

SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure

by James H. Smith and Nathan Canova

On August 20, in response to the recent trend of issuers and obligated persons increasingly using direct purchases of municipal securities and direct loans (“bank placements”) as alternatives to public offerings, the Securities and Exchange Commission (the “SEC”) adopted amendments to Rule 15c2-12 of the Securities and Exchange Act of 1934 (the “Rule”). The amendments require public disclosure of certain information regarding “financial obligations,” including bank placements, entered into by an issuer or an obligated person. Information regarding bank placements was not previously required to be disclosed under the Rule. The rationale behind the amendments is that bank placement transactions could affect an issuer’s or obligated person’s liquidity, overall creditworthiness or an existing security holder’s rights, or otherwise be considered material to the investing public and other market participants.

For each primary offering of municipal securities subject to the Rule, an underwriter must reasonably determine whether an obligated person has agreed in writing to provide timely notice to the public of the occurrence of certain events listed in Section (b)(5)(i)(C) of the Rule. The amendments adopted by the SEC add two new events to the list:

(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.

The amendments define “financial obligation” to mean a (i) debt obligation, (ii) 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) guarantee of either (i) or (ii); provided, however, that municipal securities for which a final official statement has been properly provided to the Municipal Securities Rulemaking Board are excluded from the definition.

Related People

- James H. Smith
- Nathan Canova

Related Capabilities

- Public Finance

Not every incurrence of a financial obligation will be material and require disclosure of material terms under the Rule, but the SEC interprets the term broadly enough to include indebtedness whether or not such debt is subject to Rule 15c2-12 and whether or not it arises as a result of a municipal securities issuance. A financial obligation generally should be considered to be incurred when it is enforceable against an issuer or obligated person.

All issuers and/or obligated persons entering into a continuing disclosure agreement after the compliance date set for the amendments (expected to be in the Spring of 2019) (the “Compliance Date”) must file material event notices for any occurrence of the new listed events occurring on or after the Compliance Date. Issuers and obligated persons are not required under the Rule to disclose financial obligations incurred prior to the date of the applicable continuing disclosure agreement, but any event of default, acceleration, or termination or a modification of terms or similar event reflecting financial difficulties must be disclosed if it occurs on or after the Compliance Date, even if the financial obligation to which it relates was incurred prior to the Compliance Date.

We are available to assist you in adjusting to these amendments to the Rule.

Underwriters will need to ensure these amendments are properly incorporated into new continuing disclosure agreements entered into on and after the Compliance Date, and issuers and obligated persons should work closely with counsel and other advisors when determining whether any of the new listed events have occurred and/or whether such events should be disclosed under the Rule, and in determining the information to include in required material event notices.

Feel free to contact us with any questions.