by law. Mayor Reed has been equally steadfast in his representations in the media concerning the reasonable likelihood that the City of San Jose's pension contributions costs will reach \$650 million by Fiscal Year 2016. The following is a brief summary of statements made by Reed to various broadcast and print journalists:

1. February 8, 2012: NBC 11 11PM TV News Report

REPORTER: "Do you think you should have sat down with him [Crosby] to find out where he was getting this number [\$650 million] from other than quoting from a meeting?"

CHUCK REED: "No..."

CHUCK REED: "We're trying to avoid a disaster. And certainly \$650 million number would be a disaster."

2. February 9, 2012: San Jose Mercury News Article, "San Jose employee unions filed ethics complaint against Mayor Reed, other city officials"

---

<sup>3</sup> Reed's February 15, 2012 letter to the San Jose Elections Commission is attached hereto as Attachment 1.

CHUCK REED: "What I communicated to everybody in writing how I wrote the budget message is that the projection of \$400 million could be worse ... (and) it could be as much as \$650 million," he said. "If I had gone to the people and said, 'Don't worry about this. It's not going to be a problem,' that would be misleading the people," said Reed. "The \$650 million is a ballpark reasonable estimate of a pessimistic case."

3. February 9, 2012: NBC 11 6PM TV News Report

REPORTER: "Do you regret using the figure \$650."

CHUCK REED: "No, I think that's a ballpark figure for the kinds of problems we might experience."

4. February 9, 2012: ABC 7 5PM TV News Report

CHUCK REED: "But I do know that it's [\$650 million] a reasonable, ballpark number even today for what we might be facing if we don't take action."

5. February 9, 2012: CBS 5 5PM TV News Report

CHUCK REED: "I knew it was an estimate, but that's the point of projections is trying to figure out what's the base case scenario, what's the pessimistic scenario, what's the optimistic scenario. The \$650 million was a pessimistic scenario, but it is something that can happen if we don't pay attention to what we're doing and take action."

6. February 9, 2012: FOX 2 5PM TV News Report

CHUCK REED: "The \$650 million figure is still a reasonable ballpark figure of what could happen if things don't go well."

7. February 9, 2012: ABC 7 6PM TV News Report

REPORTER: "And you felt that was a real risk, \$650 million?"

CHUCK REED: "I did, I still do."

8. February 9, 2012: CBS 5 6PM TV News Report

REPORTER: "Were you caught in a lie?"

CHUCK REED: "No absolutely not. \$650 million number is a reasonable, ballpark number even today."

9. February 9, 2012: FOX 2 10PM TV News Report

CHUCK REED: "It's a not a worst case number [\$650 million], it's a pessimistic case number and that's how I explained it to the people."

10. February 9, 2012: CBS 5 11PM TV News Report

CHUCK REED: "\$650 million is still a reasonable, ballpark estimate of the pessimistic scenario."

11. February 13, 2012: KLIV Radio, Town Hall Meeting with San Jose Mayor Chuck Reed

REPORTER: "Now is that projection, is that where that that \$650 million comes into the discussion here?"

CHUCK REED: "Well the \$650 million, the \$400 million, was the uh projection of what things might be, uh, in, in 5 years. \$400 million was the o-official projection from the, uh, actuaries and the retirement boards, these are independent of the city. That's, uh, their projections. But depending upon the assumptions, if, if you look at the assumptions that they used and asked the

question well what would happen to those numbers if, uh, the stock market doesn't do so well if investment returns are, uh, poor or if the, uh, trustees of these retirement plans decide to go from what is a high risk assumption down to a low risk or a no risk assumption. And, uh, those are things that could dramatically change the numbers . . . Could dramatically increase the city's cost up into the ballpark of \$650 million.

...

REPORTER: "The ethics complaint seems to, uh, come up with this \$650 million figure from, uh, Retirement Services Director Russell Crosby. Who kind of threw that, uh, number out in a meeting and then later back tracked on that figure. So my question to you Mayor Reed is your using that \$650 million number is that based entirely on uh, what Mr. Crosby said? Or are you using other data as you use that number?"

