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May 12, 2017

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington D.C. 20549-1090

**Re: Proposed Amendments to Exchange Act Rule 15c2-12 (File No. S7-01-17) (RIN 3235-AL97)**

Dear Mr. Fields:

The City and County of Denver (the “**City**”) appreciates the opportunity to submit this letter in response to Release No. 34-80130 (the “**Release**”) containing proposed amendments (the “**Proposed Amendments**”) to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the “**Commission**”) under the Securities Exchange Act of 1934 (the “**Rule**”). In general, the City supports municipal market transparency and providing important information about the City to investors in a timely manner. The City is commenting on the Commission's Release because of its concerns with the burden created by the breadth of the events that would trigger the notice requirement under the Proposed Amendments, and the subjective nature of the “materiality” of such events which would trigger the notice requirements under the Proposed Amendments. The City welcomes the opportunity to work with the Commission to address the concerns below.

### The City

Denver is a thriving city located on the front range of the Rocky Mountains in the north-central part of the State of Colorado. The City is the capital of the state and is the service, retail, financial, transportation and distribution center of the Rocky Mountain region. Over 3 million people, representing more than half of the population of Colorado, currently reside in the Denver metropolitan area, of which approximately 680,000 reside in the City limits. The City employs more than 10,500 employees across 11 departments, 15 offices and agencies, and 11 independent agencies. The City's sound financial management and policies serve as the basis for its solid financial condition, as evidenced by its strong credit ratings and trend of balanced budgets. Currently, the City's outstanding securities total around \$5.5 billion, of which nearly \$4 billion are for the City's largest Enterprise, Denver International Airport. The City currently has approximately 50 issues of general obligation bonds, revenue bonds and certificates of participation outstanding.

## **Burden of Compliance**

The Proposed Amendments add the following two new events to the Rule's current list of events:

- (1) Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- (2) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

A "financial obligation" is defined by the Commission to include a: (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding.

The Commission estimates that it will take the City an average of two hours per filing to actively monitor the need for an event notice, prepare the event notice, and submit the event notice to the Electronic Municipal Market Access ("EMMA") system. The City respectfully disagrees, however, and estimates that the time required per filing will be much greater than the two hours suggested by the Commission.

The City is currently a party to thousands of contracts, and routinely enters into approximately 2,400 new contracts every year. Additionally, the City is involved in hundreds of judicial, administrative and arbitration proceedings every year, including claims related to employment matters, breach of contract matters, and personal injury claims related to governmental operations including safety, facilities, and open spaces, many of which may constitute "financial obligations" as contemplated by the Proposed Amendments. The City Attorney's Office consists of approximately 200 lawyers and staff in order to accomplish representation of the City, but many other City employees may be involved in administrative hearings without the presence of an assistant City attorney. In the vast majority of cases, staff involved in these contracts, regulatory, judicial and administrative proceedings are not aware of the Rule, making the likelihood of an instance of inadvertent non-compliance much greater. The City anticipates a significant amount of time, expense and resources would be required to actively monitor its financial obligations, if this term remains so broadly defined. A significant expense and effort would also be required to hire and train relevant City employees across dozens of departments and agencies and to create a system of coordination and review that would enable the City to comply with the Proposed Amendments in a timely fashion.

Furthermore, to make materiality determinations, the City would likely utilize outside counsel and incur additional costs for these services. Hiring such counsel would still not obviate the need for City staff members to monitor all of the City's contracts and litigation to comply with the Proposed Amendments.



Additionally, due to the lack of a standard EMMA disclosure form provided by the Commission or the Municipal Securities Rulemaking Board ("MSRB"), the City and other municipal market issuers are faced with determining the proper format and scope of information that event notices posted on EMMA must contain. This would likely entail a substantial amount of time for the City to review, extract, summarize, and format key contract and litigation information for an EMMA event notice covering the information required under the Proposed Amendments. The Proposed Amendments require the foregoing analysis, drafting, and posting to be completed within 10 days of an event. Considering the breadth of events that would trigger the filing of notices under the Proposed Amendments, even with appropriate training of the City's staff and coordination among many of the City's departments that enter into contracts or are involved in the judicial or administrative proceedings, the City believes that it would be very difficult to complete the foregoing steps within ten business days from the occurrence of the event. This will likely create a new cycle of compliance issues requiring the City to file notices on EMMA and provide non-compliance disclosures in offering documents.

