



October 15, 2018

SEC Amends Rule 15c2-12 Adding Two New Disclosure Events

On August 20, 2018, the Securities and Exchange Commission (the “SEC”) adopted amendments (the “Amendments”) to the SEC’s Rule 15c2-12, as amended (the “Rule”) that add two new events which require the filing of a notice with the Municipal Securities Rulemaking Board (the “MSRB”) through the EMMA system. The Amendments significantly broaden the types of financial events an issuer (or obligated person) must report to the MSRB. The Amendments have an effective date of February 27, 2019. This client alert provides a brief overview of the Amendments.

Background: The Rule

The Rule is designed to enhance disclosure in the municipal securities market by establishing standards for obtaining, reviewing and disseminating information about municipal securities (“Securities”) and the issuers and/or obligated persons of such Securities. Under the Rule, prior to purchasing or selling Securities in an offering subject to the Rule, an underwriter must reasonably determine that an issuer of Securities or an obligated person with respect to Securities has undertaken to provide specified information to the MSRB. Such information includes, but is not limited to, timely notice of the occurrence of certain enumerated events.

Amendments to the Rule

The Amendments require that, on and after February 27, 2019, the issuer of the Securities (or the obligated person with respect to such Securities) agree to provide notice to the MSRB of the occurrence of each of the following events within ten business days of its occurrence:

- Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material *[added as paragraph (b)(5)(i)(C)(15) of the Rule]*; and
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties *[added as paragraph (b)(5)(i)(C)(16) of the Rule]*.

What constitutes a “financial obligation”? The Amendments define a “financial obligation” as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “financial obligation” does not include Securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

A “debt obligation” includes any short-term or long-term debt obligation of an issuer or obligated person under the terms of an indenture, loan agreement, lease or similar contract. “Debt obligation” includes a direct purchase of municipal securities by an investor or a direct loan by a bank. Furthermore, a “debt obligation” generally should be considered to include lease arrangements entered into by issuers and obligated persons that operate as vehicles to borrow money.

How is “materiality” established? According to the SEC, materiality “is determined upon the incurrence of each distinct financial obligation, taking into account all relevant facts and circumstances,” and “should be based on whether the information would be important to the total mix of information available to the reasonable investor.” The materiality inquiry in this regard is the same standard that applies when preparing disclosure documents in connection with a public securities offering.

Which Continuing Disclosure Undertakings Are Affected?

The Amendments will only apply to continuing disclosure undertakings entered into on or after February 27, 2019 (the “Compliance Date”) and will not apply to continuing disclosure undertakings entered into prior to the Compliance Date. Note, however, continuing disclosure undertakings entered into on and after the Compliance Date will require the issuer or obligated person to report certain events as required by the Amendments with respect to all financial obligations, including both those financial obligations incurred prior to the Compliance Date and those incurred on and after the Compliance Date.

Additional Information

For additional information and SEC guidance on the Amendments, see the related SEC release [here](#).

If you have questions about this ruling, please contact a member of our Public Finance Practice Group. For more information concerning our practice, please visit us at www.KutakRock.com.

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