



City of Columbus

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Legislation Text

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The Securities and Exchange Commission (SEC) has approved amendments to Rule 15c2-12, the municipal securities continuing disclosure rule. Effective December 1, 2010, the amendments affect event notice requirements and eliminate the exemption for certain variable rate demand obligations.

This ordinance amends Section 323.07 of the City Code to make it consistent with the changes to Rule 15c2-12. This ordinance is a result of collaboration between the City Attorney and the City's Bond Counsel.

The City Auditor asks for and recommends adoption of this ordinance.

Fiscal impact: none

To amend Section 323.07 of the Columbus City Codes in order to comply with changes to SEC requirements relative to the disclosure of information on bonds and notes issued by the City.

WHEREAS, the Securities and Exchange Commission (SEC) has approved amendments to Rule 15c2-12, the municipal securities continuing disclosure rule, effective December 1, 2010; and

WHEREAS, these amendments affect event notice requirements and eliminate the exemption for certain variable rate demand obligations; and

WHEREAS, it is necessary to amend Section 323.07 of the Columbus City Codes in order to make it compliant and consistent with Rule 15c2-12; now therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

Section 1. That Section 323.07 of the Columbus City Codes, 1959, be and is hereby amended to read as follows:

323.07 - Disclosure of annual information and specified events.

(a) For purposes of and as used in this section, the following words shall have the following meanings:

- (1) "Accounting ~~principles~~Principles" means the accounting principles applied from time to time in the preparation of the annual general purpose financial statements of the city, initially being generally accepted accounting principles applicable to governments as promulgated by the Governmental Accounting Standards Board and as in effect from time to time.
- (2) "Annual ~~information~~Information" means for each fiscal year the annual financial information and operating data described in or pursuant to the ordinance relating to a particular series of ~~obligations~~Obligations. The ~~annual information~~Annual Information to be provided will be consistent with the financial information and operating data relating to the city and the series of ~~obligations~~Obligations

included in the final official statement for those ~~obligations~~Obligations.

- (3) "Filing ~~date~~Date" with respect to any fiscal year means the 180th day following the end of that fiscal year (or, if that day is not a city business day, the next city business day).
- (4) "MSRB" means the Municipal Securities Rulemaking Board, or any legal successor thereto.
- (5) "~~NRMSIR~~" means each nationally recognized municipal securities information repository designated from time to time by the SEC in accordance with the Rule.
- (5) ~~(6)~~ "Obligated ~~person~~Person" shall have the meaning as provided in the Rule.
- (6) ~~(7)~~ "Obligations" means bonds or notes of the city.
- (7) ~~(8)~~ "Rule" means Rule 15c2-12 (See 17 CFR 240. 15c2-12) adopted by the SEC pursuant to the Securities Exchange Act of 1934, as amended from time to time.
- (8) ~~(9)~~ "SEC" means the United States Securities and Exchange Commission, or any legal successor thereto.
- (10) "~~SID~~" means the state information depository, if any, designated by the state (and, if applicable, recognized by the SEC).
- (9) ~~(11)~~ "Specified ~~events~~Events" means any of the following, within the meaning of the Rule, with respect to each issue of ~~obligations~~Obligations:
 - A. Principal and interest payment delinquencies;
 - B. ~~Nonpayment~~ **Non-payment** related defaults;
 - C. Unscheduled draws on debt service reserves reflecting financial difficulties;
 - D. Unscheduled draws on credit enhancements reflecting financial difficulties;
 - E. Substitution of credit or liquidity providers, or their failure to perform;
 - F. Adverse tax opinions ~~or, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Obligations, or other material events affecting the tax-exempt status of the obligations; status of the Obligations;~~
 - G. Modifications to rights of holders of the ~~obligations~~Obligations;
 - H. ~~Obligation calls; (i) Calls for redemption of the Obligations, other than calls pursuant to the mandatory redemption or the mandatory sinking fund provisions of the Obligations, if any, and (ii) tender offers;~~
 - I. Defeasances (of the applicable trust agreement entirely, or as to all or a portion of the ~~obligations~~Obligations only);

- J. Release, substitution or sale of property securing repayment of the ~~obligations~~Obligations; or
- K. Rating changes;
- L. Bankruptcy, insolvency, receivership or similar event of the city;
- M. The consummation of a merger, consolidation, or acquisition involving the city or the or the sale of all or substantially all of the assets of the city, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; or
- N. Appointment of a successor or additional Trustee or the change of name of a Trustee.

