PROVIDING ASSURANCES
TRANSACTIONAL CONSIDERATIONS:

Maintaining collateral in the form of a letter of credit to demonstrate compliance with financial assurance can be a significant financial obligation. As such, the transfer of such an obligation is often an important consideration in asset sales and similar transactions. The transferor of a financial assurance obligation secured by a letter of credit must continue to maintain the letter of credit until the transferee has demonstrated compliance with financial assurance to the satisfaction of the regulatory authority. The transferee has six months following the closing of such a transaction to assume responsibility for complying with financial assurance.

Managing the activities associated with the transfer of a financial assurance obligation requires the attention, persistence, and patience of both transferor and transferee. The EHS, finance and treasury functions of the transferee will likely be pre-occupied with other transition and integration activities in the days, weeks, and months following the closing of the transaction. And, even after the transferee has put its own financial assurance mechanism in place, the regulatory authority must still release the transferor of from its obligation. In the interim, the existence of backstop letters of credit or similar mechanisms should ensure that the transferor is not saddled with the cost or risk associated with financial assurance obligations for operations that it no longer owns. Nonetheless, any significant delay by the regulatory authority in approving the transferee's financial assurance and releasing the transferor from its obligation may negatively impact the transferor's access to liquidity.