

# Internal Audit Department

O R A N G E C O U N T Y  
6<sup>th</sup> Largest County in the USA

## ANNUAL AUDIT OF TREASURER'S INVESTMENT COMPLIANCE

For the Year Ended  
December 31, 2009

Critical  
Impact  
Audit

INVESTMENTS HELD AT FAIR VALUE BY THE  
TREASURER AT DECEMBER 31, 2009 WAS \$7.27  
BILLION. OC'S INVESTMENT POOL IS THE 6<sup>TH</sup>  
LARGEST IN THE NATION.

In our opinion, except for the two instances of material non-compliance described in the report, the Orange County Treasurer complied in all material respects with the selected investment regulations of the California Government Code and the Orange County Treasurer Investment Policy Statement (IPS) for the year ended December 31, 2009.

Our examination disclosed **two (2) Material Non-Compliance Exceptions and one (1) Material Weakness in internal control.** The **two (2) Material Non-Compliance Exceptions** dealt with purchasing prohibited investments. The **one (1) Material Weakness in internal control** relates to the adequacy of internal controls to prevent and detect the purchase of prohibited investments.

AUDIT NO: 2953  
REPORT DATE: MAY 12, 2011

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Deputy Director: Eli Littner, CPA, CIA  
Senior Audit Manager: Alan Marcum, CPA, CIA  
Audit Manager: Kenneth Wong, CPA, CIA

### RISK BASED AUDITING

GAO & IIA Peer Review Compliant – 2001, 2004, 2007, 2010



American Institute of Certified Public Accountants Award to Dr. Peter Hughes as 2010 Outstanding CPA of the Year for Local Government



2009 Association of Certified Fraud Examiners' Hubbard Award to Dr. Peter Hughes for the Most Outstanding Article of the Year – Ethics Pays



2008 Association of Local Government Auditors' Bronze Website Award



2005 Institute of Internal Auditors' Award to IAD for Recognition of Commitment to Professional Excellence, Quality, and Outreach



ORANGE COUNTY BOARD OF SUPERVISORS'  
**Internal Audit Department**

*GAO & IIA Peer Review Compliant - 2001, 2004, 2007, 2010*

*Providing Facts and Perspectives Countywide*

**RISK BASED AUDITING**

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**OC Fraud Hotline (714) 834-3608**



## Transmittal Letter



**Audit No. 2953 May 12, 2011**

**TO:** Members, Treasury Oversight Committee

**FROM:** Dr. Peter Hughes, CPA, Director  
Internal Audit Department

**SUBJECT:** Annual Audit of Treasurer's Investment  
Compliance for the Year Ended  
December 31, 2009

At the direction of the Board of Supervisors, we have completed our first annual compliance audit of the County's Investment Pool since the Treasury Oversight Committee decided to contract with an outside auditing firm in 2004.

This report is the first annual compliance audit since the Board of Supervisors revoked the investment authority of the elected County Treasurer-Tax Collector, Chriss W. Street on March 16, 2010, and directed the County's Deputy CEO/Chief Financial Officer, Robert Franz to manage the investment pools. On November 2, 2010 a new County Treasurer-Tax Collector, Shari L. Freidenrich was elected and on December 14, 2010 the Board of Supervisors delegated the Board's investment authority, effective January 14, 2011 to the new County Treasurer-Tax Collector.

It is important to note that our audit covered the calendar year, January 1, 2009 through December 31, 2009 when all investment decisions were executed under the delegated authority of the elected County Treasurer-Tax Collector, Chriss W. Street.

Attached is a copy of our report on the Annual Audit of Treasurer's Investment Compliance for the year ended December 31, 2009. Our audit disclosed two (2) material non-compliance exceptions and one (1) material weakness in internal control. These material exceptions are the basis for our rendering a "qualified opinion" as presented on page 2.

Each month I submit an **Audit Status Report** to the BOS where I detail any material and significant audit findings released in reports during the prior month and the implementation status of audit recommendations as disclosed by our Follow-Up Audits. Accordingly, the results of this audit will be included in a future status report to the BOS.

Additionally, we will request your committee complete a Customer Survey of Audit Services. You will receive the survey shortly after the distribution of our final report.

### Attachments

Other recipients of this report are listed on the **Independent Auditor's Report** on page 2.

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Audit No. 2953*

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## INDEPENDENT AUDITOR'S REPORT

May 12, 2011

Audit No. 2953

Chair, Treasury Oversight Committee  
625 North Ross Street, Building 11  
Santa Ana, California 92701

We have examined the Orange County Treasurer's compliance with the California Government Code Sections 27130 through 27137 and related provisions of the Orange County Investment Policy Statement for the Money Market and the Extended Funds for the year ended December 31, 2009. In addition, we examined compliance with certain requirements contained within the Resolution for the Establishment of the Treasury Oversight Committee, Bylaws and Rules of Procedures of the Treasury Oversight Committee, and County policies and procedures. The Orange County Treasurer's management is responsible for compliance with those requirements. Our responsibility is to express an opinion on the Orange County Treasurer's compliance based on our examination.

Our examination was made in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and accordingly included examining on a test basis, evidence about the Orange County Treasurer's compliance with those requirements and performing such other procedures as considered necessary in the circumstances. Our examination includes consideration of internal control over compliance as a basis for designing our auditing procedures for the purpose of expressing our opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of the Treasurer's internal control. Accordingly, we do not express an opinion on the effectiveness of the Treasurer's internal control. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Orange County Treasurer's compliance with specified requirements.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified one deficiency in internal control that we consider to be a material weakness.

A **deficiency in internal control** over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement on a timely basis. A **significant deficiency** in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance. A **material weakness** in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement will not be prevented, or detected and corrected, on a timely basis.

# Independent Auditor's Report



Our examination disclosed material noncompliance exceptions with Orange County Investment Policy Statement and Board Resolution applicable to the Treasurer during the year ended December 31, 2009. In addition, our examination disclosed a material weakness in internal control over compliance. The material noncompliance exceptions dealt with the purchasing of prohibited investments. The material weakness in internal control dealt with the adequacy of internal controls to prevent and detect the purchase of prohibited investments. In addition, we identified other noncompliance exceptions that we do not consider to be material. A complete description of all exceptions is shown in the accompanying schedule of Detailed Findings, Recommendations, and Management Responses.

In our opinion, except for the material noncompliance exceptions described in the above paragraph, the Orange County Treasurer complied, in all material respects, with the aforementioned requirements for the year ended December 31, 2009.

This report is intended solely for the information and use of the Orange County Treasurer-Tax Collector and County Treasury Oversight Committee and is not intended to be and should not be used by anyone other than the specified parties. However, this report is a matter of public record and its distribution is not limited.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Peter Hughes".

Dr. Peter Hughes, CPA, Director  
Internal Audit Department

## **Members, Treasury Oversight Committee Distribution:**

Hon. William Habermehl, County Superintendent, Orange County Department of Education  
Hon. David E. Sundstrom, Auditor-Controller  
Thomas G. Mauk, County Executive Officer  
George Jeffries, City of Tustin Treasurer  
William "Andy" Dunn, Vice Chancellor, Finance & Administration, Coast Community College District

## **Distribution Pursuant to Audit Oversight Committee Procedure No. 1:**

Members, Board of Supervisors  
Members, Audit Oversight Committee  
Thomas G. Mauk, County Executive Officer  
Robert J. Franz, Deputy CEO/Chief Financial Officer  
Shari L. Freidenrich, Treasurer-Tax Collector  
Paul C. Gorman, Chief Assistant Treasurer-Tax Collector  
Foreperson, Grand Jury  
Darlene J. Bloom, Clerk of the Board of Supervisors



## COUNTY OF ORANGE SUMMARY OF INVESTMENT COMPLIANCE REQUIREMENTS For the Year Ended December 31, 2009

The investment compliance requirements in the California Government Code Sections 27130 through 27137 and related provisions of the Orange County Investment Policy Statement are as follows:

### California Government Code Sections 27130 through 27137

1. Section 27130  
The Legislature finds and declares that local agencies, including school districts, should participate in reviewing the policies that guide the investment of those funds.
2. Section 27131  
The Board of Supervisors in each county may, if the county is investing surplus funds, establish a county treasury oversight committee that consists of from three to eleven members.
3. Section 27132  
The county treasury oversight committee shall consist of members appointed from the following: county treasurer; county auditor, auditor-controller or finance director; a representative appointed by the county board of supervisors; the county superintendent of schools or designee; a representative selected by a majority of the presiding officers of the governing bodies of the school or community college districts; a representative selected by a majority of the presiding officers of the legislative bodies of the special districts; up to five other members of the public who either have expertise or academic background in finance and are economically diverse and bipartisan in political registration.
4. Section 27132.1  
Committee members may not be employed by an entity that has contributed to the campaign of a candidate for the office of local treasurer, or contributed to the campaign of a candidate to be a member of a legislative body of any local agency, that has deposited funds in the county treasury in the previous three years or during the period that the employee is a member of the committee.
5. Section 27132.2  
Committee members may not directly or indirectly raise money for a candidate for local treasurer or a member of the governing board of any local agency that has deposited funds in the county treasury while a member of the committee.
6. Section 27132.3  
Committee members may not secure employment with bond underwriters, bond counsel, security brokerages or dealers, or with financial services firms with whom the treasurer is doing business during the period that the person is a member of the committee or for one year after leaving the committee.
7. Section 27132.4  
Committee meetings shall be open to the public and subject to the Ralph M. Brown Act.



