



Disclosure Under Rule 15c2-12: New Events One Year Later and COVID-19 Consideration

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Authors:

[Laura H. Theilmann](#)

[Beau F. Zoeller](#)

[Denise \(Barkdull\) Lund](#)

[Scott A. Krapf](#)

As issuers and other obligated persons continue to navigate the implications of COVID-19, now is an opportunity to take time to review disclosure obligations under the Securities and Exchange Commission (SEC) Rule 15c2-12 (the “Rule”), revisit the recent amendments to the Rule, and consider how the events surrounding COVID-19 may impact disclosure under the Rule.

As a reminder, one year ago the SEC amended the Rule to add two new events which must be included in continuing disclosure agreements for municipal securities. The new events are:

(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; and

(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.

In addition to these two new events, 14 other events require disclosure.

A logical first reaction to the COVID-19 pandemic is that its impact may require disclosure. However, the events that require notice are limited under the Rule. Generally, until principal and interest payment delinquencies arise, unscheduled draws on debt service reserves or credit enhancements are made reflecting financial difficulties, bond obligation documents are amended to modify the rights of security holders, or another of the 16 events included in Rule occurs, then no requirement to file a notice is required.

Of course, there may be circumstances where voluntary disclosure is warranted, but those should be discussed with bond counsel and

disclosure counsel. For example, economic circumstances may put issuers in a position where they need to consider drawing on operating reserves, or media inquiries and public records requests regarding the financial impact may become so prevalent to a point that disclosure seems prudent.

Issuers, obligated persons, and broker/dealers must pay close attention to the Rule and continuing disclosure obligations, particularly in this uncertain time. Compliance with the Rule, including determinations of materiality, may be very complex, detailed, and nuanced; and issuers and obligated persons should consider adopting or reviewing existing continuing disclosure policies, while also providing training to employees who would handle these matters. Obligated persons are not excused from making required and necessary disclosures because an office is closed or because personnel are working remotely.

For more information on the amendments, continuing disclosure, trainings, determinations of materiality, and compliance, please contact [Laura Theilmann](#), [Beau F. Zoeller](#), [Denise Barkdull](#), [Scott Krapf](#), or others in Frost Brown Todd's [Public and Project Finance Practice Group](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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