For the purposes of subsection (L) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the city in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under Ohio or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the city, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the city.

(10) "Trustee" means a trustee under any trust agreement that secures a series of ~~obligations~~Obligations.

(b) The city shall provide, as stated below, to ~~each NRMSIR and to the SID~~MSRB:

- (1) Annual ~~information~~Information for each fiscal year (~~beginning with the fiscal year ending December 31, 1996~~) not later than the ~~filing date~~Filing Date for that fiscal year; and
- (2) When and if available, audited general purpose financial statements of the city for each fiscal year prepared in accordance with the ~~accounting principles~~Accounting Principles. The audited statements may be prepared and made available separately from the ~~annual information~~Annual Information.

The ~~annual information~~Annual Information may be provided by reference to other documents, such as the city's comprehensive annual financial report or subsequent final official statements relating to ~~obligations~~Obligations issued by the city, that may be provided to ~~each NRMSIR and to the SID~~MSRB. If reference is made to a subsequent official statement, the city shall file that official statement with the MSRB.

(c) The city shall provide to ~~each NRMSIR or to the MSRB and to the SID~~, all in a timely manner:

- (1) Notice of the occurrence of any ~~specified event if that specified event is material~~Specified Event; provided, however, that notice of the occurrence of the events listed in subsections (B), (G), (H)(i), (J), (M) and (N) of the definition of "Specified Event" contained in this section shall only be filed with the MSRB if such event is material. For the filing of a notice of the occurrence of any Specified Event, filing in a timely manner shall not be in excess of ten business days after the occurrence of such Specified Event.
- (2) Notice of a failure to comply with the requirements of paragraph (b) of this section.
- (3) Notice of the termination of the applicability of the requirements of this Section to a particular series of ~~obligations~~Obligations.

- (4) Notice of any material change in ~~accounting principles~~ the Accounting Principles applied to the preparation of the annual audited financial statements of the city, or of any change in the city's fiscal year.
- (d) All documents provided to MSRB under this section shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board.
- (e) The provisions of this section shall only apply to those Obligations that are subject to the disclosure requirements of the Rule as determined by the appropriate officers of the city upon the advice of bond counsel to the city. The proceedings for those Obligations subject to the disclosure requirements of the Rule shall require compliance with this section.
- (f) ~~(d)~~ The right of the holders or beneficial owners of ~~obligations~~Obligations to enforce any of the requirements of this section shall be limited, to the extent permitted by law, to an action for or specific performance to compel compliance by mandamus of the obligations and duties of the city under this section. Any failure of the city to comply with any of the provisions of this section shall not be or be deemed to be a failure, a default or an event of default under any ~~obligation~~Obligation or trust agreement relating to an ~~obligation~~Obligation.
- (g) ~~(e)~~ Notwithstanding any other provision of this section, the city may amend or waive any provision of this section if the city has received an opinion of counsel knowledgeable in federal securities laws to the effect that such amendment or waiver would not, in and of itself, cause the undertakings contained in this section to violate the ~~rule~~Rule if such amendment or waiver had been effective on the date of adoption of this section but taking into account any subsequent change in or official interpretation of the ~~rule~~Rule.
- (h) ~~(f)~~ The obligations of the city under this section for a series of ~~obligations~~Obligations shall remain in effect only for such period that ~~obligations~~Obligations of that series are outstanding in accordance with their terms and the city remains an ~~obligated person~~Obligated Person with respect to those ~~obligations~~Obligations.
- (i) ~~(g)~~ The city's undertakings pursuant to this section shall inure solely to the benefit of the holders and beneficial owners of the ~~obligations~~Obligations including book entry interest owners in them, and shall not create any rights in any other person.
- (j) ~~(h)~~ Unless specifically and expressly provided in a trust agreement or supplemental trust agreement relating to a series of ~~obligations~~Obligations, no ~~trustee~~Trustee shall be responsible for, or responsible for determining, compliance by the city with any of the agreements or obligations in or pursuant to this chapter.

Section 2. That existing Section 323.07 of the Columbus City Codes, 1959, is hereby repealed and replaced as provided in Section 1.

Section 3. That this ordinance shall take effect and be in force from and after the earliest date allowed by law.