# Independent Auditor's Report



## 8. Section 27133

The county treasurer shall annually prepare an investment policy that will be reviewed and monitored by the county treasury oversight committee. The investment policy shall include all of the following:

- a. A list of securities or other instruments in which the county treasury may invest, according to law, including the maximum allowable percentage by type of security.
- b. The maximum term of any security purchased by the county treasury.
- c. The criteria for selecting security brokers and dealers from, to, or through whom the county treasury may purchase or sell securities or other instruments. The criteria shall prohibit the selection of any broker, brokerage, dealer, or securities firm that has, within any consecutive 48-month period following January 1, 1996, made a political contribution in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board, to the local treasurer, any member of the governing board of the local agency, or any candidate for those offices.
- d. Limits on the receipt of honoraria, gifts, and gratuities from advisors, brokers, dealers, bankers, or other persons with whom the county treasury conducts business by any member of the county treasury oversight committee. These limits may be in addition to the limits set by a committee member's own agency, by state law, or by the Fair Political Practices Commission.
- e. A requirement that the county treasurer provide the county treasury oversight committee with an investment report as required by the board of supervisors.
- f. The manner of calculating and apportioning the costs, authorized by Section 27013, of investing, depositing, banking, auditing, reporting, or otherwise handling or managing funds.
- g. The terms and conditions under which local agencies and other entities that are not required to deposit their funds in the county treasury may deposit funds for investment purposes.
- h. Criteria for considering requests to withdraw funds from the county treasury, pursuant to Section 27136. The criteria shall include an assessment of the effect of a proposed withdrawal on the stability and predictability of the investments in the county treasury.

## 9. Section 27134

The county treasury oversight committee shall cause an annual audit to be conducted to determine the county treasury's compliance with the investment compliance requirements presented in the California Government Code Sections 27130 through 27137. The audit may include issues relating to the structure of the investment portfolio and risk.

## 10. Section 27135

The costs of complying with this article shall be county charges and may be included with those charges enumerated under Section 27013.



11. Section 27136

- a. Notwithstanding any other provision of law, any local agency, public agency, public entity, or public official that has funds on deposit in the county treasury pool and that seeks to withdraw funds for the purpose of investing or depositing those funds outside the county treasury pool, shall first submit the request for withdrawal to the county treasurer before withdrawing funds from the county treasury pool.
- b. The county treasurer shall evaluate each proposed withdrawal for its consistency with the criteria adopted pursuant to subdivision (h) of Section 27133. Prior to approving a withdrawal, the county treasurer shall find that the proposed withdrawal will not adversely affect the interests of the other depositors in the county treasury pool.

12. Section 27137

The county treasury oversight committee shall not direct individual investment decisions, select individual investment advisors, brokers, or dealers, or impinge on the day-to-day operations of the county treasury.

Orange County Investment Policy Statement

13. Investments maintained in the portfolios shall be consistent with those authorized per Government Code Sections 53601 et seq., 53631.5, and 53635, as stated in IPS Sections VI and VII.
14. Investments maintained in the portfolios shall comply with investment criteria as stated in IPS Sections VI, VII and VIII, including the maximum allowable percentage by type of security, allowable percentage per issuer, maximum term limits and credit rating requirements.
15. Treasurer, investment personnel, and Treasury Oversight Committee members shall annually complete the Statement of Economic Interests Disclosure (State of California Form 700) and must comply with the Orange County Gift Ban Ordinance which prohibits the receipt of specified gifts, as stated in IPS Section X.
16. All security transactions must be executed through brokers/dealers and financial institutions that meet the selection criteria specified in IPS Section XI and are placed on the list of qualified institutions.
17. All security transactions entered into by the Treasurer shall be conducted on a delivery-versus payment basis and a third party custodian shall hold securities, as stated in IPS Section XIII.
18. Repurchase agreements are required to be collateralized by securities authorized under Government Code Section 53601 at a minimum of 102% of market value of the principal and accrued interest, and shall be adjusted no less frequently than weekly. Collateral is to be held by an independent third party with whom the treasurer has a current custodial agreement. Evidence of ownership must be supplied to the Treasurer and retained, as stated in IPS Section VI.

# Independent Auditor's Report



19. The Treasurer will charge all pool participants for administrative and overhead costs of investing, depositing, banking, auditing, reporting, or otherwise handling or managing the funds as authorized by Government Code Section 27013, as stated in IPS Section XVI.
20. Local agencies that voluntarily deposit monies with the Treasurer must provide to the Treasurer a resolution adopted by its governing board stating that excess funds are available for investing, in compliance with requirements stated in IPS Section XVII.
21. Withdrawal of participant funds shall require prior written approval from the Treasurer. Prior to approving the withdrawal request, the Treasurer shall make a finding of the effect of the withdrawal on the stability and predictability of the investments, as stated in IPS Section XVIII.
22. The Treasurer shall provide a monthly report and any audit report in accordance with Government Code Sections 53646 and 53686, as stated in IPS Section XXI.



## BACKGROUND

The California Government Code, Sections 27000.1, 27000.3 and 53600.3 grant a county board of supervisors, not a county treasurer, with authority for investing public funds. Thus, under California law, county boards of supervisors generally have primary responsibility for investment of public funds in a county treasury. The authority of the board to invest or reinvest funds deposited in a county treasury may be delegated for a one-year period by the board. Subject to review, such a delegation may be renewed annually (Government Code Section 53607). It is common practice for the board of supervisors for counties in the State to delegate its investment responsibility.

California law requires the Treasurer to prepare an annual investment policy statement. The County's Investment Policy Statement (IPS) is reviewed and approved by the County's Treasury Oversight Committee (TOC) and the Board of Supervisors on an annual basis. The IPS, to the extent not inconsistent with the restrictions of state law, establishes the legal parameters by which the Treasurer, or other qualified party to which investment authority is delegated, may invest monies deposited and held within the County treasury.

Historically, the Board of Supervisors has conducted an annual review of the Treasurer's performance and has delegated its investment authority to the County Treasurer. The most recent renewal of investment authority was December 15, 2009 for calendar year 2010.

On February 2, 2010, the Board of Supervisors directed the Internal Audit Department to conduct this audit to determine whether the treasury investments complied with both applicable California law and the IPS for the year ended December 31, 2009. As the public stewards of over \$7 billion of taxpayers' monies, compliance with the County's IPS is of the highest priority for the Board of Supervisors. We are reminded that in 1995, a former Treasurer, unbeknownst to the Board of Supervisors, invested billions of County funds into extremely high risk and prohibited securities that resulted in a \$1.6 billion loss. The importance of having the Treasurer's office establish and practice sound internal controls ensures that the Treasurer's office is in full compliance with the applicable California code and the IPS.

On March 16, 2010, the Board of Supervisors revoked its investment authority from the County Treasurer-Tax Collector, Chriss W. Street, and directed the County Chief Financial Officer to exercise the Board of Supervisors' investment authority.

On November 2, 2010 a new County Treasurer-Tax Collector, Shari L. Freidenrich was elected and on December 14, 2010 the Board of Supervisors delegated the Board's investment authority, effective January 14, 2011 to the new County Treasurer-Tax Collector.

This audit represents the OC Internal Audit Department's first annual compliance audit of the County's Investment Pool since the Treasury Oversight Committee recommended the selection of an external auditing firm in 2004.



## **TREASURER'S OVERSIGHT COMMITTEE**

California Government Code Section 27131 states that the Board of Supervisors in each county may, if the county is investing surplus funds, establish a county treasury oversight committee that consists of from three to eleven members. The County of Orange Board of Supervisors established the treasury oversight committee that consists of the following: Auditor-Controller, County Executive Officer, County Superintendent of Schools, Representative for Special Districts, and a Public Member.

# Detailed Findings, Recommendations, and Management Responses



## 1. Finding No. 1 – Controls Were Not Adequate to Prevent and Detect Overrides and Noncompliance with the IPS for Investment Purchases – Noncompliance with IPS Section XVI – INTERNAL CONTROLS (Material Weakness in Internal Control)

### CRITERIA:

County Investment Policy Statement (IPS) Section XVI – INTERNAL CONTROLS requires that the Treasurer establish a system of internal controls designed to prevent loss of public funds due to fraud, employee error, misrepresentation by third parties, unanticipated market changes or imprudent actions by employees of the Treasurer's Office. The Treasurer is required to develop and maintain administrative procedures for the operations of the investment program which are consistent with the IPS. Procedures will include explicit delegation of authority to personnel responsible for investment transactions. No investment personnel may engage in an investment transaction except as provided by the terms of the IPS and control established by the County Treasurer. The Treasurer is responsible for all investments and is required to establish a system of controls to regulate the activities of Treasury personnel.

### CONTROL BACKGROUND:

Controls must be in place to both prevent (preventive controls) and detect (detective controls) the purchase of investments for a \$7 billion portfolio that are not in compliance with the Government Code and the IPS.

