

SEC Proposes Additional Event Disclosures for Municipal Bond Issuers

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On March 1, 2017, the Securities Exchange Commission voted in open meeting to propose [**amendments**](#) to Rule 15c2-12 under the Securities Exchange Act of 1934 adding two event notices to the current fourteen required in continuing disclosure agreements of issuers and obligated persons issuing municipal bonds. ¹ The proposed events are:

- (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.

The proposed amendments also add a definition of “financial obligation” to the Rule, as “a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.”

In the meeting, Acting Chairman Michael S. Piwowar said the proposed changes aim to reduce the “information asymmetry among market participants and to increase transparency to the municipal securities market by improving investor and market participant access to timely information relating to a municipal issuer’s financial obligations.” Commissioner Kara M. Stein said that this proposal represents a step toward increased transparency and will create efficiency for issuers and investors alike. Commission staff noted that the incurrence of material obligations could substantially impact the underlying indebtedness of the issuer and thus the underlying riskiness of the investment. Accordingly, investors should be informed of these financial obligations. Commission staff also stated that under the current disclosure requirements of Rule 15c2-12, investors have limited or substantially delayed access to information about the non-public financing agreements of issuers and that this lack of information disadvantages investors.

Event reporting under the first proposed event hinges upon materiality and in the second event upon reflection of financial difficulties. Issuers and obligated persons would need to apply these

terms in determining whether an obligation is material and which of its terms are material, in complying with continuing disclosure agreements entered into after the effective date of adoption of the amendments. They would likewise need to assess whether events “reflect financial difficulties” under financial obligations and trigger event reporting. Absence of transparency, a motivating factor behind the proposed amendments, may pose challenges to underwriters when forming a reasonable basis for belief in the accuracy of statements in issuer or obligated person offering documents as to compliance with disclosure undertakings.

The Commission seeks comments on its proposals, providing municipal market participants and other interested parties with an opportunity to express views on these matters and others. The comment period will run 60 days following publication in the Federal Register.

Note: The text of proposed amendment paragraph (15) in the proposing release adds “Inurrence of a financial obligation of the obligated person ...,” omitting the phrase “issuer or.” The text of the proposing release alternately refers to “the issuer or obligated person” or “obligated person.”

For questions about the proposed amendments or providing comment, please contact Paul Maco, Britt Steckman, or members of the Public Finance Section at Bracewell LLP.

¹ Rule 15c2-12 under the Securities Exchange Act of 1934 requires brokers, dealers, and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities subject to the Rule, to reasonably determine, among other things, that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board (MSRB) timely notice of certain events pursuant to a Continuing Disclosure Agreement.