

Securities and Exchange Commission Amends Municipal Securities Disclosure Requirements

In an effort to enhance disclosure and increase transparency in the municipal securities market, the Securities and Exchange Commission adopted amendments to Rule 15c2-12 of the Securities Exchange Act of 1934. The amendments will require obligated persons that incur financial obligations outside the municipal bond market to provide additional disclosure. Under Rule 15c2-12, a broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of municipal securities must reasonably determine that an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities, to provide to the Municipal Securities Rulemaking Board timely notice of certain information. The information required to be provided under the Rule consists of annual filings, event notices and failure to file notices.

The amendments adopted by the SEC revise the list of event notices by adding two new events to paragraph (b)(5)(i)(C) of the Rule as follows:

- 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; and
- default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the obligated person, any of which reflect financial difficulties.

The term “financial obligation” means a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or a guaranty of a debt obligation or derivative. The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

The Rule amendments are an attempt to better inform investors about material financial obligations that could impact an obligated person’s liquidity, overall creditworthiness or an existing security holder’s rights. Direct placements of municipal securities offerings as financing alternatives to traditional public offerings have significantly increased since 2009 and the SEC indicated that its approval of the amendments is meant to address a gap in disclosure related to these direct placements by obligated persons.

Issuers and obligated persons that have issued or are contemplating the issuance of municipal securities are reminded of the importance of complying with continuing disclosure obligations in connection with their future public offerings. Failure to timely provide continuing disclosure information may require disclosure in official statements utilized in connection with the public sale of municipal securities and may create other difficulties relating to the sale of municipal securities in an underwritten offering. Issuers and obligated persons should review their continuing disclosure policies and procedures to determine if any changes are needed to ensure compliance with the amended Rule.

The compliance date for the amendments is February 27, 2019.

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