The preventive controls for the Treasurer included:

- An IPS approved by the Treasury Oversight Committee and Board of Supervisors.
- An evaluation by the Treasurer during the audit period of each issuer prior to investment in respect to its management, market position, credit rating, and financial statements and ratios.
- Only five (5) selected individuals were authorized to purchase investments.
- Pre-trade parameters were setup in the Bloomberg Investment System to restrict certain transactions. The pre-trade parameters were setup to support specific requirements of the California Government Code or IPS. These pre-trade parameters set up by the Treasurer's Accounting and Compliance Manager could be added, removed or amended as the specific requirements change. The pre-trade parameters also allowed the configuration of rules through warning limits and override levels. The strength of the pre-trade warning limits and override levels were: (1) warning; (2) trade override; (3) needs authorization; (4) violation of rule and the compliance manager's approval required; and (5) no override allowed. We noted the Treasurer during the audit period had approximately 60 pre-trade parameters in place consistent with regulations and a variety of warning limits and override levels on their Bloomberg Investment System.

The detective controls for the Treasurer included daily compliance monitoring by the Treasurer's Accounting and Compliance Unit performed within one business day after the investments are purchased. The Treasurer's Accounting and Compliance Unit prepared analyses and a daily checklist with specific requirements provided in the California Government Code and IPS. We noted that the daily compliance monitoring applied to certain requirements in the California Government Code and IPS such as net asset value, maturity, percentage of holdings, and credit ratings on commercial paper and medium-term notes.

# Detailed Findings, Recommendations, and Management Responses



The Treasurer during the audit period relied upon the pre-trade parameters in the Bloomberg Investment System to ensure compliance with the other requirements not part of the daily compliance monitoring.

## EXCEPTIONS NOTED:

We found that controls were not adequate to prevent and detect the purchase of municipal bonds with less than the required two credit ratings (See Finding No. 2), and the purchase of commercial paper and medium term notes issued by prohibited foreign organized entities (See Finding No. 3).

## **Recommendation No. 1**

We recommend that the Treasurer-Tax Collector reconfigure the pre-trade parameters in the Bloomberg Investment System to include the requirement to purchase only investments with two current credit ratings and issued by entities organized within the United States.

## **Treasurer-Tax Collector Response:**

### **Concur**

During 2009, Bloomberg pre-trade compliance parameters were set to adhere to credit quality, diversification and maturity limits in the County's Investment Policy with the exclusion of municipal bonds. For this particular instance, our Bloomberg pre-trade compliance had a rule to look at the short term and long term ratings of any security purchased by the County to ensure they have at least 2 of 3 approved ratings (either Moody's, S&P or Fitch). The Bloomberg pre-trade compliance manager rule (MMFRAT) created when the IPS was changed on 12/30/08 did not include municipal bonds as the IPS did not require a rating restriction for local agency debt issued within Orange County. On 1/6/11 we created an additional rule in the Bloomberg pre-trade system (RATINGS) for all purchases of municipal debt that requires approval by, either the Chief Portfolio Manager or Accounting/Compliance Manager to purchase local agency debt issued within Orange County where the security purchased has less than 2 ratings. All other purchases of municipal debt are required to meet the credit rating restrictions set forth in the IPS. We will also implement in our procedures that any purchases of municipal debt from agencies in Orange County will appear as a compliance error; and if approved, a memo prepared by the Accounting/Compliance Manager and approved by the Chief Assistant Treasurer-Tax Collector will be placed with the trade packet showing override of the pre-trade rule as the investment meets IPS guidelines.

We should also note, as an additional mitigating condition, that the Accounting/Compliance manager and the entire investment team are immediately alerted by Bloomberg on the pre-trade with a message alert & in an end of day report if a rule is being violated.

## **2. Finding No. 2 – Treasurer Overrode the IPS and Purchased Debt Securities with Less Than the Required Two Credit Ratings – Noncompliance with IPS Section VII – INVESTMENT RESTRICTIONS (Material Compliance Exception)**

### CRITERIA:

IPS Section VII – INVESTMENT RESTRICTIONS requires short and long term debt be rated at an "A" grade by at least two Nationally Recognized Statistical Rating

# Detailed Findings, Recommendations, and Management Responses



Organizations (NRSRO) at the time of purchase. Municipal debt issued by a local agency located in the County of Orange, California is exempt from the credit rating requirement.

## EXCEPTIONS NOTED:

In our test sample of 55 selected investment purchases made in calendar year 2009, we found that the Treasurer overrode the IPS and made two (2) purchases (3.6% of our sample) of debt securities having less than the required two separate credit ratings at the time of purchase. The IPS requires the long-term debt for the Money Market Fund have a credit rating of no less than "A" by at least two NRSROs at the time of purchase.

- A. On October 23, 2009, a Municipal Refunded Bond issued by Pickerington Local School District (Ohio) was purchased for the Money Market Fund for \$5.2 million. The bond was assigned a credit rating of "A1" from Moody's at the time of purchase. However, the bond did not have another investment grade rating as is required from either Standard & Poor's or Fitch Ratings at the time of purchase.

The investment issued by Pickerington Local School District (Ohio) sold on December 1, 2009 and the investment pool received all principal and earned interest for the investment.

- B. On November 5, 2009, a Municipal Refunded Bond issued by Erie County Tobacco Asset Securitization Corporation (New York) was purchased for the Money Market Fund for \$3.2 million. The bond was assigned a credit rating of "AAA" from Standard & Poor's at the time of purchase. However, the bond did not have another investment grade rating as is required from either Moody's or Fitch Ratings at the time of purchase.

The investment issued by Erie County Tobacco Asset Securitization Corporation (New York) sold on July 15, 2010 and the investment pool received all principal and earned interest for the investment.

## **Recommendation No. 2**

We recommend that the Treasurer-Tax Collector ensure that purchases of debt securities have the minimum required rating by at least two Nationally Recognized Statistical Rating Organizations at the time of purchase as required by the Investment Policy Statement. Additionally, the Treasurer-Tax Collector's staff be formally informed that neither management nor the investment officers are to override the Investment Policy Statement.

## **Treasurer-Tax Collector Response:**

### **Concur**

The purchases noted did not have ratings from at least two Nationally Recognized Statistical Rating Organizations at the time of purchase. On 1/6/11, a rule was added to the Bloomberg pre-trade system (RATINGS) which now includes municipal debt that a purchase must have ratings from at least two Nationally Recognized Statistical Rating Organizations at the time of purchase in addition to the credit quality pre-trade parameters. We will also implement in our procedures that any purchases of municipal debt from agencies in Orange County will appear initially as a compliance error and that only the Chief Portfolio Manager or Accounting/Compliance Manager can provide specific approval for the trade and only override it if it meets the credit criteria or if it is a municipal debt in the County of Orange as allowed by the IPS. If approved, a memo is also required to be



# Detailed Findings, Recommendations, and Management Responses



prepared by the Accounting/Compliance Manager and approved by the Chief Assistant Treasurer-Tax Collector and placed with the trade packet showing override of the pre-trade rule as the investment meets IPS guidelines.

We should also note, as an additional mitigating condition, that the Accounting/Compliance manager and the entire investment team are immediately alerted by Bloomberg on the pre-trade with a message alert & in an end of day report if a rule is being violated.

### 3. Finding No. 3 – Treasurer Improperly Purchased Commercial Paper and Medium Term Notes from Prohibited Issuers Organized Outside of the United States – Noncompliance with Government Code Section 53601 and IPS Section VI – AUTHORIZED INVESTMENTS (Material Compliance Exception)

#### CRITERIA:

Government Code Section 53601(k) requires that medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, are issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

Government Code Section 53601(h)(2)(A) requires that the entity issuing commercial paper be organized and operating in the United States as a general corporation or organized within the United States as a special purpose corporation, trust, or limited liability company.

IPS Section VI (10) requires that medium term notes be issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

#### EXCEPTIONS NOTED:

In our test sample of 55 selected investment purchases made in calendar year 2009, we found that the Treasurer improperly made four (4) purchases (7.3% of our sample) of commercial paper and medium term notes issued from entities organized outside of the United States.

- A. On January 2, 2009 and January 5, 2009, prohibited commercial paper issued by BASF was improperly purchased in the amounts of \$4.3 million and \$2 million, respectively, due to the fact that BASF is organized in Germany. The investments issued by BASF matured and sold on January 14, 2009 and February 26, 2009, respectively, and the Treasurer received all principal and earned interest for the investments. In February 2009, the Treasurer reported that the purchases of commercial paper issued by BASF were unauthorized purchases and adjusted the internal controls over the approval of authorized issuers.

IPS Section VI (3) requires eligible issuers of commercial paper for the Extended Fund be a corporation organized within the United States as a special purpose corporation, trust, or limited liability company. Eligible issuers for commercial paper for the Money Market Fund must be organized and operating in the United States as a general corporation.

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- B. On September 16, 2009 and October 2, 2009, medium term notes issued by Royal Bank were purchased in the amounts of \$8 million and \$6.9 million, respectively, and are prohibited, due to the fact that Royal Bank is organized in Canada.

The investments issued by Royal Bank matured and sold on October 7, 2009 and January 26, 2010, respectively, and the Treasurer received all principal and earned interest for the investments. We noted that the purchases of medium term notes from Royal Bank were made even after unauthorized purchases by another foreign organized issuer, BASF, were reported by the Treasurer in February 2009 as noted in Item A above.

### **Recommendation No. 3**

We recommend that the Treasurer-Tax Collector ensure that purchases of commercial paper and medium term notes are only from issuers organized within the United States.

