



SEC Proposes Amendments to Rule 15c2-12 to Add Required Disclosure of New Event Notices

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On March 1, 2017, the Securities and Exchange Commission (SEC) issued Release No. 36-80130 (the "Release") proposing amendments to SEC Rule 15c2-12. Under Rule 15c2-12, it is unlawful for a broker, dealer, or municipal securities dealer to act as an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1 million or more, unless a written agreement or contract is undertaken by the issuer or obligated person to provide continuing disclosure information (i.e. annual filings, event notices, and failure to file notices) regarding the security to the Municipal Securities Rulemaking Board in a timely manner not in excess of 10 business days. Rule 15c2-12 is intended to benefit holders of municipal securities by addressing fraud and manipulation in the municipal securities market and prohibiting the underwriting of municipal securities and subsequent recommendation of such securities by issuers or obligated persons for which adequate information is not available.

Since 2009, issuers and obligated persons of municipal securities have increasingly used direct placements of municipal securities as alternatives to publicly offered municipal securities. When used as an alternative to public offerings, direct placements can provide potential advantages for issuers and obligated persons, including reduced exposure to bank and SEC regulatory requirements, fewer transaction costs, and no requirements to obtain a rating or prepare an offering document. However, some market participants have expressed concerns about a lack of disclosure regarding direct placements and other non-public securities, and are asking the SEC to add required event notices for such securities under Rule 15c2-12.

The proposed amendments to Rule 15c2-12(b)(5)(i)(C) would add two (2) new event notices to the current list of 14 that issuers and obligated persons are required to disclose. The SEC believes the proposed amendments will facilitate investors' and other market

participants' access to important information in a timely manner and help to enhance transparency in the municipal securities market to improve investor protection. The two new event notices would be:

(15) 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.

(16) 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.

The scope of the proposed amendments is broader than just direct purchases though. The proposed amendments would also add a definition for "financial obligation" to Rule 15c2-12(f) to mean: "a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule." This definition could be interpreted broadly to include a wide array of obligations, but the new proposed reportable events would need only be disclosed "if material" or if they "reflect financial difficulties."

The proposed amendments would apply to municipal securities issued after the effective date of the proposed amendments. If the proposed amendments are adopted, then issuers will need to review their existing continuing disclosure policies and determine what modifications may be necessary to comply with the new requirements.

Comments on the proposed amendments will be received by the SEC on or before May 15, 2017. The compliance date of the proposed amendments would be no earlier than three months after final approval and adoption by the SEC. The impact of the Presidential Executive Order on Reducing Regulation and Controlling

Regulatory Costs, requiring an executive department or agency that proposes a regulation to identify at least two existing regulations to be repealed for every one new regulation issued, remains to be seen.

For more information on the proposed amendments, please contact [Denise Barkdull](#) (Indianapolis), [John Egan](#) (Louisville), [Emmett Kelly](#) and David Rogers (Columbus), or [Pat Woodside](#) (Cincinnati) in Frost Brown Todd's [Public and Project Finance Practice Group](#).

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