



Newsletters

SEC Proposes to Add New Reporting Events to the Municipal Disclosure Rule

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On March 15, 2017, the U.S. Securities and Exchange Commission (SEC) published for public comment proposed amendments to the Municipal Disclosure Rule, Rule 15c2-12 under the Securities Exchange Act of 1934. The proposed amendments add two new events to the list that a broker, dealer or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer has undertaken to provide to the Municipal Securities Rulemaking Board (MSRB).

The SEC issued Rule 15c2-12 to address fraud and manipulation in the municipal securities market by prohibiting the underwriting of municipal securities and recommendation of them by brokers, dealers and municipal securities dealers where adequate information was not available. The Rule requires brokers, dealers and municipal securities dealers that act as underwriters in primary offerings of municipal securities to reasonably determine, among other things, that the issuer or obligated person has agreed to provide to the MSRB timely notice of certain events, including: principal and interest payment delinquencies; nonpayment related defaults; 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 or events affecting the tax-exempt status of the security; modifications of security holders; bond calls; defeasances; release, substitution or sale of property securing repayment of the securities; and rating changes.

The SEC has used Rule 15c2-12 to effectively impose a regulatory framework on issuers. The SEC and MSRB may not require municipal issuers to make filings with the SEC or the MSRB before the sale of municipal securities, and the MSRB may not require issuers to deliver information to the MSRB or bond purchasers. In addition, municipal securities are generally exempt from the registration requirements under the Securities Act of 1933. By requiring underwriters of most public offerings of municipal securities to obtain certain contractual agreements from municipal issuers before the sale of bonds, the SEC has effectively required issuers to agree to specific primary and continuing disclosure requirements as a condition to use an underwriter to conduct a public offering of their securities.

The proposed amendments to Rule 15c2-12 add the following two new events to the list of notices that a broker, dealer or municipal securities dealer acting as an underwriter in a primary offering of municipal securities subject to the Rule

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must reasonably determine that an issuer or obligated person has undertaken, in a written agreement for the benefit of holders of municipal securities, to provide to the MSRB within 10 business days of the event's occurrence:

- 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
- 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 rule amendments also add this definition for "financial obligation": a debt obligation, lease, guarantee, derivative instrument or monetary obligation resulting from a judicial, administrative or arbitration proceeding. The term does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

In announcing the proposed rule amendments, SEC Acting Chair Michael S. Piwowar, stated, "Today the SEC took steps to empower investors by improving their access to current information about the financial obligations incurred by municipal issuers and conduit borrowers." According to the SEC, the proposed amendments would provide timely access to important information regarding financial obligations incurred by issuers and obligated persons that could impact the entities' liquidity and overall creditworthiness.

The proposed rule amendments are open for public comment for 60 days following their publication in the Federal Register on March 15, 2017. Any comments to the Rule must be received by the SEC by May 15, 2017.

For further information, please contact [Ken Yeadon](#) — a former SEC Enforcement Attorney and Assistant U.S. Attorney — or your regular Hinshaw lawyer.

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