

March 29, 2018

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**BY ELECTRONIC MAIL**

Tim Henseler  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: *In the Matter of Casella Waste Systems, Inc.*

Dear Mr. Henseler:

We write on behalf of our client, Casella Waste Systems, Inc. (the “Company”), in connection with the settlement of the above-referenced administrative proceeding with the Securities and Exchange Commission (the “Commission”). Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”), we hereby request that the Commission or the Division of Corporation Finance, acting pursuant to delegated authority, determine that for good cause shown it is not necessary under the circumstances that the Company be considered an “ineligible issuer” under Rule 405. Prior to this matter, the Company has not previously made a request for a waiver of ineligible issuer status from the Commission.

**BACKGROUND**

The Company is a waste management and recycling company headquartered in Rutland, Vermont. In 2016, the Company entered into a settlement with the Commission in connection with the Division of Enforcement’s Municipalities Continuing Disclosure Cooperation Initiative (the “MCDC Initiative”). The Commission entered an order against the Company on August 24, 2016 (the “Order”) that found that the Company violated Section 17(a)(2) of the Securities Act in connection with certain sales of municipal securities and required the Company to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and to comply with certain undertakings. The violations discussed in the Order were self-reported by the Company to the Commission pursuant to the MCDC Initiative.

Specifically, under Rule 15c2-12 of the Securities Exchange Act of 1934 (“Exchange Act”) any underwriter is generally prohibited from purchasing or selling municipal securities unless it has reasonably determined that the municipal issuer or other obligated person has undertaken in a written agreement, sometimes referred to as a continuing disclosure agreement, to provide certain financial information to the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access system (“EMMA”) as well as to provide timely notice of certain specified events pertaining to the municipal securities being offered and timely

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notice of any failure to submit annual financial information on or before the date specified in the continuing disclosure agreement.

The Order found that the Company executed a continuing disclosure agreement in an earlier offering which preceded the offerings at issue in this matter, but failed to comply in all material respects with its commitment to provide certain types of continuing disclosure within the timeframes set forth in the continuing disclosure agreement. The Order also found that after these failures to comply with the prior continuing disclosure agreement, the Company was an obligated person in two issuances of new municipal securities, and that in the official statements for such new municipal securities, the Company made material omissions about its prior compliance with its earlier continuing disclosure agreement.

## DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.<sup>1</sup> As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the “well-known seasoned issuer” (or “WKSI”), and a new category of offering communication, the “free writing prospectus.” A well-known seasoned issuer is eligible for important reforms that have changed the way corporate finance transactions for large, established filers are offered and sold. These reforms include the ability to “file-and-go” (*i.e.*, eligibility for automatically effective shelf registration statements) and “pay-as-you-go” (*i.e.*, the ability to pay filing fees as the issuer sells securities off the shelf). These reforms have removed the risk of regulatory delay in connection with capital formation. In addition, well-known seasoned issuers are provided with the most flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement and in connection with the offering of securities registered on the WKSI’s registration statement.

The Commission also created another category of issuer under Rule 405, the “ineligible issuer.” An ineligible issuer is excluded from the category of “well-known seasoned issuer” and is ineligible to make communications by way of free writing prospectuses, except in limited circumstances.<sup>2</sup> As a result, an ineligible issuer that would otherwise be a well-known seasoned issuer does not have access to file-and-go or pay-as-you-go, and cannot use most free writing prospectuses.

Securities Act Rule 405 authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an

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<sup>1</sup> See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

<sup>2</sup> See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

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ineligible issuer.”<sup>3</sup> The Commission has delegated the function of granting or denying such applications to the Division of Corporation Finance.<sup>4</sup>

The Company understands that the entry of the Order made the Company an ineligible issuer under Rule 405. As such, the Company currently is not able to qualify as a well-known seasoned issuer and does not have access to file-and-go and other reforms available to well-known seasoned issuers.

