

# OMAC MuniNews

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## “SEC Amends Rule 15c2-12 Regarding Continuing Disclosure Provisions”

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On May 26, 2010, the Securities and Exchange Commission (the “Commission” or “SEC”) adopted amendments to Rule 15c2-12 (“Rule 15c2-12” or the “Rule”) under the Securities Exchange Act of 1934 relating to disclosure associated with primary offerings of municipal securities. These amendments, like the Rule itself, technically regulate only underwriters, but will substantially affect issuers. These amendments were published in SEC Release No 34-62184A, Amendment to Municipal Securities Disclosure (available at [www.sec.gov/rules/final/2010/34-62184a.pdf](http://www.sec.gov/rules/final/2010/34-62184a.pdf)) (the “Release”). With minor exceptions, the Release adopts the amendments as originally proposed, despite substantial criticism of the proposed amendments in comment letters.

**The amendments apply to primary offerings of municipal securities which take place on or after December 1, 2010 and the continuing disclosure agreements pertaining to such offerings.**

The adopting release includes Commission statements that should be taken into account in attempting to comply with current law.

### Prospective Rule Amendments

#### Blanket Exemption of VRDOs from Rule Is Deleted.

The blanket exemption from the Rule for variable rate demand obligations (“VRDOs”) is deleted by the amendments, but only for purposes of the continuing disclosure provisions. VRDO offerings remain exempt from the rules requiring underwriters to obtain, contract to be supplied, and provide offering documents in connection with the primary offering. When the amendment becomes effective, the continuing disclosure provisions of the Rule will apply to primary offerings of VRDOs, both new offerings of VRDOs and remarketings of VRDOs that are primary offerings, including remarketings that are accompanied by a change in denominations from \$100,000 or more to denominations of less than \$100,000, or if such remarketing is accompanied by a change in the period for tender from nine months or less to a period of more than nine months.

Although the Rule includes examples of remarketings that are primary offerings, it does not expressly state that other remarketings are not primary offerings. Despite a request from the National Association of Bond Lawyers (“NABL”) in its comments on the proposed amendments, the amendments fail to add any clarity to this issue. Instead, the amendments exempt from the new continuing disclosure requirements primary offerings of VRDOs that are outstanding on November 30, 2010, so long as they remain continuously in \$100,000 or larger denominations and subject to tender at the owner’s option for purchase or redemption at face value at least once every nine months. Underwriters and their counsel are therefore left to resolve whether routine remarketings of VRDOs initially offered on or after December 1, 2010, could be treated as primary offerings. If they are, the amendments could be expected to substantially affect the practices of remarketing agents in remarketing VRDOs initially offered on or after December 1.

Although the amended Rule does not itself impose any minimum primary offering disclosure requirements for VRDOs, the adopting release implies that offering documents for VRDOs should include the same disclosure of prior material breaches of an issuer’s or obligated person’s prior continuing disclosure undertakings as in offerings of securities not exempt from the other primary offering requirements.

#### Timely Notice of Events Equated with Not in Excess of 10 Business Days.

The Rule currently requires that issuers agree in continuing disclosure agreements to give notice of listed events “in a timely manner.” The amendments require that they undertake to provide event notices “in a timely manner not in excess of ten business days after the occurrence of the event” (emphasis added).

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### Materiality Limitation Deleted for Certain Events.

The Rule presently provides that issuers are to agree in continuing disclosure agreements to make a filing with the Municipal Securities Rulemaking Board (“MSRB”) if any of the following events occur, but only “if [the event is] material.” The amendments delete this limitation of “if material,” thereby requiring issuers to agree to make a filing with the MSRB in all instances where any of the following events occurs:

- Principal and interest payment delinquencies;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions;
- Defeasances; and
- Ratings changes.

Issuers may wish to establish monitoring systems to assist them in identifying these events (e.g., bond insurer-based rating changes) in time to make timely filings. (See Interpretive Statements – Effect of Prior Non-Compliance, below.)

### Materiality Limitation Retained for Certain Events.

The amendments do not delete the “if material” limitation presently included in the Rule for the following events for which issuers are to agree in continuing disclosure agreements to make a filing with the MSRB:

- Non-payment related defaults, if material;
- Modifications to rights of security holders, if material;
- Bond calls, if material; and
- The release, substitution, or sale of property securing repayment of the securities, if material.