### **Treasurer-Tax Collector Response:**

#### **Concur**

On February 10, 2010 the Treasurer added a pre-trade compliance rule within the Bloomberg systems. This rule ensures that all purchases are domiciled within the United States. This rule cannot be overridden.

## **4. Finding No. 4 – Treasury Oversight Committee did not Review as Required \$6 Million Administrative and Overhead Fees Charged to Pool Participants – Noncompliance with IPS Section XVI - COMPENSATION AGREEMENT**

### **CRITERIA:**

IPS Section XVI – COMPENSATION AGREEMENT states that the Treasurer will charge all pool participants for administrative and overhead costs as authorized by California Government Code Section 27013. Costs include, but are not limited to, portfolio management, bank and custodial fees, software maintenance fees, and other indirect costs incurred from handling or managing funds. The administrative fee will be subject to change; the administrative and overhead fees will be reviewed by the Treasury Oversight Committee on an annual basis.

### **EXCEPTION NOTED:**

The Treasury Oversight Committee (TOC) did not review administrative and overhead fees of over \$6 Million charged to pool participants in calendar year 2009 as required by the IPS. In addition, we found that the last review of administrative and overhead fees by the TOC was conducted on July 26, 2006.

Completing an annual review of administrative and overhead fees is a responsibility of the TOC to act on behalf of pool participants and the Board of Supervisors. This is a critical review in that these charges are not scrutinized by any other oversight body. Errors or irregularities in these calculations would therefore go undetected.

### **Recommendation No. 4**

We recommend that the Treasury Oversight Committee ensure that administrative and overhead fees charged to pool participants are reviewed annually as required by the Investment Policy Statement.

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## Chair, Treasury Oversight Committee Response:

### Concur

Chair of the Treasury Oversight Committee will place the review of administrative and overhead fees on the agenda of its next regular meeting on July 27, 2011.

In the future, the Chair of the Treasury Oversight Committee will work with the Treasurer to ensure that departmental cost studies and the subsequent review by the Treasury Oversight Committee are completed in a timely fashion on an annual basis in compliance with the IPS.

## 5. Finding No. 5 – TOC did not Provide a Required Annual Report to the BOS – Noncompliance with Resolution No. 95-946, Establishment of New Treasury Oversight Committee Pursuant to Provisions of SB 866, Clause 6

### CRITERIA:

Resolution No. 95-946, Establishment of New Treasury Oversight Committee Pursuant to Provisions of SB 866, dated December 19, 1995, states the Treasury Oversight Committee was established to promote the restoration of confidence in the Office of County Treasurer-Tax Collector following the investment pool collapse. Clause 6 of the Resolution requires the Treasury Oversight Committee present an oral and written report to the Board of Supervisors during open session no less frequently than annually. In all instances, the Committee is required to immediately report to the Board of Supervisors any substantial concern relative to the Treasurer's compliance with applicable law, County policy or Treasurer policy, if such concerns come to the attention of the Committee.

### EXCEPTION NOTED:

The Treasury Oversight Committee did not provide an annual report to the Board of Supervisors in calendar year 2009 describing any substantial concerns relative to the Treasurer's compliance with applicable law, County policy or Treasurer policy as required by the IPS. In addition, we found that the last annual report on the Treasurer from the Treasury Oversight Committee to the Board of Supervisors was presented on December 19, 2006.

### **Recommendation No. 5**

We recommend that the Treasury Oversight Committee ensure that they provide both an oral and written report at least once a year to the Board of Supervisors during open session as required by resolution.

## Chair, Treasury Oversight Committee Response:

### Concur

The Treasury Oversight Committee approved the 2007, 2008, and 2009 annual reports to the Board of Supervisors at their April 27, 2011 regular meeting. The 2010 annual report to the Board of Supervisors was approved by the Treasury Oversight Committee at their January 26, 2011 regular meeting. The Chair will coordinate with the Treasurer to provide the reports to the Board of Supervisors by June 30, 2011.

# Detailed Findings, Recommendations, and Management Responses



## 6. Finding No. 6 – Policies and Procedures were not Documented for the Treasury Oversight Committee’s Required Investigation of Alleged Irregularities in the Treasury Operation

### CRITERIA:

IPS Section XIV – MAINTAINING THE PUBLIC TRUST states that all participants in the investment process are required to act as custodians of the public trust. The overall program is required to be designed and managed with a degree of professionalism that is worthy of the public trust.

Resolution No. 95-946, Establishment of New Treasury Oversight Committee Pursuant to Provisions of SB 866, dated December 19, 1995, established the Treasury Oversight Committee to promote the restoration of confidence in the Office of County Treasurer-Tax Collector following the investment pool collapse. Clause 4(c) of the Resolution requires the committee members “to investigate any and all irregularities in the treasury operation which become known to the committee.”

### EXCEPTIONS NOTED:

As noted in the Resolution above, the Treasury Oversight Committee is responsible for investigating any and all irregularities in the treasury operation which become known to the Committee. However, policies and procedures are not documented for this responsibility.

Documenting policies and procedures promotes a consistent process to investigate irregularities in the Treasurer’s operations.

### **Recommendation No. 6**

We recommend that the Treasury Oversight Committee develop and document policies and procedures to fulfill their responsibilities for investigating and reporting upon any and all irregularities in the treasury operation which become known to the Committee as required by the Board of Supervisors’ Resolution No. 95-946.

### **Chair, Treasury Oversight Committee Response:**

#### **Concur**

The Treasury Oversight Committee will develop a policy to refer non criminal complaints to the County Treasurer-Tax Collector unless it involved the Treasurer-Tax Collector and the Treasurer-Tax Collector will refer criminal complaints to the District Attorney. The policy will be submitted for the Committee’s approval by their October 26, 2011 regular meeting.

## 7. Finding No. 7 – Investment Policy Statement does not Clearly Define “Organized and Operating in the United States”

### CRITERIA:

The IPS lists the type of securities the County may purchase when investing treasury funds in Section VI – AUTHORIZED INVESTMENTS. The IPS states:

- Section VI (3) – Commercial paper for the Extended Fund must be issued by a corporation organized within the United States as a special purpose corporation, trust, or limited liability company. Commercial paper for the Money Market Fund must be issued by a general corporation organized and operating in the United States.

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- Section VI (10) – Medium term notes must be issued by a corporation, organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States.

The California Debt and Investment Advisory Commission (CDIAC), under Government Code Section 8855, is required to develop continuing education programs aimed at state and local officials who have direct or supervisory responsibility for the investment of public funds. This mandate has led to the publication of several reports, issue briefs, and a public fund investment book of principles.

In Local Agency Investment Guidelines Update for 2009, CDIAC provides that with many companies operating worldwide, the interpretation of the phrase “organized and operating in the United States” comes into question. While not clearly defined, CDIAC recommends that local agencies establish a method of determining whether a purchase of medium term notes meets this requirement in consultation with their legal counsel. CDIAC provides the following general guidance to consider:

- If an issuing entity is incorporated in the U.S. but is a subsidiary of a foreign-owned parent company, the stability of either the parent company or the economy of the parent company should be considered when purchasing from these types of entities.
- Alternatively, a local agency may hold securities in a U.S. company that is subsequently purchased by or merges with a foreign company. The local agency should monitor the merger or purchase to determine if it remains a prudent security for the agency to hold.
- Determining the venue for any legal recourse in the event of a bankruptcy or credit event would assist the local agency in determining whether the organization is organized and operating in the U.S. If the security is backed by assets that are in the U.S., then the investor may attempt to attach a claim on them in a U.S. court in the event of a bankruptcy or default. As an example: the SIV Whistlejacket was controlled in London for its Insolvency which presented the County with unanticipated complexity.

## EXCEPTION NOTED:

The IPS does not fully interpret the phrase “organized and operating in the United States” and the method of determining whether a purchase of commercial paper and medium term notes meets this requirement.

Clear parameters for authorized issuers of debt securities organized and operating in the United States will both enhance the IPS and minimize the likelihood of inadvertently purchasing non-conforming investments. This issue is critical in that litigation associated with foreign issues adds legal complexities and expense associated to resolution in a court of a foreign country.

## **Recommendation No. 7**

We recommend that the Treasurer-Tax Collector review the Investment Policy Statement Section VI – AUTHORIZED INVESTMENTS to determine if the phrase “organized and operating in the United States” needs to be clarified.

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## Treasurer-Tax Collector Response:

### Concur

The Treasurer-Tax Collector has reviewed the referenced IPS section and has determined the phrase "organized and operating in the United States" does not need further clarification. Per California Government Code 53601, the use of the organized and operating in the United States terminology is a direct excerpt and further amendment is not considered necessary.

Any issuer incorporated within the United States or organized as a special purpose corporation, trust or limited liability Company within the United States meets the requirement of "organized and operating in the United States".

## 8. Finding No. 8 – Treasurer Does Not Use a Commonly Accepted Municipal Benchmark for the County’s Portfolio - Government Code Section 27134

### CRITERIA:

Government Code Section 27134 requires that the County Treasury Oversight Committee cause an annual audit to be conducted to determine the County Treasury’s compliance with the requirements presented in the California Government Code Sections 27130 through 27137. The audit may include issues relating to the structure of the investment portfolio and risk.

The structure of investment portfolio and risk should consider the broad requirement of preserving principal and maintaining liquidity before seeking yield.

The structure of the investment portfolio and risk should promote the use of reliable, diverse, and safe investment instruments to better ensure a prudently managed portfolio worthy of the public’s trust.