### **REASONS FOR GRANTING A WAIVER**

Consistent with the framework outlined in the Division of Corporation Finance's Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, the Company respectfully requests that the Commission determine that it is not necessary for the Company to be considered an ineligible issuer as a result of the entry of the Order. For the reasons described below, applying the ineligibility provisions to the Company would be disproportionately and unduly severe.

#### Nature of Violation: Responsibility for and duration of the alleged violations

The conduct described in the Order relates to the Company's role as an obligated person in three discrete issuances of tax-exempt municipal bonds through public conduit issuers. The conduct does not relate to the Company's role as an issuer of its own debt or equity securities or any disclosure related thereto, and also does not involve any alleged fraud in connection with the Company's offerings of such securities. The Company is and has been current in its filings with the Commission, and we note that although it was not in full compliance with its continuing disclosure obligations, in the municipal bond offerings at issue the Company had been providing the requisite annual financial information in its reports filed with the Commission. The conduct described in the Order is not criminal in nature, nor does it involve any violations of the scienter-based anti-fraud provisions of the federal securities laws.

The Order does not call into question the Company's disclosures in filings with the Commission as an issuer of securities or the effectiveness of its disclosure controls and procedures. The Order also does not find that any members of the Board of Directors or senior management knew about the conduct or ignored any warning signs or “red flags” relating to the conduct.

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<sup>3</sup> Securities Act Rule 405, 17 C.F.R. § 230.405.

<sup>4</sup> 17 C.F.R. § 200.30-1(a)(10).

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### Remedial Steps

The Company has taken comprehensive measures to prevent any future failures to comply with its continuing disclosure agreements. As required by the Order, the Company has (1) established written policies and procedures and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws, including the designation of an individual or officer at the Company responsible for ensuring compliance by the Company with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training; (2) complied with existing continuing disclosure undertakings, including making past delinquent filings; and (3) disclosed in a clear and conspicuous fashion the terms of the Order in any final official statement for an offering by the Company.

### Impact on Issuer

At the time of the issuance of the Order, the Company was not able to qualify as a well-known seasoned issuer under Rule 405 because it did not meet the worldwide public float requirement nor had it issued the requisite amount of non-convertible securities. Therefore, the Company did not request a waiver from ineligible issuer status under Rule 405 at the time of the entry of the Order. However, now the Company's stock price has risen to a level where the Company would be able to meet the public float requirement and qualify as a well-known seasoned issuer, but for the ineligibility triggered by the Order.

The MCDC Initiative was a self-reporting program intended to address violations of the federal securities laws resulting from misrepresentations in municipal bond offering documents about prior compliance with continuing disclosure obligations. The MCDC Initiative resulted in a large number of underwriters and other participants self-reporting potential non-scienter based violations of the federal securities laws and entering into settlements with the Commission under certain standardized settlement terms. These settlements triggered a number of disqualifications, including ineligible issuer status under Rule 405, for the municipal underwriters that participated in the MCDC Initiative and certain issuers that have such underwriters as subsidiaries. Noting that the initiative generated much-needed attention about continuing disclosure compliance, the disclosure process, and due diligence, and that it allowed the Commission to address an industry-wide problem while avoiding the expenditure of significant resources typically associated with identifying and conducting full investigations of potential securities law violations, the Commission has granted blanket waivers to those municipal underwriters and issuers.

The Company has issued \$60 million of senior subordinated notes in one offering off its non-automatic shelf registration statements in the last 3 years. Although the Company is able to continue to access the capital markets using a non-automatic shelf registration statement, the

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Company believes that it is an unduly severe result not to allow the Company to take advantage of the increased flexibility and the ability to quickly access the markets that other market participants who similarly cooperated with the MCDC Initiative enjoy.

In light of these considerations, continuing to subject the Company to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists to determine that it should not be considered an ineligible issuer under Rule 405 as a result of the Order. We respectfully request the Commission or the Division of Corporation Finance to make that determination.

Please contact me at the above listed telephone number if you should have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Zepralka", with a stylized flourish at the end.

Jennifer Zepralka