### Additional Events Which Require Disclosure.

The amendments add the following to the Rule’s list of events for which issuers are to agree in continuing disclosure agreements to make a filing with the MSRB:

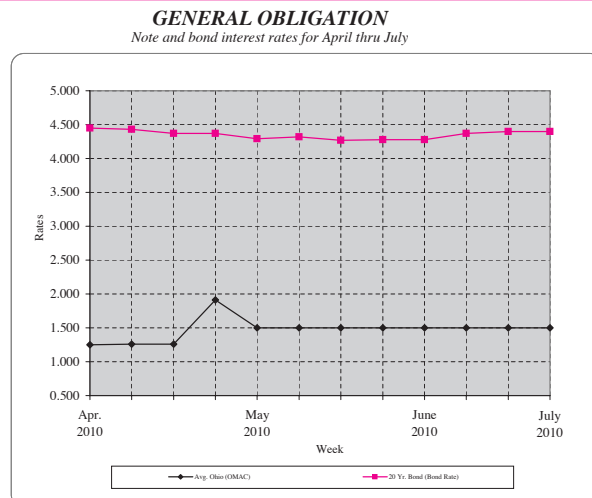
- The issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- Tender offers;
- Bankruptcy, insolvency, receivership or similar events of the obligated person;
- The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, 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, if material; and
- Appointment of a successor or additional trustee or the change of name of a trustee, if material.

## MARKET UPDATE

### GENERAL OBLIGATION

#### Note and Bond Interest Rates for April 2010 through July 2010

The following graph compares Ohio short-term note rates with the Bond Buyer's 20 year bond index. The short-term rates represent actual rates reported to OMAC by Ohio purchasers and reported on OMAC's weekly calendar.



## Interpretive Statements

### VRDO Primary Offering Disclosure.

NABL's comment letter had asked the Commission to clarify whether the amendments effectively would require that official statements for VRDO offerings include financial and operating data about conduit borrowers, even if payment of the VRDOs is provided by a direct-pay letter of credit. The Commission responded ambiguously, noting that updated operating and financial information must be provided "only to the extent provided in the final official statement," but also restating that "information regarding conduit borrowers is material to investors in credit enhanced offerings and therefore should be included in official statements."

### Effect of Prior Non-Compliance.

In the proposing release, the Commission stated that underwriters must evaluate the likelihood that the issuer or an obligated person will comply with its continuing disclosure undertakings. Despite criticism in comment letters, the Commission reiterated this statement in adopting the amendments. In doing so, it clarified that underwriters may rely on specific issuer certifications as to whether events have occurred, but not as to whether the events are material or notice filings have been made. If an issuer has failed to comply with its continuing disclosure undertakings on multiple occasions in the five years before an offering, the Commission stated that it would be "very difficult" for an underwriter to underwrite an offering by the issuer, unless the issuer had established (and regularly reviews and takes prompt action to remedy deficiencies in) policies and procedures designed to ensure compliance with its continuing disclosure undertakings (e.g., to ascertain and provide notice of rating changes).

## 2010 August Election Results

### Bond Issues

Of the nine (9) school district bond issues totaling an adjusted volume of \$227,221,906 on the ballot, eight (8) were considered large - \$10,000,000 or greater, zero (0) were considered intermediate - \$5,000,000 to \$9,999,999 and one (1) was considered small - less than \$5,000,000. Voters approved three (3) or \$46,750,161 or 20.6% while rejecting six (6) or \$180,471,745 or 79.4%.

### School District Tax Levies

Voters approved 34.8% of Ohio's school district levies in the August 3, 2010 election. Of the twenty-three (23) school district tax levies on the ballot, eight (8) were approved while fifteen (15) were defeated.

The first table shows the total new millage levies submitted (number), and also the results thereof.

