

Securities Exchange Act of 1934:

Continuing Disclosure Under Rule 15c2-12

Rule 15c2-12: Continuing Disclosure Requirements

Rule 15c2-12 Continuing Disclosure:

- Issuers and obligated people are subject to continuing disclosure requirements for municipal securities offerings of \$1 million or more that are sold on or after July 3, 1995
- Before the purchase or sale of securities, underwriters must have “reasonably determined” that the issuer and/or obligated person has committed, in a writing for the benefit of bondholders, to provide continuing disclosure of certain information
 - The disclosure agreement may be a trust indenture, bond resolution, notice of sale, or underwriting agreement

Rule 15c2-12 Continuing Disclosure:

- An “obligated person” is any person who has committed to support payment of all or part of the obligations on the securities offered
 - Continuing disclosure is only required for those for whom financial information and operating data is provided in the FOS

Rule 15c2-12 Continuing Disclosure:

- The written agreement must provide for the issuer's continuing disclosure of the following categories:
 - 1) **Annual financial information**, including operating data, for each obligated person for which such information is required (as stated in the FOS)
 - 2) **Audited financial statements** for each obligated person, if and when available, if not included in the annual financial information
 - 3) In a timely manner, notice of any obligated person's **failure to provide the required annual financial information**
 - 4) In a timely manner, the occurrence of one or more of 11 **enumerated events, if material**

Securities Exchange Act § 240.15c2-12(b)(5)

Rule 15c2-12 Continuing Disclosure:

- The issuer must agree, in a writing for the benefit of the security holders, to provide “annual financial information” to each NRMSIR and the appropriate state information depository, if any
- In addition, the failure of any obligated person to make annual financial information available within the specified time period must be disclosed in a timely manner

Rule 15c2-12 Continuing Disclosure:

- **Annual Financial Information:**

- The writing must identify each person for whom annual financial information will be provided, and for each person must specify:
 - 1) The type of **financial information and operating data** to be provided annually
 - The type of financial information to be provided annually must mirror the financial information included in the official statement
 - 2) The **accounting principles** used to prepare financial statements and whether those statements will be audited
 - 3) The **date** on which the annual financial information for the preceding year will be provided (typically 6 months to 1 year after the close of the issuer's fiscal year), and to whom it will be provided

Securities Exchange Act § 240.15c2-12(b)(5)(ii)

Rule 15c2-12 Continuing Disclosure:

- **Annual Financial Information:**
 - If not submitted as annual financial information, then if and when available, the issuer must furnish **audited financial statements** for each obligated person for whom financial information is required
 - The GFOA Guidelines recommend that the financial statements are subject to GAAP and to generally accepted auditing standards

Rule 15c2-12 Continuing Disclosure:

- Along with the annual financial information required by Rule 15c2-12, GFOA Guidelines recommend an annual report that describes:
 - The **issuer and its structure**, management, assets, and operations
 - The **issuer's debt structure** and any changes in indebtedness
 - The **issuer's finances**, including financial condition, results of operations, and financial practices of the issuer or enterprise
 - **Legal matters** affecting the issuer, including litigation and legislation
 - **Ratings**
 - The **interests** of certain people

Rule 15c2-12 Continuing Disclosure:

- In the continuing disclosure agreement, the issuer and/or obligated person must agree to disclose notice of 11 enumerated events, if material, in a timely manner to the appropriate state information depository and to either each NRMSIR or the Municipal Securities Rulemaking Board
- The failure to report the occurrence of one of these material events must be disclosed in future official statements for five years

Rule 15c2-12 Continuing Disclosure:

- Eleven events that must be disclosed, if material:
 - 1) Principal and interest payment delinquencies
 - 2) Non-payment related defaults
 - 3) Unscheduled draws on debt service reserve reflecting financial difficulties
 - 4) Unscheduled draws on credit enhancements reflecting financial difficulties
 - 5) Substitution of credit or liquidity provider, or their failure to perform

Securities Exchange Act § 240.15c2-12(b)(5)(i)

Rule 15c2-12 Continuing Disclosure:

- Eleven events that must be disclosed, if material:
 - 6) Adverse tax opinion or events affecting the security's tax-exempt status
 - 7) Modifications to rights of securities holders
 - 8) Optional or unscheduled bond calls
 - 9) Defeasances
 - 10) Release, substitution, or sale of property securing repayment of securities
 - 11) Rating change

Securities Exchange Act § 240.15c2-12(b)(5)(i)

