

SEC Adds Two New Material Events to Continuing Disclosure Requirements

October 10, 2018

Issuers or obligated persons (together, an "Issuer") of municipal securities will be required to add two new events to the list of reportable material events in their continuing disclosure undertakings entered into after February 26, 2019, under amendments to Securities Exchange Act Rule 15c2-12 (the "Rule") adopted by the Securities and Exchange Commission (the "SEC"). The amendments to the Rule, adopted on August 15, 2018, focus on material financial obligations that could impact an Issuer's liquidity, overall creditworthiness, or an existing security holder's rights. The Rule amendments do not affect an Issuer's existing continuing disclosure undertakings.

Specifically, the amendments add the following two events to the existing material events listed in the Rule:

- 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 Rule defines the term financial obligation as (i) a debt obligation; (ii) a 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) a guarantee of either of the foregoing. A financial obligation does not include a municipal security as to which a final official statement has been provided in compliance with the Rule nor does it include ordinary financial and operating liabilities incurred in the normal course of business, only debt, debt-like, and debt-related obligations.

In its proposing release, the SEC suggested that all material terms be included in an event notice disclosing the incurrence of a financial obligation. Cited examples include the date of incurrence, the principal amount, maturity and amortization, interest rate (or method of computation for variable rate debt), default rates, and other appropriate terms depending on the circumstances.

It is expected that the Rule amendments will substantially increase an Issuer's obligation to disclose material information related to its non-publicly offered financial obligations, including bank placements, installment purchase agreements and financing leases.

As is currently the case with Issuers' existing disclosure obligations, Issuers will be required to exercise their judgment as to whether any of the reportable events are "material" under the securities laws.

If you have any questions about your disclosure obligations under the Rule, please contact your Miller Canfield attorney or any of the authors listed on this client alert.