

## **Delegation of Council's Debenture Bylaw Enacting Authority**

<b>Date:</b>	May 19, 2009
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager and Chief Financial Officer
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2009\Internal Services\Cf\Ec09013Cf – et (AFS#9706)

### **SUMMARY**

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This report recommends the delegation of Council's authority to enact debenture bylaws. The technical amendments contained herein would improve the efficiency of issuing debt to support the City's capital program.

### **RECOMMENDATIONS**

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**The Deputy City Manager and Chief Financial Officer recommends that:**

1. Council create a Debenture Committee, consisting of the Mayor, Budget Chief, City Manager and Deputy City Manager and Chief Financial Officer to serve for the term of Council, and delegate to the Debenture Committee:
  - (a) The authority to issue debentures and revenue bonds, and enter into bank loans up to the annual limit established by Council in the City's annual borrowing bylaw; and
  - (b) the authority to adopt the requisite borrowing bylaws to approve debenture issue authorized by the Debenture Committee, in accordance with the City's Financing of Capital Works Policy and Goals (The "Financing Policy") and with all legislative requirements
2. Council amend the "City of Toronto Financing of Capital Works Policy and Goals" to reflect Recommendation 1 of this report and adopt the amended Policy as set out in Appendix A.

3. Bylaw No. 1326-2008, the City's 2009 borrowing limit by-law, be amended to reflect Recommendation 1 of this report.
4. Authority be granted for the introduction of the necessary bills in Council to give effect to the recommendations contained herein.

## **FINANCIAL IMPACT**

There are no financial impacts contained in the recommendations of this report. However, the recommended changes would provide additional flexibility to the City's access to capital markets to support its borrowing program. This improved timing can provide for more efficient debt issuance which could ultimately lower the cost of debt in the operating budget.

## **DECISION HISTORY**

City Council approved the report entitled "Capital Financing Works Policy and Goals" at its meeting on March 7, 2007 which satisfied the requirements of the City of Toronto Act for the issuance of debt to support the capital budget.

<http://www.toronto.ca/legdocs/mmis/2007/ex/reports/2007-02-27-ex05-cr.pdf>

The City issued a \$300 million debenture with an interest rate of 4.95% and a term-to-maturity of 10 years on June 16th, 2008 which was approved by Council at its meeting held on June 23<sup>rd</sup> and 24<sup>th</sup>, 2008. While the timing of the issue was deemed to be the best available to the City, it was very challenging for the debt underwriting syndicate and City staff to plan for the market timing to coincide with the Council meeting schedule since, according to the City of Toronto Act, 2006, the borrowing bylaw must be adopted no later than the second meeting of Council after the debenture is issued.

## **ISSUE BACKGROUND**

By-law No. 1326-2008 was enacted by Council on December 10, 2008 and authorized the Mayor and the Deputy City Manager and Chief Financial Officer to enter into agreements for the issuance and sale of debentures during the year 2009 to provide an aggregate amount not exceeding \$700,000,000 for City purposes.

While this bylaw provides delegated authority to issue debentures in the capital market, it does not provide the flexibility needed in current financial markets for the City to issue debt at the most advantageous terms. Currently, however, in accordance with the Financing Policy, after debentures are issued in capital market, the related borrowing bylaw must be adopted by Council no later than the second meeting after the debentures have been sold to investors before the transaction can be settled and the City receives its funds. As a result, instead of being influenced only by capital market timing considerations, debt issuance is unduly affected by the schedule of City Council meetings since a debenture has to be issued approximately 7 days before the Council meeting date or the settlement date (when the City will receive its funds and the investors receive their bonds) will be too lengthy.

This is no longer an acceptable practice in the financial markets when settlements usually occur a week or more after the debt sale since the security regulators have introduced an average settlement period of 3 days from the date of the transaction. Although the City is not directly subject to this requirement, under the current Financing Policy, the City is unable to shorten its settlement period or issue debentures unless the transaction is timely to occur within a week of a Council meeting.

***The City's Borrowing and Delegation Authority:***

The City's authority to borrow for long-term capital purposes is provided by section 245 and sections 7 and 8 of the City of Toronto Act, 2006 (COTA), and must be exercised in accordance with the conditions and limitations prescribed by Ontario Regulation 610/06 and the City's Financing Policy. The City annually enacts a by-law which sets an annual limit on the amount of long-term capital borrowing to which the Mayor and the Deputy City Manager and Chief Financial Officer may commit in the year.