The City also believes the Commission has not fully considered the additional costs that will result from the Proposed Amendments in the course of securities offerings. The Commission's recent Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative") encouraged municipal securities issuers, obligated persons, and underwriters to self-report possible securities law violations related to inaccurate representations in offering documents concerning an issuer's prior compliance with its continuing disclosure obligations. Only *material* non-compliance with a prior continuing disclosure agreement is required to be disclosed under the Rule. However, because both the Commission's regulatory and enforcement divisions have declined to provide clear guidance on materiality, the result of the MCDC Initiative has been a lengthy due diligence process surrounding past continuing disclosure compliance with an eye towards disclosing every possible instance of non-compliance in offering documents, whether such non-compliance is material or not. The City would expect an even lengthier and more in-depth due diligence process to result from the Proposed Amendments. As the cease and desist orders issued by the Commission pursuant to the MCDC Initiative prohibit future violations of federal securities laws, the City's underwriters who settled with the Commission will be especially conservative in their materiality analysis to avoid automatic violations of the cease and desist orders.

There is likewise another "material" standard under the Proposed Amendments related to financial obligations and agreements with no clear guidance from the Commission. Without clear guidance from the Commission or narrowing the scope of financial obligations that are required to be reported, the City would be forced to consider whether a \$1 million judgment against the City in a wrongful death case brought by an inmate or a \$7 million equipment lease for Public Works fleet would be material and, thus, require filing an event notice under the Proposed Amendments. The City would also be forced to consider whether a "default" which has not become an "event of default" under a financing obligation (because of a cure period or a requirement for a notice from another party) should be disclosed even before a final "event of default" has been declared under the terms of such financial obligation. Considering the very conservative position taken by the Commission under the MCDC Initiative on materiality, the City may be forced to treat far more routine financial obligations and agreements as "material" for purposes of the Proposed Amendments than legally required under federal securities law just to avoid a potential violation



of the Rule and resulting consequences. Further, such ordinary operational matters are disclosed in annual financial statements posted by the City on EMMA where investors may review such matters in a meaningful consolidated way instead of being repeatedly inundated with notices about isolated standard governmental operations.

Even if the City is able to put in place the resources necessary to undertake appropriate contract and judicial and administrative proceedings reviews and to make materiality determinations, there is always the potential of an underwriter on a City financing disagreeing with the City's materiality determinations, which could create a new continuing disclosure compliance failure that will likely be disclosed in offering documents, whether material or not.

Once the City determines that a particular contract or judgment should be disclosed, it would then be required to determine whether to post a summary of the terms of the financial obligation or the entire document or series of documents creating such obligation. The combination of the lack of materiality guidance and the indirect regulation of the City through underwriters will very likely result in the posting on EMMA of entire documents creating financial obligations, with no analysis or summarization. This result is not optimal, or even helpful, to municipal market investors.

The National Association of Bond Lawyers ("NABL") submitted comments to the Commission on April 11, 2017 that estimates the actual burden on municipal market participants, in terms of hours spent to comply, under the Proposed Amendments to be more than 100 times greater than the Commission estimates. The City believes the NABL estimates to be more in line with the actual burdens imposed on the City under the Proposed Amendments.

### **Intent and Cooperation**

Of significant importance to the City is the benefit to investors in its securities under the Proposed Amendments. The Commission and the City are both interested in providing investors with the information they need to make informed choices. However, as outlined above, the Proposed Amendments would result in investors being inundated with immaterial information. Relevant investment considerations will be lost in a sea of information. The Commission should narrow the scope of financial obligations that are required to be disclosed and provide clear guidance on the materiality standard that issuers and obligated persons could rely upon in making their determination. The City appreciates the Commission's willingness to entertain comments from municipal market participants and we welcome the opportunity to maintain an open dialogue to achieve meaningful disclosure changes for regulators and investors.

Sincerely,



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Kristin M. Bronson  
City Attorney