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# SEC Amends Continuing Disclosure Requirements for Municipal Securities

On May 26, 2010, the Securities and Exchange Commission (the "SEC") approved amendments to Rule 15c2-12 that will expand the continuing disclosure obligations of issuers and other obligated persons in municipal finance transactions. Most significantly, the amendments (1) eliminate the materiality determination for certain reportable events; (2) expand the types of events that are required to be reported; (3) implement a mandatory 10-day time period for reporting such events; and (4) remove the exemption from continuing disclosure requirements for variable rate demand obligations. The amendments to Rule 15c2-12 will become effective on December 1, 2010. The amendments are set forth in SEC Release No. 34-62184 and were published in the Federal Register on June 10, 2010.

## Background

The SEC adopted Rule 15c2-12 under the Securities and Exchange Act of 1934 to improve the availability of information in the municipal securities market. Under Rule 15c2-12, a participating underwriter must reasonably determine that an issuer of municipal securities or another obligated person has undertaken in a written agreement to provide the required annual financial information and continuing disclosure documents relating to the security and the issuer or obligated person. Among the continuing disclosure actions required by the current version of Rule 15c2-12 is reporting to the Municipal Securities Rulemaking Board (the "MSRB"), through its Electronic Municipal Market Access system, of the occurrence of any of the events described in the rule, *if such event is determined to be material*. Under the amendments to Rule 15c2-12, the SEC has eliminated the materiality determination for certain events, requiring that the occurrence of such event be reported, regardless of materiality.

## Elimination of Materiality Determination for Certain Reportable Events

Effective December 1, 2010, the occurrence of any of the following events must be reported to the MSRB, *regardless of materiality*: (1) principal and interest payment delinquencies; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancement reflecting financial difficulties; (4) substitution of credit of liquidity providers, or their failure to perform; (5) defeasances; (6) ratings changes.[1]

The SEC has added to this list the following types of events that will also be required to be disclosed, regardless of materiality: (7) tender offers; and (8) bankruptcy, insolvency, receivership, or a similar proceeding by the obligated person.

Additionally, the SEC has clarified the reporting requirements for certain tax events. The amendments to Rule 15c2-12 will require disclosure of the issuance by the Internal Revenue Service of a proposed or final determination of taxability or Notices of Proposed Issue (IRS Form 5701-TEB), regardless of materiality.

## Continuation of Materiality Determination for Certain Reportable Events

The amendments to Rule 15c2-12 do not affect the reporting requirements for the following events, which continue to be subject to a materiality determination: (1) nonpayment related defaults; (2) modifications to existing rights of security holders; (3) redemptions; (4) release, substitution, or sale of property securing repayment of the securities.

The SEC has also added to this list the following events that will be required to be disclosed, if determined to be material: (5) consummation of a merger, consolidation, acquisition, or sale of all or substantially all of the assets of an obligated person, other than in the ordinary course of business, and the entry into a definitive agreement relating to any such actions, other than pursuant to its terms; and (6) appointment of a successor or additional trustee or the change of name of a trustee.

Additionally, any notices or determinations with respect to the tax-exempt status of the security, other than those notices described in the amendments to Rule 15c2-12 and referenced above, and other events affecting the tax-exempt status of the security, continue to be reportable, *if determined to be material*. This continues the existing requirement for tax related matters.

1 The SEC has indicated that for purposes of Rule 15c2-12, "ratings change" does not include indicators of an increased likelihood of an impending ratings change, such as "negative credit watch"; thus, changes in ratings outlook are not included in this category.

### Ten Business Days for Notice of Reportable Events

The current version of Rule 15c2-12 does not provide a specific timeline for disclosing the occurrence of a reportable event, requiring only that such disclosure be made in a "timely manner." After December 1, 2010, disclosure of the occurrence of a reportable event must be made "in a timely manner not in excess of *ten business days* after the *occurrence* of the event." This change will require issuers and obligated persons to monitor the occurrence of certain events in order to prepare timely disclosure of such events within the ten business-day reporting period.

### Variable Rate Demand Obligations No Longer Exempt from Continuing Disclosure Requirements

The amendments to Rule 15c2-12 repeal the exemption from continuing disclosure requirements previously allowed for newly-issued variable rate demand obligations and variable rate demand obligations that constitute "primary offerings" within the meaning of Rule 15c2-12. This change will require issuers of variable rate demand obligations and other obligated persons related to such debt to comply with the annual financial and material event reporting requirements of Rule 15c2-12 effective December 1, 2010. This change will require the issuers of variable rate demand obligations to enter into the same continuing disclosure obligations commonly used for fixed rate debt. Many issuers already do so, but this is not currently a universal practice.



Walter J. St. Onge, III, Partner 617.239.0389 wstonge@eapdlaw.com
Sarah E. O'Dea, Associate 561.820.0275 sodea@eapdlaw.com