In CDAIC’s publication “Understanding Public Investment Reporting – A Handbook for Local Elected Officials,” a benchmark is defined as a passive index that represents the expected returns and expected risks that correspond to the investment objectives of the local agency’s portfolio. CDAIC provides that the commonly accepted benchmarks for public agency investment portfolios are 3-month Treasury bills and a 1-year to 3-year Treasury bond index. Because these benchmarks represent safe and relatively liquid assets, they provide a reference point from which to assess the relationship between performance and risk.

CDIAC advises that the strength of a benchmark as a point of comparison is a function of the differences between the benchmark and the agency’s portfolio with respect to the types of securities and their respective maturities, ratings, and underlying credit characteristics.

Interest rate statistics are provided by the US Department of the Treasury that may serve as a benchmark. These statistics include:

- Treasury Bill Rates by increments of 4 weeks, 13 weeks, 26 weeks, and 52 weeks.
- Treasury Yield Curve Rates by increments of one month, three months, six months, one year, two years, and three years.

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## EXCEPTION NOTED:

We found that IPS Section XIX – PERFORMANCE STANDARDS does not adhere to the recommendation (this is not a requirement) from CDIAC. The IPS states that the basis used by the Treasurer to determine whether market yields are being achieved shall be compared to our Fund, such as money rate data published by Barron's, The Wall Street Journal, Bloomberg, etc.

The Treasurer's monthly management reports for calendar year 2009 provided benchmark comparisons with Dreyfus Government Cash Management, Fidelity Institutional Cash Management, and Merrill Lynch Institutional Cash Management.

## **Recommendation No. 8**

We recommend that the Treasurer-Tax Collector reevaluate the investment portfolio's performance standards and consider the appropriateness of benchmarking an index consisting of U.S. Treasury notes and bonds as recommended by the California Debt and Investment Advisory Committee and revise the Investment Policy Statement as appropriate for review by the Treasury Oversight Committee and approval by the Board of Supervisors.

## **Treasurer-Tax Collector Response:**

### **Concur**

The Treasurer-Tax Collector will reevaluate the appropriate benchmark for comparison to the investment portfolio's performance. California Government Code Sections 53601 et al and 53635 do not require use of a benchmark. The IPS does not contain a specific benchmark in Section XIX – PERFORMANCE STANDARDS. The IPS directs the Treasurer to determine the indices most comparable to the Fund. The current Treasurer-Tax Collector has already discussed with investment staff the updating of this section. In addition, the term "benchmark" referred to in the Treasurer's monthly reports was removed by the Treasurer-Tax Collector in the February 2011 report as the IPS doesn't make reference to a specific benchmark.

## **9. Finding No. 9 – One Designated Employee did not File the Required Statement of Economic Interests Disclosure – Noncompliance with IPS Section X – ETHICS AND CONFLICT OF INTEREST**

### CRITERIA:

IPS Section X – ETHICS AND CONFLICT OF INTEREST states, in part, that all designated employees shall complete on an annual basis the State of California Form 700 – Statement of Economic Interests Disclosure. Should any conflicts be disclosed, the Treasurer will resolve such matters as soon as practical. Designated employees include the following in the Treasurer's office: the Treasurer-Tax Collector, the Assistant Treasurer-Tax Collector, the Deputy Treasurer, all Investment Officers, all Financial Analysts, all Cash Managers, and all Accounting and Compliance Officers. The Treasurer will review this list annually and shall submit any proposed changes to the Treasury Oversight Committee for concurrence and adoption.

Not completing a Statement of Economic Interests Disclosure reduces the ability to detect and resolve potential or actual conflicts of interest.

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## EXCEPTION NOTED:

One designated employee in the Treasurer's office, the Accounting and Compliance Manager, did not complete a Statement of Economic Interests Disclosure, State of California Form 700 for calendar year 2009.

The Clerk of the Board of Supervisors ("Clerk") verifies that all Form 700s are received. However, the memorandum dated July 7, 2007 provided to the Clerk by the Treasurer lists all designated employees but did not include the Accounting and Compliance Manager. The Clerk on August 14, 2007 submitted this memorandum to the Board of Supervisors for their approval. In addition, it was noted that the Treasurer did not present the amended listing of designated employees by position to the Treasury Oversight Committee as required by IPS Section X – ETHICS AND CONFLICT OF INTEREST.

## **Recommendation No. 9**

We recommend that the Treasurer-Tax Collector have the Accounting and Compliance Manager complete and submit a State of California Form 700 – Statement of Economic Interests Disclosure to the Clerk of the Board of Supervisors.

## **Treasurer-Tax Collector Response:**

### **Concur**

On December 30, 2010, the Accounting/Compliance Manager filed late copies of her Form 700 for calendar years 2008 and 2009 which was received and stamped by the Clerk of the Board.

We have provided the CEO an updated listing for our Department as this list was missing this position and they have informed us the Clerk of the Board is submitting a revised list of County employees for Board of Supervisor's approval in their regular meeting of May 10, 2011. The Accounting/Compliance Manager has been added to the revised list of designated staff required to File Form 700 that will go to the Board of Supervisors.

## **10. Finding No. 10 – Continuous Review of Qualified Institutions was not Completed and Approved – IPS Section XI – AUTHORIZED FINANCIAL DEALERS AND QUALIFIED INSTITUTIONS**

### CRITERIA:

IPS Section XI – AUTHORIZED FINANCIAL DEALERS AND QUALIFIED INSTITUTIONS requires the Treasurer maintain a list of broker/dealers (Qualified Institutions) authorized to provide investment products to the Treasurer. Any permitted investment, not purchased directly from the issuer, is required to be purchased either from a "primary" or regional broker/dealer qualifying under SEC Rule 15c3-1 (Uniform Net Capital Rule) or a "well capitalized" financial institution, as defined in Title 12 of the Code of Federal Regulations (CFR) Part 6.4. Qualified institutions must comply with the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board (MSRB) as required in California Government Code Section 27133(c). The Treasurer is required to make a best effort to conduct an annual review of each Qualified Institution's financial condition and registrations to determine whether it should remain on the approved list.



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Rule G-37 of the MSRB provides guidelines to ensure that the standards and integrity of the municipal securities industry are maintained to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market, and to protect investors and the public interest. Rule G-37 of the MSRB: (a) prohibits brokers, dealers and municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials to such issuers; and (b) requires brokers, dealers and municipal securities dealers to disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a broker, dealer or municipal securities dealer.

In addition, Rule G-37 requires all brokers, dealers and municipal securities dealers by the last day of the month following the end of each calendar quarter to send to the MSRB disclosure for contributions to officials by issuers and payments to political parties of states and political subdivisions. Contributions are any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election for federal, state or local office, for payment of debt incurred in connection with any such election, or for transition or inaugural expenses incurred by the successful candidate for state or local office. The MSRB makes public a copy of each disclosure for contributions received from any broker, dealer or municipal securities dealer.

## EXCEPTIONS NOTED:

We reviewed the process and documentation for the annual review of approved brokers and dealers and noted the following:

- A written policy and procedure requires filing a printed copy of the quarterly disclosure for political contributions in the broker-dealer files. However, the policy and procedure was not fully developed to detect and report possible conflict of interest situations to the appropriate enforcement agency(s).
- Annual review documentation compiled by a designated staff member was not approved by the Treasurer's supervisory management.
- Documentation was not on file in certain instances and we were unable to establish the Treasurer's compliance review for political contributions. On June 17, 2010, it was noted that most recent annual review of approved brokers and dealers was completed in January 2010. We noted that certain quarterly disclosures for political contributions were not contained in the Treasurer's authorized broker-dealer files for the following: (1) D.A. Davidson & Company for the quarters ending in March 2009, June 2009 and September 2009; (2) First Tennessee Bank for the quarters ending March 2009, June 2009 and September 2009; (3) Morgan Keegan for the quarter ending September 2009; and (4) Oppenheimer & Company for the quarter ending September 2009.

A satisfactory system of internal controls over the continuing review of authorized brokers and dealers decreases the risk of the Treasurer purchasing investment products from dealers making political contributions.

## **Recommendation No. 10**

We recommend that the Treasurer-Tax Collector: (a) improve policy and procedures to be followed in reviewing and reporting political contributions from qualified institutions; (b) ensure that qualified and systematic supervisory review is provided and documented to

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enhance the integrity of the review of qualified institutions; and (c) ensure that the review of qualified institutions is complete.

## **Treasurer-Tax Collector Response:**

### **Concur**

The Treasurer has a written policy for the Broker Dealer Annual Review. The preliminary exercise was carried out by the Executive Secretary however the work was not reviewed by her supervisor, the Treasurer-Tax Collector or the top Investment management personnel. Starting with the year ending 12/31/10, the annual broker-dealer review will be reviewed by Accounting/Compliance Manager and the Chief Portfolio Manager. As such, the procedures will be updated to reflect this change.

The MSRB Rule G-37 prohibits municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers. It also requires them to disclose certain political contributions to the MSRB to allow for regulatory and public scrutiny. As part of the Treasurer's written policy, we check those disclosures however the procedures have no distinct directive on what steps need to be taken in the event a noncompliance issue pertaining to conflict of interest is found. The TTC procedures will be updated to show that any Rule G-37 violations should be immediately reported to the Investment Division, the Chief Assistant Treasurer-Tax Collector and the Treasurer-Tax Collector.