Rule 15c2-12 Exclusions:

- **Exclusions:**
 - The POS and continuing disclosure requirements do not apply to primary offerings with an aggregate of less than \$1 million
 - The POS and continuing disclosure requirements do not apply if the securities are offered in denominations of \$100,000 or more and:
 - 1) Are sold to no more than 35 people that the underwriter believes (a) have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of the prospective investment, and (b) are not purchasing for more than one account or to distribute the securities; or
 - 2) Have a maturity of 9 months or less; or
 - 3) May be tendered to the issuer for redemption or purchase at least every 9 months until maturity, earlier redemption, or purchase by an issuer

Securities Exchange Act § 240.15c2-12(d)(1)

Rule 15c2-12 Exclusions:

- **Exclusions:**
 - Continuing disclosure requirements do not apply if, at the date of closing:
 - No obligated person will be an obligated person with respect to more than \$10 million of outstanding securities; and
 - An issuer or obligated person has committed to disclose:
 - 1) Limited annual financial information or operating data, including that which is customarily prepared and publicly available, upon request or at least annually, to the appropriate state depository, if any; and
 - 2) In a timely manner, notice of the 11 material events to each NRMSIR (or Municipal Securities Rulemaking Board) and to the appropriate state information depository; and
 - The OS identifies the name, address, and telephone number from which this information can be obtained

Rule 15c2-12 Exclusions:

- **Exclusions:**
 - The continuing disclosure agreement only requires the disclosure of material events, and not annual financial information, if municipal securities have a stated maturity of 18 months or less

Securities Exchange Act § 240.15c2-12(d)(3)

Rule 15c2-12 SEC Interpretations

- The SEC has found that many governments violated the anti-fraud provisions (Section 10(b) and Rule 10b-5) of the securities laws with respect to their **disclosure of financial information**

SEC Release No. 34-36761 (Jan. 24, 1996)

Rule 15c2-12 SEC Interpretations

- In the Matter of County of Orange, California:
 - Facts in the official statement were false or misleading due to the omission of material facts, including: (1) Orange County's investment strategy, (2) Orange County's financial condition, (3) the tax-exempt status of the offering, (4) an undisclosed cap on the interest rate payable to investors, and (5) the unauthorized use of an audit report
 - The SEC found that these were material misstatements that violated anti-fraud Section 10(b) and Rule 10b-5
 - The GFOA now recommends that this financial information be disclosed in the official statement

SEC Release No. 34-36761 (Jan. 24, 1996)

Rule 15c2-12 SEC Interpretations

- In the Matter of Maricopa County:
 - Maricopa County disclosed, in connection with a securities offering: (1) financial statements for 1992, without disclosing the 1993 material decline of the County's cash flow, (2) that future bond proceeds would be used to finance County projects, rather than to fund the cash flow deficit as it intended, and (3) that there had been no material changes in financial condition since 1992
 - The SEC found that Maricopa County had violated anti-fraud Rule 10b-5 by materially misrepresenting its financial status
 - These facts were material because they would be important for an investor to consider in determining whether to purchase the bonds

SEC Release No. 33-7354, 34-37779 (Oct. 3, 1996)

Rule 15c2-12 SEC Interpretations

- In the Matter of City of Syracuse, New York:
 - In connection with its securities offering, the City of Syracuse: (1) materially misrepresented its financial condition and results of operations, and (2) described financial information inaccurately, in a false and materially misleading way
 - The SEC determined that the City had violated the anti-fraud provisions by making material misrepresentations and misleading investors regarding its financial condition

SEC Release No. 34-39149 (Sept. 30, 1997)

Rule 15c2-12 SEC Interpretations

- In the Matter of City of Miami, Florida:
 - In connection with its securities offering, the City of Miami failed to disclose: (1) its cash flow shortage, and (2) that it had lessened the shortage by spending the proceeds of bonds issued for other purposes for operating costs
 - The SEC found that the City violated the anti-fraud provisions with respect to its disclosure of its financial status

SEC Release No. 34-47552 (Mar. 21, 2003)

Rule 15c2-12 SEC Interpretations

- In the Matter of City of San Diego, California:
 - In connection with its securities offering, the City of San Diego failed to disclose: (1) the gravity of its pension and retiree health liabilities and (2) that those liabilities had serious, negative financial consequences for the City
 - The SEC determined that the City had violated the anti-fraud provisions by materially misrepresenting its financial condition

SEC Release No. 34-54745 (Nov. 14, 2006)