Type	---Submitted---		-----Approved-----				-----Defeated-----			
	No.	Millage	No	Pct.	Millage	Pct.	No.	Pct.	Millage	Pct.
<b>Current Expense*</b>	<b>5</b>	<b>29.64</b>	<b>3</b>	<b>60.0</b>	<b>21.24</b>	<b>71.7</b>	<b>2</b>	<b>40.0</b>	<b>8.40</b>	<b>28.3</b>
<b>Emergency</b>	<b>10</b>	<b>61.22</b>	<b>1</b>	<b>10.0</b>	<b>6.90</b>	<b>11.3</b>	<b>9</b>	<b>90.0</b>	<b>54.32</b>	<b>88.7</b>
<b>Permanent Improvement</b>	<b>6</b>	<b>5.50</b>	<b>3</b>	<b>50.0</b>	<b>2.0</b>	<b>36.4</b>	<b>3</b>	<b>50.0</b>	<b>3.50</b>	<b>63.6</b>
<b>TOTAL</b>	<b>21</b>	<b>96.36</b>	<b>7</b>	<b>33.3</b>	<b>30.14</b>	<b>31.3</b>	<b>14</b>	<b>66.7</b>	<b>66.22</b>	<b>68.7</b>

\*Includes Current Operating

The second table shows the total renewal millage levies submitted (number), and also the results thereof.

Type	---Submitted---		-----Approved-----				-----Defeated-----			
	No.	Millage	No	Pct.	Millage	Pct.	No.	Pct.	Millage	Pct.
<b>Emergency</b>	<b>2</b>	<b>7.27</b>	<b>1</b>	<b>50.0</b>	<b>2.90</b>	<b>39.9</b>	<b>1</b>	<b>50.0</b>	<b>4.37</b>	<b>60.1</b>
<b>TOTAL</b>	<b>2</b>	<b>7.27</b>	<b>1</b>	<b>50.0</b>	<b>2.90</b>	<b>39.9</b>	<b>1</b>	<b>50.0</b>	<b>4.37</b>	<b>60.1</b>



**Ohio Municipal Advisory Council**  
 9321 Ravenna Rd, Unit K  
 Twinsburg, OH 44087-2445

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 CLEVELAND OHIO  
 PERMIT 4584

## CALENDAR

### *Calendar of Issuer Conferences & Outings for 2010*

NAME	EVENT	DATE	LOCATION
CAAO	Winter Conference	Nov. 30 – Dec 2	The Columbus – A Renaissance Hotel - Columbus, Ohio
CCCAO	Winter Conference Annual Golf Outing	Dec. 5 - 8	Hyatt Regency – Columbus, Ohio No Golf Outing is scheduled for 2010
CTAO	Fall Meeting	November 16 - 18	Columbus Marriott NW at Tuttle Crossing – Dublin, Ohio
GFOA	Annual Fall Conference	September 15 -17	Hilton Columbus at Easton – New Albany, Ohio
MFOA (OML)	Annual Conference North-Central Ohio Golf Outing	Sept. 29 - Oct. 1 September 8	The Columbus – A Renaissance Hotel - Columbus, Ohio Woussickett Golf Course – Sandusky, Ohio
OAPT	Annual Conference	October 13 – 15	The Columbus-A Renaissance Hotel - Columbus, Ohio
OSBA	Capital Conference	November 7 – 10	Columbus Convention Center – Columbus, Ohio
SIFMA (BMA)	Annual Meeting Municipal Bond Summit	November 8 September 27	Marriott Marquis – New York, New York Marriott Marquis – New York, New York

(T) – means date is tentative.

CAAO – County Auditor’s Association of Ohio – (614) 228-2226  
 CCAO – County Commissioners Association of Ohio – (614) 221-5627  
 CTAO – County Treasures Association of Ohio – (614) 233-6818  
 GFOA – Government Finance Officers Association – (614) 221-1900  
 MFOA – Municipal Finance Officers Association of Ohio – (614) 221-4349  
 NACO – National Association of Counties – (614) 221-5627

OAPT – Ohio Association of Public Treasurers – (216) 443-7814  
 OASBO – Ohio Association of School Business Officials – (614) 431-9116  
 OMCA – Ohio Municipal Clerks Association – (614) 221-4349  
 OPFOTP – Ohio Public Finance Officers Training Program – (330) 972-7618  
 OSBA – Ohio School Boards Association – (614) 540-4000  
 SIFMA (formerly BMA) – Securities Industry & Financial Market Association – (212) 608- 1500

If you would like your event highlighted, contact Chris Scott at 1-800-969-6622, or by email at [Chris@ohiomac.com](mailto:Chris@ohiomac.com)