For all the individually noted items found in the review, we should note that no instances of MSRB Rule G-37 violations were found. All G-37 forms for these items are present on the official website and due to timing differences between TTC review and broker disclosure dates, were not part of the review.

## **11. Finding No. 11 – Documentation was not on File to Support Nomination of the Representative for Special Districts - Government Code Section 27132**

### CRITERIA:

California Government Section 27132 requires the County Treasury Oversight Committee include a representative selected by a majority of the presiding officers of the legislative bodies of the special districts.

### EXCEPTION NOTED:

Rule 6(d) of the Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee, as determined by the Board of Supervisors, in consultation with the Treasurer, states that the Committee will consist of the five members including one representative selected by a majority of the presiding officers of the legislative bodies of the special districts in the County that are authorized to deposit funds in the County Treasury.

It was noted that the representative for special districts was appointed to the Treasury Oversight Committee by the Board of Supervisors on March 18, 2008. However, we found that evidence concerning the consent or disapproval from the presiding officers of the legislative bodies of the special districts was not documented. Therefore, we were unable to establish the delegated authority to represent the special districts with funds deposited with the County Treasurer.

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Documentation to support the nomination of a representative of the special districts provides evidence of the delegated authority to represent the interests of the voluntary pool participants with funds deposited with the County Treasurer.

## **Recommendation No. 11**

We recommend that the Treasury Oversight Committee consult with County Counsel regarding the appointment of the representative of the special districts and to clarify what documentation is necessary to support the candidate selection by the presiding officers of the legislative bodies of the special districts.

### **Chair, Treasury Oversight Committee Response:**

#### **Concur**

The Committee eliminated this provision of the Bylaws in their January 27, 2010 regular meeting and the revised Bylaws to the Board of Supervisors were approved by the Board on April 19, 2011.

## **12. Finding No. 12 – Expiration of TOC Public Member’s Term – Noncompliance with Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee Section III – Chair and Vice Chair Powers and Duties, Rule 9**

### CRITERIA:

Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee, Rule 9, states that the term of office of each public member shall be limited to 2 three-year terms. In the case of a vacancy for a member of the public or other members, the term of office shall be until the selection of a successor by the Board of Supervisors.

California Government Code Section 27131(a) states that members of the County Treasury Oversight Committee are to be nominated by the Treasurer and confirmed by the Board of Supervisors.

### EXCEPTION NOTED:

The appointed term for the public member of the Treasury Oversight Committee expired on March 13, 2009. However, the public member with the expired term continued to serve on the Treasury Oversight Committee for the remainder of calendar year 2009. The Treasurer did not nominate him or another public member candidate to the Board of Supervisors for confirmation before or after the approved term expired.

## **Recommendation No. 12**

We recommend that the Treasurer-Tax Collector develop a process to timely identify and nominate qualified candidates subject to term limits for the Board of Supervisors’ confirmation as required by Rule 9 in the County of Orange Treasury Oversight Committee Bylaws and Rules of Procedure.

### **Treasurer-Tax Collector Response:**

#### **Concur**

The Treasurer-Tax Collector will review Rule 9 in the County of Orange Treasury Oversight Committee Bylaws and Rules of Procedure to identify if any changes should be made and will ensure that a process is put in place by January 2012 to timely identify and

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nominate qualified candidates subject to term limits for the Board of Supervisors' confirmation.

The Treasurer-Tax Collector placed an Agenda Staff Report (ASR) on the Board of Supervisor's agenda for their regular meeting of April 19, 2011. The ASR was approved by the Board and included Committee approved recommended changes to the TOC Bylaws and Rules of Procedure, nomination of one Committee member for a second term, and nomination of a new Committee member for the public member vacancy.

County Counsel Opinion concerning the "hold over" of expired Committee members: The TOC By-laws, specifically Rule 9, provide that the term of office for each public member shall be limited to 2 three-year terms. If the three-year term of office of a public member of TOC expires, and the Board of Supervisors does not take action to reappoint the incumbent or appoint a replacement, the incumbent remains in office as a public member of TOC. The incumbent TOC member "holds over" until the Board of Supervisors either appoints a successor, or reappoints the incumbent to a new term. Government Code Section 1302 states: "Every officer whose term has expired shall continue to discharge the duties of his office until his successor has qualified." The California Supreme Court has said the purpose of this statute is to avoid a gap between successive office holders. The policy of the law is against having a vacancy in a public office. *Hartford Accident and Indemnity Co. v. City of Tulare*, 30 Cal. 2d 832 (1947). An officeholder does not begin a new term of office by "holding over." Rather, his or her old term is extended. In *People v. Nickel*, 9 Cal. App. 783, at 785, the Court of Appeal said: "The time that a particular incumbent holds over after the ending of his proper term has been called a prolongation of the old term . . . The new term begins only upon the making of a new appointment."

As such, a TOC member gets to "holds over" his term of office until the Board of Supervisors either appoints a successor, or reappoints the TOC member to a new term.

## **13. Finding No. 13 – TOC Member Use of a Designee – Noncompliance with Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee, Rule 6**

### CRITERIA:

Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee, Rule 6 provides membership for the County Superintendent of Schools or a designee. The Rules do not state that a designee is allowed for the Auditor-Controller, County Executive Officer, Representative of the Special Districts, or Member of the Public.

Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee, Rule 23 states that the committee shall conduct its meetings under Robert's Rules of Order, except as modified by these Rules.

Robert's Rules of Order Newly Revised, 10<sup>th</sup> Edition, Chapter XIII – Voting, Section 45 – Voting Procedure, page 414, states that a proxy is a power of attorney given by one person to another to vote in his stead; the term also designates the person who holds the power of attorney. Proxy voting is not permitted in ordinary deliberative assemblies unless the laws of the state in which the society is incorporated require it or the charter or bylaws of the organization provide for it. Ordinarily it should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable.

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## EXCEPTIONS NOTED:

We found that the Deputy CEO/Chief Financial Officer represented the County Executive Officer as a proxy, which included voting at the meetings held on January 28, 2009 and July 29, 2009.

## **Recommendation No. 13**

We recommend that the Treasury Oversight Committee discuss the use of designees at the meetings and whether the Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee should be amended to allow for additional designee(s). If the Bylaws and Rules of Procedure are amended, the proposed procedures should be approved by the Board of Supervisors.

## **Chair, Treasury Oversight Committee Response:**

### **Concur**

The Committee added this provision of designees into the Bylaws in their January 26, 2011 regular meeting and the revised Bylaws were approved by the Board of Supervisors in their regular meeting of April 19, 2011.

## **14. Finding No. 14 – The Treasurer-Tax Collector Agenda Lacked Clarity and the Treasury Oversight Committee Meeting Minutes Did Not Provide Adequate Detail Regarding the Discussion of Investment Types Not Specifically Authorized by the IPS**

### CRITERIA:

IPS Section VI – AUTHORIZED INVESTMENTS states that any investment types not specifically authorized by the IPS must be approved by the Treasury Oversight Committee and the Orange County Board of Supervisors prior to the Treasurer executing transactions.

### BACKGROUND:

The Treasurer for the June 24, 2009 Treasury Oversight Committee placed on the Agenda Item “No. 8. CLARIFICATION OF IPS SECTION: VI. AUTHORIZED INVESTMENTS **Recommended Actions:** Discuss the relevant IPS language and provide staff general direction for carrying out the policy.”

The approved minutes of the Treasury Oversight Committee for Item No. 8: stated:

*“Mr. Cocking [Chief Portfolio Manager for the Treasurer] gave a brief description accompanied by a hand-out regarding the bonds the Treasurer’s Office was interested in purchasing. The procedure for bringing new items for purchase to the TOC meetings was discussed. Mr. Sundstrom [Auditor-Controller, Chair of the Treasury Oversight Committee] requested that TOC get an update at quarterly meetings. He isn’t interested in ‘tying the hands’ of the Treasurer. He suggested that the Treasurer make the distinction and decision himself as to whether the security being considered for purchase should be brought to the TOC or just bring it to the quarterly meeting for TOC to validate it.”*

### EXCEPTION NOTED:

The TOC Agenda for the June 24, 2009 meeting, Item No. 8 “Clarification of IPS Section: VI. Authorized Investment” lacked clarity and the TOC Minutes did not provide adequate

# Detailed Findings, Recommendations, and Management Responses



detail. The agenda item did not clearly set fourth the available actions to be taken for an investment type not specifically authorized by the Investment Policy Statement. In addition, the approved meeting minutes did not provide adequate detail to document the subject discussed and the basis for the conclusions reached.

## **Recommendation No. 14**

We recommend that the Treasurer-Tax Collector prepare meeting agendas and minutes for the Treasury Oversight Committee that include an adequate description of actions to be taken and whether approval or rejection was conferred.

## **Treasurer-Tax Collector Response:**

### **Concur**

The Treasurer-Tax Collector will ensure that meeting agendas and summarized minutes for the Treasury Oversight Committee include all motions made by Committee members. In addition, the Treasurer's office will try to ensure that investments that are being purchased for the first time be identified on the agenda for the TOC to approve/disapprove.