CHUCK REED: "Well Russell Crosby, uh, I think was quoted as saying that that number came off the top of his head. Uh, Russell happens to be the smartest head in the room, uh, when you're talking about this retirement stuff. So it wasn't without analysis or without, uh, some thought. Uh, but independently of what Russell thinks the number might be, I can do the math in my head of what happens if the retirement boards decide they're going from a high risk, uh, rate of return/assumption to a no risk rate of return/assumption. And it adds 2 or 3 hundred million dollars to our cost and you get the \$650 million pretty quickly. It, it's not that hard to figure it out based on the work that they've done. So, uh, I was aware—"

REPORTER: "So it's not entirely based on what Mr. Crosby said?"

CHUCK REED: "And if anyone wants to look and get the facts they can see, uh, in my June Budget message, uh back, uh June 14th, uh, Budget Message that Council approved, I used the \$400 million number saying that was the official projection but it could be as, as bad as \$650 million number if the assumptions proved to be wrong or if the Boards changed directions on how much risk they're willing to take. Uh, anybody that wants that wants can take a look at the language and there's nothing wrong with that language it was, uh, accurate and true.

12. February 15, 2012: San Jose Mercury News Article, "San Jose ethics commission must pass on mayor complaint

But Reed has maintained that the \$650 million figure is "still a reasonable estimate," citing a Stanford Institute for Economic Policy Research report in December -- which unions also criticized -- that stated: "in the pessimistic scenario, city retirement expenditures increase \$663.8 million above 2012 levels."

13. February 22, 2012: The Wall Street Journal article, "San Jose Confronts Pension Burden"

"The numbers we use aren't made up," says San Jose Mayor Reed. "They're based upon projections of what we see now."

...

Mr. Reed says the numbers the city uses to calculate pension costs are verified by an independent retiree board. "What we try to do is make it very clear to the public that the numbers we use are examined by independent sources," he says. "You can't just make a number up."

14. February 23, 2012: NBC 11 6PM TV News Report

REPORTER: "So you're still saying that we can get to \$650?"

CHUCK REED: "Well that's what people. I don't do the calculations I don't do the numbers. Uh, so whether or not we can get to \$650 is a guesstimate from people that do this work."

15. February 24, 2012: KCBS 740AM Radio News Report

CHUCK REED: "It could get into the ballpark of \$650 million which would be a disaster for the City of San Jose and that's something I think that public has a right to know."

In addition to the foregoing statements, Mayor Reed is quoted in M. Lewis, "*Boomerang, Travels in the New Third World*," p. 196 (Norton, 2011), that the City's pension costs, if

adjusted “for life expectancy” is “more like six hundred fifty million dollars.” Reed predicted that it would be “a mathematical inevitability” that the City’s pension costs would require a reduction in its work force to one employee. (Id. at p. 197<sup>4</sup>.)

### **III. The San Jose City Council Votes to Issue Municipal Securities without Disclosing the Projected Increase in Pension Contribution Costs of \$650 Million by FY 15-16.**

On November 15, 2011, the San Jose City Council approved the authorization for the issuance of Airport Revenue Bonds as a Seventeenth Supplemental Resolution of the Council authorizing the issuance of City of San Jose Airport Revenue Bonds, Series 2011B and Series 2011C (the “2011B/C Bonds”) in a total aggregate principal amount of not to exceed \$315,000,000 to be sold through negotiated sale. This was accomplished through the adoption of Resolution No. 76063 in Council Agenda Item 6.1(a)<sup>5</sup>.

As part of the City Council’s action approving the issuance of \$315 million in Series B/C Airport Revenue Bonds, the City published for review at the November 15, 2011 Council Meeting a Preliminary Official Statement (POS) including a document entitled “Appendix C, The City of San Jose Pension Plans.”<sup>6</sup> This document does not reveal or include a representation that the City’s pension contribution costs obligations could rise to \$650 million by Fiscal Year 2016. Appendix C sets forth a projection of City pension contribution costs obligations by Fiscal Year 2016. Table C-3d on page 13 of Appendix C projects the City’s pension costs to increase to

---

<sup>4</sup> A copy of pages 196-197 is attached hereto as Attachment 2.

<sup>5</sup> Attached hereto as Attachment 3 is a copy of the City Council Agenda Synopsis for the November 15, 2011 City Council meeting confirming the Council’s adoption of Resolution No. 76063.

<sup>6</sup> A true and correct copy of Appendix C to the POS is attached hereto as Attachment 4.

