Preparing for the Recent Amendments to Rule 15c2-12

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CONTINUING DISCLOSURE BACKGROUND: FEDERAL SECURITIES LAW

Antifraud Provisions

- State and local governments and authorities generally exempt from registration and reporting requirements, *but*
- Antifraud provisions prohibiting material misstatements and omissions in connection with the offer, purchase, or sale of an issuer’s bonds.
- Applies also to statements that may reach the bond markets, i.e. continuing disclosure.

CONTINUING DISCLOSURE BACKGROUND: FEDERAL SECURITIES LAW

- SEC regulates brokers and dealers who underwrite and buy and sell municipal bonds in the secondary market.
- SEC used this authority to indirectly regulate municipal bond disclosure.
  - In 1989 by adopting Rule 15c2-12 requiring underwriters to review deemed final official statements and contract to receive sufficient final official statements and provide to customers, and
  - In 1994 by amending Rule 15c2-12 to require continuing disclosure undertakings from issuers and obligated persons; unless
  - transaction exempt from Rule.

CONTINUING DISCLOSURE REQUIREMENTS

Continuing Disclosure Agreement must require:

(A) Annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, audited financial statements for each obligated person covered by the paragraph above.

CONTINUING DISCLOSURE REQUIREMENTS

Continuing Disclosure Agreement must require:

(C) In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

CONTINUING DISCLOSURE REQUIREMENTS

- (*1*) Principal and interest payment delinquencies;
- (*2*) Non-payment related defaults, if material;
- (*3*) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (*4*) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (*5*) Substitution of credit or liquidity providers, or their failure to perform;
- (*6*) Adverse 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;
- (*7*) Modifications to rights of security holders, if material;
- (*8*) Bond calls, if material, and tender offers;

CONTINUING DISCLOSURE REQUIREMENTS

- (*9*) Defeasances;
- (*10*) Release, substitution, or sale of property securing repayment of the securities, if material;
- (*11*) Rating changes;
- (*12*) Bankruptcy, insolvency, receivership or similar event of the obligated person;*
- (*13*) 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
- (*14*) Appointment of a successor or additional trustee or the change of name of a trustee, if material

CONTINUING DISCLOSURE REQUIREMENTS

* Note to paragraph (b)(5)(i)(C)(12): For the purposes of the event identified in paragraph (b)(5)(i)(C)(12) of this section, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

CONTINUING DISCLOSURE

How can an Issuer or Obligated Person Violate a CDA?

In the CDA you promise to provide annual financial information (usually audited financial statements) and operating data of the type in the official statement (e.g., tables), within 180 days after the fiscal year end, and file a failure to file notice if you cannot, as well as notice of 14 events, within 10 business days of occurrence, to the MSRB’s EMMA System. If you cannot file your audited financials on time, you must file a “failure to file notice” explaining why and when you will file.

CONTINUING DISCLOSURE

IF you do not file; your annual financial information – both audited financial statements and operating data – by the date you state in the CDA or (ii) file a "failure to file notice" along with the other information you are required to file under your CDA if the audited financial statements are not available (typically the operating data, unaudited financial statements and audited financial statements, when and if available);

IF you do not file any of the event notices – including ratings changes for you and any enhancer, defeasances, trustee changes, or any of the other events in the contract;

You violate the CDA.

CONTINUING DISCLOSURE

What happens if I violate a CDA?

You breach your contract – the CDA – but do not violate the Securities Laws.

IF you return to the bond market within the next five years, you must disclose the violation in every official statement over the next five years *if it is a material breach* of the CDA.

IF you don't disclose – you may then violate the Securities Laws.

SEC MCDC Program: accepted offers to settle and issued cease and desist orders against 72 Issuers and Obligated Persons and 72 Underwriters.

CONTINUING DISCLOSURE

SEC MCDC Program:

As part of the settlement, issuers and obligated persons agreed to undertake to establish appropriate policies, procedures, and training regarding continuing disclosure obligations.

Disclosure policies and procedures designed to meet the particular circumstances of an issuer or obligated person both ease the burden of compliance with a Continuing Disclosure Agreement and when followed may protect the issuer or obligated person and officials from antifraud liability under the federal securities law.

THANK YOU

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