

SEC Adopts Amendments to Rule 15C2-12

July 23, 2010

The Securities and Exchange Commission (the SEC) recently approved amendments to Rule 15c2-12 (the Rule) which governs municipal securities disclosure. As amended, the Rule expands the scope of municipal securities covered and the nature of the events issuers must disclose and tightens the time period in which the disclosure must be made. The amendments will apply to "primary offerings" of municipal securities that occur on or after December 1, 2010.

As amended, the Rule will:

- Increase the Number of Categories of Notice Events. The amendments increase the number of listed disclosure events from 11 to 14, adding (1) tender offers; (2) bankruptcy, insolvency, receivership or similar event of the issuer or obligated person; (3) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material.
- Provide a Specific Filing Deadline. Besides expanding the types of events an issuer must disclose, the amendments provide that notice of a listed event must be disclosed in a timely manner not more than 10 business days after the event occurs. Currently, the Rule provides for disclosure in a "timely manner."
- Reduce the Need for Materiality Determination. Presently, the Rule provides that an event notice needs to be filed only if the event is determined to be material. The amendments remove the materiality standard for the following events: (1) failure to pay principal and interest; (2) unscheduled payments out of debt service reserves reflecting financial difficulties; (3) unscheduled payments by parties backing the bonds, reflecting financial difficulties; (4) change in the identity of parties backing the bonds or their failure to perform; (5) certain events affecting the tax status of municipal securities; (6) defeasances; and (7) rating changes. The materiality determination is retained for event notices regarding (1) non-payment related defaults; (2) modifications to rights of security holders; (3) bond calls; and (4) the release, substitution or sale of property securing repayment of securities.
- Expand Disclosure of Tax Risk. The amendments modify the existing 6th listed disclosure event. Currently, the Rule only requires disclosure of adverse tax opinions if determined to be material. As amended, the Rule requires that an issuer submit a disclosure notice for "[a]dverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security."
- Apply to Variable Rate Demand Obligations. When it was first adopted, the Rule contained an exemption for certain offerings of municipal securities with put features (commonly known as variable rate demand obligations). Variable rate demand obligations are debt obligations that bear interest at a floating or variable rate which is adjusted at specific intervals (such as daily, weekly or monthly) and can be tendered for purchase at the option of the bondholder at certain times for their par value. Under the amendments, variable rate demand obligations issued and certain remarketings occurring on or after December 1, 2010, are subject to the continuing disclosure requirements of the Rule.

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In addition to releasing amendments to the Rule, the SEC also provided interpretive guidance intended to assist municipal securities brokers and dealers in meeting their obligations under the antifraud provisions of the federal securities laws, warning that they should not assume an issuer will adhere to its continuing disclosure obligations if it has a history of "persistent and material non-disclosure."