\$431.5 million by Fiscal Year 2016, yet fails to disclose, per federal securities the material fact that according to Mayor Reed, the, “\$650 million was our retirement department’s professional staff estimate of how high our retirement costs could reach if things got worse. .”

At no time during 2011, or prior to the City Council’s action of November 15, 2011 to approve the sale of \$315 million in bonds did former City of San Jose Finance Director Scott Johnson, City Manager Figone, Retirement Services Director Crosby, former City Actuary Moehle or any other City employee publicly correct, deny or disclaim Mayor Reed’s representation that the City’s pension contribution costs obligations could increase to \$650 million by Fiscal Year 2016. As such, they should have ensured that the \$650 million projection was included in the bond disclosure documents issued by the City of San Jose.

Prior to the City Council’s action on November 15, 2011 to approve issuance of \$315 million in bonds, the City Council was expressly admonished about its obligations under the Securities Act. This admonishment included a recitation of the prohibitions under Section 17(a) of the Securities Act by a power point presentation to the Council at the meeting of November 15, 2011<sup>7</sup>.

On page 4 of the power point presentation, Mayor Reed and all Council members were instructed specifically that “pursuant to federal law and enforced by the SEC: *issuers of municipal securities have an obligation to ensure that information contained in their disclosure documents is not materially misleading.*” Mayor Reed and the Council were expressly told that Section 17(a) of the Securities Act prohibits “*omitting to state a material fact in the offer or sale of securities.*”

---

<sup>7</sup> A copy of the power point presentation is attached hereto as Attachment 5.

Mayor Reed and all Council members were further instructed to consider whether all risks and events have “been brought to the attention of staff, bond counsel and other professionals,” and whether “such risks and events have been disclosed, and if not, what is the rationale for the non-disclosure.”

Page 7 of the power point presentation emphasizes: “. . . *if any Councilmember has any personal knowledge that any of the material information in the financing documents – Preliminary Official Statement (POS), including Appendices A, B, and C, is false or misleading, the Councilmember must raise these issues prior to approval of the distribution of the POS to the market.*” [Italics in original.]

Neither Mayor Reed nor any member of the City Council, or City staff identified the risk of an increase in City pension costs obligations to \$650 million by FY 15-16 prior to the Council’s adoption of Resolution No. 76063 authorizing the sale of up to \$315 in revenue bonds.

This is not the only instance in which Mayor Reed and City Councilmembers failed to disclose material facts involving the authorization of municipal securities in violation of the Securities Act.

On March 15, 2011, members of the San Jose City Council acting in their capacity as the City of San Jose Financing Authority adopted a resolution to authorize the issuance of the City of San Jose Special Hotel Tax Revenue Bonds, Series 2011 (Convention Center Expansion and Renovation Project) ("Hotel Tax Bonds") in the not-to-exceed principal amount of \$120,000,000 in order to finance certain public capital improvements of the City, consisting of the expansion and renovation to the San Jose McEnery Convention Center. This was accomplished through the adoption of Resolution No. 75758 in Council Agenda Item 2(a).

As part of their action the Council members approved, “in substantially final form”, the Official Statement, Indenture, Bond Purchase Agreement, and Continuing Disclosure Certificate, and authorize the City Manager, or other authorized designees, to execute and deliver these documents and any other related documents as necessary in connection with the issuance of the Hotel Tax Bonds. At no time did Mayor Reed, the City Council, or others named in this Securities and Exchange Commission Complaint ensure that the legal and appropriate disclosure was made in any of the bond disclosure documents that pension costs could or would reach \$650 million dollars by FY 15-16.

**IV. Mayor Reed and the City of San Jose Have Violated the Securities Act by Failing to Disclose the Material Facts Concerning the City’s Pension Contribution Costs, An Omission Considered Significant by a Reasonable Investor.**

By their actions, Mayor Reed and the City of San Jose have failed to disclose to investors the material fact of a substantial likelihood that the City’s pension and contribution costs could increase to \$650 million by FY 15-16. This information if disclosed would be considered significant by a reasonable investor as defined under Section 17(a) of the Securities Act.

This omission of a material fact in the Offer or Sale of the Securities is a violation of the prohibitions of Section 17(a) of the Securities Act. The Securities Exchange Commission should investigate this gross nonfeasance of duty and take appropriate remedial action.