

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Matthew Anhut on May 25, 2006

DATED: May 30, 2006

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On May 25, 2006, Michael Schachter, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Matthew Anhut. Mr. Anhut was represented at this interview by his lawyer, Jim Mercer, of the Law Offices of James W. Mercer. Ray Sarola of Willkie was also present for this interview, which was conducted by telephone and lasted approximately forty minutes.

The following memorandum reflects my thoughts, impressions, and opinions regarding our conversation with Mr. Anhut, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

*Bryan Cave Presentation to City Council*

Mr. Schachter began the interview by explaining that he wished to discuss the October 29, 2001 Bryan Cave memorandum (Exhibit 1) and the presentation that Bryan Cave made to the City Council shortly thereafter.

Mr. Schachter asked Mr. Anhut if he had a particular specialization in his practice. Mr. Anhut responded that he specialized in SEC enforcement and regulatory work for Bryan Cave. Mr. Anhut stated that Gerald Boltz had the same specialization.

Mr. Anhut explained that Les Girard (Deputy City Attorney) had hired Bryan Cave on the recommendation of Paul Webber (Disclosure Counsel), and stated that he had never worked for the City of San Diego prior to this engagement. Mr. Anhut stated that Mr. Girard asked Mr. Boltz to prepare a letter to the City Council outlining the federal securities laws and the Council's responsibility for disclosure (Exhibit 1). Mr. Schachter asked Mr. Anhut why this letter was requested at that time, and Mr. Anhut replied that the letter was designed to provide a framework for the Council to consider the POS (Preliminary Offering Statement), and that the City's request for this letter was not framed as a "why now" request.

At this point, Mr. Mercer stated that at the time of this letter, the City was involved in a controversial proposal for the Ballpark financing. One of the challenges to this financing was that Bruce Henderson had threatened to report the City to the SEC for making misleading disclosures. Mr. Schachter asked Mr. Anhut if he was aware of this threat at that time, and Mr. Anhut responded that he was. Mr. Anhut explained that Mr. Henderson wrote a

letter to the City threatening to go to the SEC because he felt the POS was misleading. As a result, Mr. Webber asked the Council to retain special counsel for the purpose of representing the City in a possible SEC action. Mr. Schachter asked Mr. Anhut where he got this understanding, and he responded that Mr. Girard had one or two phone calls with Mr. Boltz and Mr. Webber to discuss this issue. Mr. Boltz then told Mr. Anhut that they had been hired and instructed him to go to San Diego to learn about the Ballpark deal. Mr. Anhut stated that at that time the City was already drafting the POS, and Bryan Cave was hired to deal with the potential SEC challenge.

Mr. Schachter asked Mr. Anhut how he dealt with the potential SEC challenge, and Mr. Anhut responded that he made sure that the POS was correct and that the Council reviewed the POS and addressed any issues that arose. Mr. Schachter asked Mr. Anhut if the scope of his representation extended beyond the October 29, 2001 letter and corresponding presentation, and Mr. Anhut responded that it did. He stated that he assisted the City in drafting the POS, and that he met with the City and Mr. Webber in the POS "working group" over a two-month period to "slug through the POS." Mr. Anhut noted that the drop in tourism due to 9-11 was an issue that was discussed.

Mr. Schachter asked Mr. Anhut who he met with in the City's Finance Department. Mr. Anhut listed Ed Ryan (City Auditor), Pat Frazier (Deputy City Manager), Mary Vattimo (City Treasurer), Elizabeth Kelly (Program Manager, Financing Services), and Jeff Witt (City Attorney), and noted that more people were involved. He explained that City employees who had information relevant to issues that were being discussed came to the meetings and provided updates on their respective issues. Mr. Schachter asked if Orrick was involved in these meetings, and Mr. Anhut replied that they were "very involved" as lead counsel and that Mr. Webber was present at most if not all of these meetings.

Mr. Schachter asked how the work was divided among the individuals at these meetings. Mr. Anhut explained that the bond counsel (Orrick) drafted the POS and Bryan Cave reviewed it and provided comments. Mr. Anhut stated that Orrick was the primary counsel and retained responsibility and control over the financing when it changed from a public to a private offering. Mr. Schachter asked Mr. Anhut what actions Bryan Cave took in the course of its representation of the City that were different from those taken by Orrick. Mr. Anhut responded that Bryan Cave had significant enforcement experience and had the responsibility to make sure, up front, that there were no problems with the offering documents, and had to be prepared to respond to an SEC inquiry. Mr. Schachter asked Mr. Anhut what his focus was in preparing for a possible SEC inquiry. Mr. Anhut replied that Mr. Henderson did not identify specific issues in his letter and only alleged that the POS was invalid and had not been approved by the City.