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses



### OFFICE OF THE TREASURER-TAX COLLECTOR SHARI L. FREIDENRICH, C.P.A.

HALL OF FINANCE & RECORDS  
11 CIVIC CENTER PLAZA, SUITE G76  
SANTA ANA, CA 92701

#### INTERDEPARTMENTAL COMMUNICATION

TO: Dr. Peter Hughes, MBA, CPA, CIA, Internal Audit Director  
FROM: Shari L. Freidenrich, CPA, CCMT, CPFA, CPFIM, Treasurer-Tax Collector *SH*  
DATE: 5/10/2011  
SUBJECT: Response to Draft Report on the Annual Audit of Treasurer's Investment Compliance for the Year Ended December 31, 2009.

1. **FINDING NO. 1 – CONTROLS WERE NOT ADEQUATE TO PREVENT AND DETECT OVERRIDES AND NONCOMPLIANCE WITH THE IPS FOR INVESTMENT PURCHASES – NONCOMPLIANCE WITH IPS SECTION XVI – INTERNAL CONTROLS (MATERIAL WEAKNESS IN INTERNAL CONTROL)**

#### Recommendation No. 1

We recommend that the Treasurer-Tax Collector reconfigure the pre-trade parameters in the Bloomberg Investment System to include the requirement to purchase only investments with two current credit ratings and issued by entities organized within the United States.

#### Treasurer-Tax Collector Response:

#### Concur

During 2009, Bloomberg pre-trade compliance parameters were set to adhere to credit quality, diversification and maturity limits in the County's Investment Policy with the exclusion of municipal bonds. For this particular instance, our Bloomberg pre-trade compliance had a rule to look at the short term and long term ratings of any security purchased by the County to ensure they have at least 2 of 3 approved ratings (either Moody's, S&P or Fitch). The Bloomberg pre-trade compliance manager rule (MMFRAT) created when the IPS was changed on 12/30/08 did not include municipal bonds as the IPS did not require a rating restriction for local agency debt issued within Orange County. On 1/6/11 we created an additional rule in the Bloomberg pre-trade system (RATINGS) for all purchases of municipal debt that requires approval by, either the Chief Portfolio Manager or Accounting/Compliance Manager to purchase local agency debt issued within Orange County where the security purchased has less than 2 ratings. All other purchases of municipal debt are required to meet the credit rating restrictions set forth in the IPS. We will also implement in our procedures that any purchases of municipal debt from agencies in Orange County will appear as a compliance error; and if approved, a memo prepared by the Accounting/Compliance Manager and approved by the Chief Assistant Treasurer-Tax Collector will be placed with the trade packet showing override of the pre-trade rule as the investment meets IPS guidelines.

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

We should also note, as an additional mitigating condition, that the Accounting/Compliance manager and the entire investment team are immediately alerted by Bloomberg on the pre-trade with a message alert & in an end of day report if a rule is being violated.

2. **FINDING NO. 2 – TREASURER OVERRODE THE IPS AND PURCHASED DEBT SECURITIES WITH LESS THAN THE REQUIRED TWO CREDIT RATINGS – NONCOMPLIANCE WITH IPS SECTION VII – INVESTMENT RESTRICTIONS (MATERIAL COMPLIANCE EXCEPTION)**

### Recommendation No. 2

We recommend that the Treasurer-Tax Collector ensure that purchases of debt securities have the minimum required rating by at least two Nationally Recognized Statistical Rating Organizations at the time of purchase as required by the Investment Policy Statement. Additionally, the Treasurer-Tax Collector's staff be formally informed that neither management nor the investment officers are to override the Investment Policy Statement.

### Treasurer-Tax Collector Response:

#### Concur

The purchases noted did not have ratings from at least two Nationally Recognized Statistical Rating Organizations at the time of purchase. On 1/6/11, a rule was added to the Bloomberg pre-trade system (RATINGS) which now includes municipal debt that a purchase must have ratings from at least two Nationally Recognized Statistical Rating Organizations at the time of purchase in addition to the credit quality pre-trade parameters. We will also implement in our procedures that any purchases of municipal debt from agencies in Orange County will appear initially as a compliance error and that only the Chief Portfolio Manager or Accounting/Compliance Manager can provide specific approval for the trade and only override it if it meets the credit criteria or if it is a municipal debt in the County of Orange as allowed by the IPS. If approved, a memo is also required to be prepared by the Accounting/Compliance Manager and approved by the Chief Assistant Treasurer-Tax Collector and placed with the trade packet showing override of the pre-trade rule as the investment meets IPS guidelines.

We should also note, as an additional mitigating condition, that the Accounting/Compliance manager and the entire investment team are immediately alerted by Bloomberg on the pre-trade with a message alert & in an end of day report if a rule is being violated.

3. **FINDING NO. 3 – TREASURER IMPROPERLY PURCHASED COMMERCIAL PAPER AND MEDIUM TERM NOTES FROM PROHIBITED ISSUERS ORGANIZED OUTSIDE OF THE UNITED STATES - NONCOMPLIANCE WITH GOVERNMENT CODE SECTION 53601 AND IPS SECTION VI – AUTHORIZED INVESTMENTS (MATERIAL COMPLIANCE EXCEPTION)**

### Recommendation No. 3

We recommend that the Treasurer-Tax Collector ensure that purchases of commercial paper and medium term notes are only from issuers organized within the United States.

### Treasurer-Tax Collector Response:



# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

**Concur**

On February 10, 2010 the Treasurer added a pre-trade compliance rule within the Bloomberg systems. This rule ensures that all purchases are domiciled within the United States. This rule cannot be overridden.

4. **FINDING NO. 4 – TREASURY OVERSIGHT COMMITTEE DID NOT REVIEW AS REQUIRED \$6 MILLION ADMINISTRATIVE AND OVERHEAD FEES CHARGED TO POOL PARTICIPANTS - NONCOMPLIANCE WITH IPS SECTION XVI - COMPENSATION AGREEMENT**

**Recommendation No. 4**

We recommend that the Treasury Oversight Committee ensure that administrative and overhead fees charged to pool participants are reviewed annually as required by the Investment Policy Statement.

**Chair, Treasury Oversight Committee Response:**

**Concur**

Chair of the Treasury Oversight Committee will place the review of administrative and overhead fees on the agenda of its next regular meeting on July 27, 2011.

In the future, the Chair of the Treasury Oversight Committee will work with the Treasurer to ensure that departmental cost studies and the subsequent review by the Treasury Oversight Committee are completed in a timely fashion on an annual basis in compliance with the IPS.

5. **FINDING NO. 5 – TOC DID NOT PROVIDE A REQUIRED ANNUAL REPORT TO THE BOS - NONCOMPLIANCE WITH RESOLUTION NO. 95-946, ESTABLISHMENT OF NEW TREASURY OVERSIGHT COMMITTEE PURSUANT TO PROVISIONS OF SB 866, CLAUSE 6**

**Recommendation No. 5**

We recommend that the Treasury Oversight Committee ensure that they provide both an oral and written report at least once a year to the Board of Supervisors during open session as required by resolution.

**Chair, Treasury Oversight Committee Response:**

**Concur**

The Treasury Oversight Committee approved the 2007, 2008, and 2009 annual reports to the Board of Supervisors at their April 27, 2011 regular meeting. The 2010 annual report to the Board of Supervisors was approved by the Treasury Oversight Committee at their January 26, 2011 regular meeting. The Chair will coordinate with the Treasurer to provide the reports to the Board of Supervisors by June 30, 2011.

6. **FINDING NO. 6 – POLICIES AND PROCEDURES WERE NOT DOCUMENTED FOR THE TREASURY OVERSIGHT COMMITTEE'S REQUIRED INVESTIGATION OF ALLEGED IRREGULARITIES IN THE TREASURY OPERATION**

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

### Recommendation No. 6

We recommend that the Treasury Oversight Committee develop and document policies and procedures to fulfill their responsibilities for investigating and reporting upon any and all irregularities in the treasury operation which become known to the Committee as required by the Board of Supervisors' Resolution No. 95-946.

#### Chair, Treasury Oversight Committee Response:

##### **Concur**

The Treasury Oversight Committee will develop a policy to refer non criminal complaints to the County Treasurer-Tax Collector unless it involved the Treasurer-Tax Collector and the Treasurer-Tax Collector will refer criminal complaints to the District Attorney. The policy will be submitted for the Committee's approval by their October 26, 2011 regular meeting.

### 7. FINDING NO. 7 – INVESTMENT POLICY STATEMENT DOES NOT CLEARLY DEFINE “ORGANIZED AND OPERATING IN THE UNITED STATES”

#### Recommendation No. 7

We recommend that the Treasurer-Tax Collector review the Investment Policy Statement Section VI – AUTHORIZED INVESTMENTS to determine if the phrase “organized and operating in the United States” needs to be clarified.

#### Treasurer-Tax Collector Response:

##### **Concur**

The Treasurer-Tax Collector has reviewed the referenced IPS section and has determined the phrase “organized and operating in the United States” does not need further clarification. Per California Government Code 53601, the use of the organized and operating in the United States terminology is a direct excerpt and further amendment is not considered necessary.

Any issuer incorporated within the United States or organized as a special purpose corporation, trust or limited liability Company within the United States meets the requirement of “organized and operating in the United States”.

