New Amendments to SEC Rule 15c2-12

Government Finance Officers Association

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Our Commitment

The industry has long advocated for quality, timely and meaningful disclosure

SEC Rule 15c2-12: What is the Change?

- ***Aka "Fifteen and Sixteen"***
- ***Broker/Dealer (Underwriter) Rule – Issuers are not directly regulated by the SEC or MSRB***

Governments will have to state in CDAs entered into on or after February 27, 2019 that they will

- **15:** Disclose to the market any new and material financial obligations
- **16:** Notify the market when certain events occur with respect to an outstanding or new material financial obligation that reflect financial difficulties.

15: What Are Material Financial Obligations?

- The term "*materiality*" is still unspecified in SEC Rule 15c2-12
- Financial obligations are related to debt and debt-related products and not normal business operations. This potentially includes:
  - bank loans
  - capital leases
  - swaps
  - guarantees
  - and other types of financial products that "operate as vehicles to borrow money"

16: What Qualifies as a Financial Difficulty?

- Financial difficulties are defined as certain events such as default, acceleration, modification of terms or similar events under the terms of the financial obligations.

Why the Change?

- The new Amendments, effective February 27, 2019, are an effort to provide additional financial information to investors in situations where an issuer may have incurred material financial obligations that could impact existing bond holders.

Why Should I Care?

- While outside professionals will ensure that continuing disclosure agreements are in line with the new requirements, governments will continue to be responsible for their own disclosure documents and ensuring that material event notices are filed on EMMA.

- Not fulfilling these duties could
  - at least: cause underwriters to hesitate to enter into new transactions with issuers that do not demonstrate proper disclosure practices
  - at worst: the SEC could pursue legal action against parties it deems to be responsible for potential wrong-doing, including issuers, similar to what occurred with the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) project.

How Do I Comply?

- STEP ONE: **In order to understand how these changes specifically relate to your debt program and future bond issuances and other financial transactions talk with your bond and/or disclosure counsel.**

- The MSRB EMMA system
  - Free webinar will be January 17, 2019
  - Manual will be available shortly thereafter

- GFOA Best Practice: Using Technology for Disclosure

GFOA Best Practices

Best Practices by Topic

- Financial Policies
- Accounting & Financial Reporting
- Budgeting & Financial Planning
- CIP / Economic Development
- Debt Management
- Financial Management
- Pension & Benefit Administration
- Technology
- Treasury and Investment Management

http://www.gfoa.org/best-practices

GFOA Best Practices

- Focus on written policies and procedures
- Recommend specific actions
- Shared with the issuer community and all other market participants
- Common themes
  - Checklists
  - Using Technology
  - Communication
  - Primary Market
  - Post-Issuance
  - Bank Loans

GFOA Best Practices

- GFOA Best Practice, Debt Management Policy
- GFOA Best Practice, Understanding Your Continuing Disclosure Responsibilities

- GFOA Best Practice, Post Issuance Policies and Procedures
- GFOA Best Practice, Primary Market Disclosure
- GFOA Best Practice, Using Technology for Disclosure
- GFOA Best Practice, Bank Loans
- GFOA Best Practice, Maintaining an Investor Relations Program
- Best Practice, Using the Comprehensive Annual Financial Report to Meet SEC Requirements for Periodic Disclosure
- GFOA Advisory, Use of Debt-Related Derivatives Products
- Best Practice, Investment of Bond Proceeds
- Debt 101 (Volume 1) - Issuing a Bond
- Debt 101 (Volume 2) - Responsibilities After Bond Issuance

GFOA Alert Recommendations

- Governments should review debt management and continuing disclosure policies and procedures to consider adding new provisions to address the Amendments, including:

  - creating a master list of all current financial obligations
  - developing a system to track any financial difficulties related to these obligations
  - having a process in place to add new financial obligations
  - working with legal counsel to determine materiality of your financial obligations and when financial difficulties may arise.

A Master List or Tracking Document

TEMPLATE – INTERNAL TRACKING OF FINANCIAL OBLIGATIONS (CURRENT AND NEW)

- Name of Entity:
- Debt Manager/Person Completing This Document:
- Debt Manager/Person Responsible for Maintaining Document:
- Members of Internal Debt Disclosure Board:
- Bond Counsel: (if varies, add a column below)
- Disclosure Counsel: (if varies, add a column below)
- Municipal Advisor: (if varies, add a column below)

- Last Updated xx/yy/20zz
- Person Updating Document: ____________

TEMPLATE – INTERNAL TRACKING OF FINANCIAL OBLIGATIONS (CURRENT AND NEW)

Name/Description Financial Obligation	Entered Into	Maturity	Key Material Provisions	Bank/UW	Other
Banks Loans					
Current					
New					
Capital Leases					
Current					
New					

- Debt-Related Derivatives
- Guarantees
- Variable Rate Demand Obligations (<1 year)
- Other Financial Obligations

TEMPLATE – PROCESS FOR IDENTIFYING WHEN FINANCIAL DIFFICULTIES MAY ARISE

- Financial Obligation
- Key Material Provisions in Contract Indicating Material Financial Difficulty
  - (e.g., Rating Agency changes, late payments, changes to terms [acceleration, interest rate triggers, bank triggers, gross up event], contract termination, default, changes to entity's financial Status)

Financial Obligation	Key Material Provisions

- Last Updated xx/yy/20zz
- Person Updating Document: ____________

Advocacy

- Frequent Communication with the Securities and Exchange Commission
  - Office of Municipal Securities
  - Chairman and Commissioners
- Municipal Securities Rulemaking Board
  - EMMA Enhancements and Updates
  - EMMA Issuer Homepage
- Congressional

  Advocacy

GFOA Training

Debt Courses	Level	Length (Days)
Debt Management Best Practices	Basic	2
Issuer Disclosure Practices and Investor Relations	Intermediate	1
Disclosure Changes: New SEC Requirements	Basic	Webinar
Mini-Muni Conference	Intermediate	1
SEC Disclosure Outlook	Intermediate	Webinar

Capital Finance & Debt Management	**Various Levels**
Financial Management	**Various Levels**
Pension & Benefit Administration	**Various Levels**
Treasury Management	**Various Levels**

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Forthcoming From GFOA

- Webinar on the New Disclosure Changes, January 9, 2019
  - https://www.gfoa.org/training/32631
- Alert forthcoming this week
- Revisions and updates to Best Practices and Advisories
- Significant communication prior to February 27, 2019

Thank You!

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