Mr. Schachter asked Mr. Anhut if he did anything to ensure that the pension funding information contained in the POS was accurate. Mr. Anhut responded that he would "answer differently," and stated that pension issues did not come up in the course of discussions. He stated that he had "no idea" if responsibility for this information was part of Bryan Cave's "charge," but noted that pension issues were not a consideration at that time. Mr. Schachter asked if Mr. Anhut was involved in "page-turners," and Mr. Mercer asked him to clarify the question. Mr. Schachter explained that in page-turner meetings, the disclosure document was broken up into sections which were assigned to individuals who were responsible for updating their respective sections. Mr. Anhut stated that there were "drafting sessions" involving the City, bond counsel and underwriter's counsel. By way of example, Mr. Anhut stated that during these

drafting sessions a construction person might show up who was knowledgeable about a specific project and answer questions to address disclosure issues. Mr. Schachter asked if pension issues were ever discussed in this manner, and Mr. Anhut stated that he did not recall. Mr. Schachter then asked if Mr. Anhut would have expected pension issues to have been discussed in this context. At this point, Mr. Mercer interjected to clarify that Mr. Anhut was describing what he called "drafting sessions," and not what Mr. Schachter called "page-turners." Mr. Schachter acknowledged this clarification.

Mr. Mercer then stated that Mr. Schachter might have mischaracterized Bryan Cave's role in this process. Mr. Mercer stated that Bryan Cave was not disclosure counsel or bond counsel, but was just SEC counsel and was hired to vet issues beforehand so the City could respond to the SEC. Mr. Mercer described this role as "shadow counsel," and stated that Bryan Cave was only trying to become educated during this process. Mr. Schachter stated that he was simply trying to determine the difference between Bryan Cave's representation and that of Orrick. Mr. Schachter asked Mr. Anhut if he agreed with the explanation provided by Mr. Mercer, and Mr. Anhut replied that he did. Mr. Anhut stated that there was a need to get up to speed quickly in order to respond to the SEC and that Bryan Cave acted as "add-on," rather than "replacement" counsel. Mr. Anhut explained this comment by stating that if Bryan Cave was not part of the City's representation, the Ballpark financing would have looked like a regular bond issuance.

Mr. Schachter asked Mr. Anhut what issues he was looking for in the vetting process. Mr. Anhut responded that he did not know what the specific challenge might have been, so he reviewed the disclosure and provided comments on the POS. Mr. Mercer then stated that the meeting in which the Council approved the POS was available on videotape, and could be compared to an Enron board meeting. He explained that everyone at the City who was responsible for a section of the POS answered questions about that section and he described this as a "comprehensive process" designed to show due diligence for the offering. He stated that the meeting was designed to put the Council in a position, if there was litigation, to say that if mistakes were made it was not because the City did not attempt to address all the issues.

Mr. Anhut noted that the risk of an SEC action became negligible when Merrill Lynch took the financing private rather than underwriting the deal to the public. He stated that at that point, the POS was turned into a private placement offering document and Bryan Cave had limited involvement going forward.

Mr. Schachter asked Mr. Anhut if Bryan Cave was asked to write the October 29 letter to bolster the City's defense against a possible SEC action. Mr. Anhut replied that it was not intended for that purpose, and was designed only to provide a general framework of the Council's duties in approving the POS. Mr. Anhut stated that he wrote the letter and attended Mr. Boltz's presentation to the Council. During that presentation, Mr. Boltz walked through the points in the letter describing what the Council should do to approve the POS. Mr. Schachter stated that the letter indicated the Council members could not rely on professional advice, and Mr. Mercer countered that the letter indicated that Council members were required to seek out relevant information and conduct follow-up inquiries. Mr. Schachter asked Mr. Anhut if Mr. Boltz made this point in his presentation. Mr. Anhut responded that Mr. Boltz generally explained the points made in the letter, but he did not recall Mr. Boltz specifically discussing

reliance on professionals. Mr. Schachter asked if Mr. Boltz mentioned that the Council needed to conduct its own inquiry of relevant facts. Mr. Mercer stated that the standard was that the POS not be misleading and that the Council use "reasonable care." Mr. Anhut again stated that Mr. Boltz "generally" discussed the points in the letter, but he did not recall Mr. Boltz mentioning that issue specifically.

