

Client Advisory | *March 2009*

Securities and Exchange Commission Adopts Amendments to Rule 15C2-12 Relating to Municipal Securities Disclosure

The amendments to Rule 15c2-12 adopted by the Securities and Exchange Commission (the “SEC”) on December 5, 2008 (the “2008 Amendments”)¹ will require brokers, dealers or municipal securities dealers acting as underwriters in a primary offering of municipal securities to reasonably determine that the issuer or obligated person has agreed to: (i) provide information covered by a written agreement or contract to the Municipal Securities Rulemaking Board (“MSRB”) instead of to multiple nationally recognized municipal securities information repositories (“NRMSIRs”) and state information depositories (“SIDs”), as required under the current rule; and (ii) to provide such information in an electronic format and accompanied by identifying information prescribed by the MSRB. The 2008 Amendments will become effective July 1, 2009 and will be applied retroactively to continuing disclosure undertakings entered into prior to July 1, 2009.

Background

The SEC adopted Rule 15c2-12 in 1989 to improve the availability of information in the municipal securities market. As initially adopted, Rule 15c2-12 required (and still requires) an underwriter acting in a primary offering of municipal securities of \$1,000,000 or more to, among other things, review a preliminary offering document “deemed final” prior to making an offer or bid; provide such

preliminary offering document to potential customers upon request; and contract with the issuer of the securities to receive a sufficient number of copies of the final offering document in order to provide copies to all potential customers upon their request. Rule 15c2-12 was amended in 1994 to address availability of information in the secondary municipal securities market. The 1994 amendments require a participating underwriter to reasonably determine that an issuer of municipal securities or an obligated person has undertaken in a written agreement or contract for the benefit of holders of bonds to provide annual filings to each NRMSIR, to provide material event notices and failure to file notices either to each NRMSIR or to the MSRB, and to provide all continuing disclosure documents to the appropriate SID, if applicable.

To further improve the quality, timing and dissemination of disclosure in the municipal securities market, the SEC, on August 7, 2008, published the 2008 Amendments to Rule 15c2-12 that provide for a single centralized repository for the electronic collection and availability of information in the secondary municipal securities market.

MSRB as the Sole Repository of Continuing Disclosure Information

Under the 2008 Amendments, the four existing NRMSIRs will be replaced

by the MSRB as the sole repository of continuing disclosure information submitted by issuers and obligated persons. There will be no requirement to disclose information to SIDs. In connection with the effectiveness of the 2008 Amendments, the SEC will designate the MSRB as the “sole NRMSIR” effective July 1, 2009. The 2008 Amendments do not affect the substance or volume of disclosure provided by issuers under the Rule (except for certain small issuers as discussed below).

Electronic Submission through the MSRB’s Electronic Municipal Market Access (“EMMA”) System

Under the 2008 Amendments and a separate MSRB rule change, effective July 1, 2009, all continuing disclosure information shall be provided electronically through the MSRB’s Electronic Municipal Market Access (“EMMA”) system in portable document format (PDF) with identifying information as prescribed by the MSRB. Issuers may still engage the services of a trustee or designated agent to submit continuing disclosure documents. The MSRB has indicated plans for an extensive outreach program to educate issuers and other obligated persons regarding the use of its EMMA system’s continuing disclosure service and to assist filers who have been accustomed to providing paper documents. The EMMA system will make municipal disclosures available to investors in the same

¹ 73 Fed. Reg. 76,132, SEC Rel. No. 34-59062 (Dec. 5, 2008) (<http://www.sec.gov/rules/final/finalarchive/finalarchive2008.shtml>)

manner that the SEC's EDGAR system does for corporate disclosures.

Effect on Continuing Disclosure Undertakings Entered Into Prior to July 1, 2009

Beginning on July 1, 2009, continuing disclosure documents that are submitted pursuant to existing continuing disclosure agreements (entered into prior to July 1, 2009 and typically referencing the NRMSIRs as repositories) should be provided to the MSRB in its capacity as the sole NRMSIR. No amendments to such pre-existing continuing disclosure agreements should be necessary to implement this change. However, continuing disclosure agreements entered into up until the effective date of the 2008 Amendments may make note of the

impending rule change. While the 2008 Amendments are effective as of July 1, 2009, voluntary submissions to the MSRB and its EMMA system may be made prior to that time. Until the effective date of the 2008 Amendments, required filings should continue to be made to the existing NRMSIRs and the SID, if any.

Effect of 2008 Amendment on Rule 15c2-12 Small Issuer Exemption

The 2008 Amendments also diminish the small issuer exemption under Rule 15c2-12(d)(2). As currently written, the small issuer exemption requires an issuer with no more than \$10,000,000 in outstanding municipal securities to provide financial information and operating data only

if such information is specifically requested. By contrast, the section as modified by the 2008 Amendments requires a small issuer to provide to the MSRB annually, financial information and operating data that is presented in the final official statement, including financial information and operating data that is customarily prepared by such issuer or obligated person and publicly available. This information will need to be provided, whether or not any specific request is made.

The MSRB website (www.msrb.org) provides current information on continuing disclosure submission requirements. Additional information on the MSRB's EMMA system can also be found on the EMMA website (<http://www.emma.msrb.org>).

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