### 8. FINDING NO. 8 – TREASURER DOES NOT USE A COMMONLY ACCEPTED MUNICIPAL BENCHMARK FOR THE COUNTY’S PORTFOLIO - GOVERNMENT CODE SECTION 27134

#### Recommendation No. 8

We recommend that the Treasurer-Tax Collector reevaluate the investment portfolio's performance standards and consider the appropriateness of benchmarking an index consisting of U.S. Treasury notes and bonds as recommended by the California Debt and Investment Advisory Committee and revise the Investment Policy Statement as appropriate for review by the Treasury Oversight Committee and approval by the Board of Supervisors.

#### Treasurer-Tax Collector Response:

##### **Concur**

The Treasurer-Tax Collector will reevaluate the appropriate benchmark for comparison to the investment portfolio's performance. California Government Code Sections 53601 et al and 53635 do not require use of a benchmark. The IPS does not contain a specific benchmark in Section XIX – PERFORMANCE STANDARDS. The IPS directs the Treasurer to determine the indices most comparable to the Fund. The current Treasurer-Tax Collector has already

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

discussed with investment staff the updating of this section. In addition, the term "benchmark" referred to in the Treasurer's monthly reports was removed by the Treasurer-Tax Collector in the February 2011 report as the IPS doesn't make reference to a specific benchmark.

**9. FINDING NO. 9 – ONE DESIGNATED EMPLOYEE DID NOT FILE THE REQUIRED STATEMENT OF ECONOMIC INTERESTS DISCLOSURE - NONCOMPLIANCE WITH IPS SECTION X – ETHICS AND CONFLICT OF INTEREST**

**Recommendation No. 9**

We recommend that the Treasurer-Tax Collector have the Accounting and Compliance Manager complete and submit a State of California Form 700 – Statement of Economic Interests Disclosure to the Clerk of the Board of Supervisors.

**Treasurer-Tax Collector Response:**

**Concur**

On December 30, 2010, the Accounting/Compliance Manager filed late copies of her Form 700 for calendar years 2008 and 2009 which was received and stamped by the Clerk of the Board.

We have provided the CEO an updated listing for our Department as this list was missing this position and they have informed us the Clerk of the Board is submitting a revised list of County employees for Board of Supervisor's approval in their regular meeting of May 10, 2011. The Accounting/Compliance Manager has been added to the revised list of designated staff required to File Form 700 that will go to the Board of Supervisors.

**10. FINDING NO. 10 – CONTINUOUS REVIEW OF QUALIFIED INSTITUTIONS WAS NOT COMPLETED AND APPROVED - IPS SECTION XI – AUTHORIZED FINANCIAL DEALERS AND QUALIFIED INSTITUTIONS**

**Recommendation No. 10**

We recommend that the Treasurer-Tax Collector: (a) improve policy and procedures to be followed in reviewing and reporting political contributions from qualified institutions; (b) ensure that qualified and systematic supervisory review is provided and documented to enhance the integrity of the review of qualified institutions; and (c) ensure that the review of qualified institutions is complete.

**Treasurer-Tax Collector Response:**

**Concur**

The Treasurer has a written policy for the Broker Dealer Annual Review. The preliminary exercise was carried out by the Executive Secretary however the work was not reviewed by her supervisor, the Treasurer-Tax Collector or the top Investment management personnel. Starting with the year ending 12/31/10, the annual broker-dealer review will be reviewed by Accounting/Compliance Manager and the Chief Portfolio Manager. As such, the procedures will be updated to reflect this change.

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

The MSRB Rule G-37 prohibits municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers. It also requires them to disclose certain political contributions to the MSRB to allow for regulatory and public scrutiny. As part of the Treasurer's written policy, we check those disclosures however the procedures have no distinct directive on what steps need to be taken in the event a noncompliance issue pertaining to conflict of interest is found. The TTC procedures will be updated to show that any Rule G-37 violations should be immediately reported to the Investment Division, the Chief Assistant Treasurer-Tax Collector and the Treasurer-Tax Collector.

For all the individually noted items found in the review, we should note that no instances of MSRB Rule G-37 violations were found. All G-37 forms for these items are present on the official website and due to timing differences between TTC review and broker disclosure dates, were not part of the review.

**11. FINDING NO. 11 – DOCUMENTATION WAS NOT ON FILE TO SUPPORT NOMINATION OF THE REPRESENTATIVE FOR SPECIAL DISTRICTS - GOVERNMENT CODE SECTION 27132**

**Recommendation No. 11**

We recommend that the Treasury Oversight Committee consult with County Counsel regarding the appointment of the representative of the special districts and to clarify what documentation is necessary to support the candidate selection by the presiding officers of the legislative bodies of the special districts.

**Chair, Treasury Oversight Committee Response:**

**Concur**

The Committee eliminated this provision of the Bylaws in their January 27, 2010 regular meeting and the revised Bylaws to the Board of Supervisors were approved by the Board on April 19, 2011

**12. FINDING NO. 12 – EXPIRATION OF TOC PUBLIC MEMBER'S TERM - NONCOMPLIANCE WITH BYLAWS AND RULES OF PROCEDURES OF THE COUNTY OF ORANGE TREASURY OVERSIGHT COMMITTEE SECTION III – CHAIR AND VICE CHAIR POWERS AND DUTIES, RULE 9**

**Recommendation No. 12**

We recommend that the Treasurer-Tax Collector develop a process to timely identify and nominate qualified candidates subject to term limits for the Board of Supervisors' confirmation as required by Rule 9 in the County of Orange Treasury Oversight Committee Bylaws and Rules of Procedure.

**Treasurer-Tax Collector Response:**

**Concur**

The Treasurer-Tax Collector will review Rule 9 in the County of Orange Treasury Oversight Committee Bylaws and Rules of Procedure to identify if any changes should be made and will ensure that a process is put in place by January 2012 to timely identify and nominate qualified candidates subject to term limits for the Board of Supervisors' confirmation.

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

The Treasurer-Tax Collector placed an Agenda Staff Report (ASR) on the Board of Supervisor's agenda for their regular meeting of April 19, 2011. The ASR was approved by the Board and included Committee approved recommended changes to the TOC Bylaws and Rules of Procedure, nomination of one Committee member for a second term, and nomination of a new Committee member for the public member vacancy.

County Counsel Opinion concerning the "hold over" of expired Committee members:

The TOC By-laws, specifically Rule 9, provide that the term of office for each public member shall be limited to 2 three-year terms. If the three-year term of office of a public member of TOC expires, and the Board of Supervisors does not take action to reappoint the incumbent or appoint a replacement, the incumbent remains in office as a public member of TOC. The incumbent TOC member "holds over" until the Board of Supervisors either appoints a successor, or reappoints the incumbent to a new term. Government Code Section 1302 states: "Every officer whose term has expired shall continue to discharge the duties of his office until his successor has qualified." The California Supreme Court has said the purpose of this statute is to avoid a gap between successive office holders. The policy of the law is against having a vacancy in a public office. *Hartford Accident and Indemnity Co. v. City of Tulare*, 30 Cal. 2d 832 (1947). An officeholder does not begin a new term of office by "holding over." Rather, his or her old term is extended. In *People v. Nickel*, 9 Cal. App. 783, at 785, the Court of Appeal said: "The time that a particular incumbent holds over after the ending of his proper term has been called a prolongation of the old term . . . The new term begins only upon the making of a new appointment."

As such, a TOC member gets to "holds over" his term of office until the Board of Supervisors either appoints a successor, or reappoints the TOC member to a new term.

### 13. FINDING NO. 13 – TOC MEMBER USE OF A DESIGNEE - NONCOMPLIANCE WITH BYLAWS AND RULES OF PROCEDURES OF THE COUNTY OF ORANGE TREASURY OVERSIGHT COMMITTEE RULE 6

#### Recommendation No. 13

We recommend that the Treasury Oversight Committee discuss the use of designees at the meetings and whether the Bylaws and Rules of Procedures of the County of Orange Treasury Oversight Committee should be amended to allow for additional designee(s). If the Bylaws and Rules of Procedure are amended, the proposed procedures should be approved by the Board of Supervisors.

#### Chair, Treasury Oversight Committee Response:

##### Concur

The Committee added this provision of designees into the Bylaws in their January 26, 2011 regular meeting and the revised Bylaws were approved by the Board of Supervisors in their regular meeting of April 19, 2011.

# Detailed Findings, Recommendations, and Management Responses



## ATTACHMENT A: Treasurer-Tax Collector/Treasury Oversight Committee Responses (continued)

**14. FINDING NO. 14 – THE TREASURER-TAX COLLECTOR AGENDA LACKED CLARITY AND THE TREASURY OVERSIGHT COMMITTEE MEETING MINUTES DID NOT PROVIDE ADEQUATE DETAIL REGARDING THE DISCUSSION OF INVESTMENT TYPES NOT SPECIFICALLY AUTHORIZED BY THE IPS**

**Recommendation No. 14**

We recommend that the Treasurer-Tax Collector prepare meeting agendas and minutes for the Treasury Oversight Committee that include an adequate description of actions to be taken and whether approval or rejection was conferred.

**Treasurer-Tax Collector Response:**

**Concur**

The Treasurer-Tax Collector will ensure that meeting agendas and summarized minutes for the Treasury Oversight Committee include all motions made by Committee members. In addition, the Treasurer's office will try to ensure that investments that are being purchased for the first time be identified on the agenda for the TOC to approve/disapprove.

cc: Alan Marcum, Internal Audit  
Paul Gorman, Chief Assistant Treasurer-Tax Collector