Mr. Mercer noted that Mr. Boltz was a former SEC enforcement attorney and described him as a "hellfire Baptist preacher." He stated that Mr. Boltz would have left no doubt that these were serious responsibilities. Mr. Schachter asked Mr. Anhut if that statement was consistent with his understanding, and he responded that it was, and stated that Mr. Boltz was the former head of the Pacific Regional Office of the SEC. Mr. Anhut stated that after the presentation, Mr. Girard met with some of the Council members who had questions about the presentation and Mr. Girard told him that Mr. Boltz had "frightened them." Mr. Anhut did not meet any Council members himself, but understood that the presentation had gotten their attention.

Mr. Schachter asked how far in advance of the presentation the letter was distributed. Mr. Anhut responded that he did not recall if the letter was distributed in advance of the presentation. Mr. Schachter asked if Lawrence Grissom (CERS Administrator) had introduced the presentation, and Mr. Anhut replied that he probably had. Mr. Anhut stated that Mr. Grissom did not downplay the significance of this presentation or describe it as establishing a defense to an SEC action, and Mr. Anhut did not recall anyone suggesting that the presentation was a formality. Mr. Anhut recalled that the presentation lasted between five and fifteen minutes. Mr. Schachter asked if Mr. Boltz would have said that the presentation was merely to establish a defense, and both Mr. Anhut and Mr. Mercer responded "no."

Mr. Schachter asked if Mr. Boltz would have said to the Council members, "this is your responsibility." Mr. Anhut responded that Mr. Boltz would have gone through the letter and instructed the Council members to ask tough questions and make sure they were satisfied with the answers. Mr. Mercer explained that he had represented Orange County regarding its SEC investigation and Mr. Boltz represented the Orange County Board of Supervisors. Mr. Mercer stated that Mr. Boltz might have described the SEC's Orange County action as a warning that the SEC was taking municipal disclosure seriously. He opined that Mr. Boltz would have communicated to the Council members the need to take personal responsibility for the City's disclosures.

Mr. Schachter asked Mr. Anhut if he recalled Mr. Boltz referencing the Orange County action in his presentation. Mr. Anhut responded that this action was in the letter, and stated that he would have been surprised if Mr. Boltz did not mention it, due to his background. Mr. Anhut explained that at some point after this presentation, Merrill Lynch took the Ballpark financing private and the need for Bryan Cave's representation diminished because of the decreased risk of an SEC action. Mr. Schachter asked Mr. Anhut to describe Merrill Lynch's actions in this regard. Mr. Anhut explained that the Ballpark bonds were priced as taxable securities with a provision that if litigation were resolved in the City's favor, bond counsel would opine that the securities were tax-free. The bonds were priced at 7% interest, which Mr. Anhut explained was two- to three-hundred basis points above other municipal bonds issued at that time. Mr. Schachter asked if the reason the bonds were priced so well was because of concern

with the City's financial condition. Mr. Anhut responded that the reason was because of the litigation described in the POS and the fact that there was only a qualified opinion on the tax-free status of the bonds.

Mr. Schachter asked if Mr. Anhut was familiar with the Blue Ribbon Committee's Report, which was released right after the Ballpark bonds were issued. Mr. Anhut stated that he was not familiar with this report. Mr. Anhut had not heard the allegation that this report was delayed until after the bond issuance was completed.

Mr. Anhut stated that his recollection of the timeline of events was that Bryan Cave's letter was sent in late October, followed by a closed session presentation, and there was an open session presentation in November. After that point, the deal was private and Bryan Cave's involvement was limited. Mr. Schachter asked if Mr. Boltz had made an open session presentation, and Mr. Anhut explained that the open session presentation was made by City officials and representatives from the Padres organization. Mr. Anhut stated that this presentation did not address securities laws or the Council's obligations under them.

Mr. Schachter asked if the Council members had raised any questions during Mr. Boltz's presentation in closed session. Mr. Anhut replied that they did not ask any questions but were paying attention. Mr. Schachter asked if there was anything about Mr. Boltz's presentation that could have been interpreted to only apply to the current offering. Mr. Anhut replied "absolutely not."

Mr. Schachter asked Mr. Anhut if there was any other information that would be relevant to the Audit Committee's investigation that he would like to discuss. Mr. Anhut responded that the letter is self-explanatory.

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