Section 132 of COTA provides that the City must be exercised by by-law unless the City is specifically authorized to do otherwise. Accordingly, the City's power to borrow must be exercised by by-law.

Under subsection 20 (1) of COTA, the City is expressly authorized to delegate its powers and duties, including legislative or quasi-judicial powers, subject to the restrictions set out in Part II of the COTA under Sections 21 and 22.

Although there are certain restrictions on the City's ability to delegate set out in section 22 of COTA, the power to issue debentures is a power that, according to Section 22 of the COTA, can be delegated by the City.

Subsection 20 (2) of the COTA sets out a number of rules that apply to a by-law, delegating any of the City's powers or duties, including the rule that any such delegation may be subject to such conditions and limits as Council deems appropriate. Also, the COTA stipulates that the delegate is subject to the same limits and conditions that would apply to Council in exercising such powers.

Section 20 (3)<sup>1</sup> provides that the conditions and limits that Council may impose on a delegate includes a requirement that the delegate act by by-law.

***To what entity may the City delegate?***

Subsections 21 (1) of the COTA rules that the City can only delegate its legislative and quasi-judicial powers to:

- (a) One or more members of City Council or a Council Committee
- (b) A body having at least two members, of whom at least 50% are
  - (i) members of City Council or a Council committee
  - (ii) individuals appointed by City Council
  - (iii) a combination of individuals in (i) and (ii)

- (c) An individual who is an officer, employee or agent of the City. Pursuant to subsection 21(4), any such delegation to an individual must be of a minor nature.

***What is involved when the City issues debentures?***

Subsection 212 (1) 8 of the COTA deals with adoption and maintenance of policies relating to various matters including financing of capital works (including limits on the annual costs associated with financing). Council adopted such a policy when it adopted the Capital Works Financing Policy at its meeting held on March 7, 2007. However, the Policy requires amendment to authorize Council “or its delegate” to adopt the required by-law.

**COMMENTS**

There are many factors to consider when the decision is made for the City to issue debt in the capital markets. The dollar amount, term-to-maturity, interest rate and interest rate spread over comparable government issuers and capital market conditions and timing must be considered by staff and the City’s issuance syndicate before a decision to issue debt is formulated. The City competes with other issuers in the capital markets for funds that represent the available lowest cost that can be achieved, given current financial and economic conditions.

In the past, market liquidity and investor demand for municipal bonds was much stronger than it is in the current environment which allowed the City to issue debt at various times during the year which usually coincided with Council meeting dates. However, the availability of market liquidity has diminished due to the global credit slowdown and it is very difficult to issue debt according to Council meeting dates.

The current arrangement of timing debt issuance to occur a few days before a scheduled Council meeting does not allow the decision to be market-driven which can negatively affect a potential debt issuance. If market conditions are not favourable during the period of several days before a Council meeting or there have been several competing debt issuers in market and the City is advised by its debt managers to postpone the debenture issue, then the City cannot issue for several weeks until next month when a Council meeting is scheduled. This is exacerbated during Council’s summer recess. As an example, in 2009, there is a Council meeting scheduled for July 6<sup>th</sup> and 7<sup>th</sup> but there is not another meeting scheduled until September 30<sup>th</sup> and October 1<sup>st</sup>. If capital market conditions become very favourable during that period with lower interest rates and investor demand, under the current process the City would not be able to issue debt for a period of 82 days which is not advisable or acceptable in current capital markets.

To successfully issue debt in today’s capital markets requires a great deal of flexibility to time the issuance to coincide with investor demand and market liquidity to ensure that the City obtains the lowest available cost of funds through a successful financing.

Accordingly, this report makes technical amendments to current policies and recommends the establishment of a Debenture Committee to consist of the Mayor, Budget Chief, City Manager and Deputy City Manager and Chief Financial Officer to serve for the term of Council, and delegate to the Debenture Committee. It further recommends that the authority to issue debentures and enact all requisite by-laws to give effect to such debenture issuances, in accordance with the annual borrowing limit established by Council, the Financing Policy and all applicable legislative requirements, be delegated to the Debenture Committee.

The Deputy City Manager and Chief Financial Officer would report to Council, through the Executive Committee, on any debentures issued within two months of issuance.

## **CONTACT**

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## **SIGNATURE**

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