

Amendments to Rule 15c2-12: Greater Disclosure Obligations for Issuers

The Securities and Exchange Commission (“SEC”) recently amended Rule 15c2-12 (the “Rule”), effective December 1, 2010, which prohibits underwriters from purchasing or selling municipal securities unless the underwriter has reasonably determined that the Obligated Person (hereinafter defined) has entered into a written undertaking to provide certain information on an annual basis and timely provide notice of certain specified material events. However, in practice, the burden of the Rule is borne by Obligated Persons, rather than the Underwriters.

The recent amendments to the Rule include three main provisions: (1) supplementing the listed events and modifying the events that are subject to a “materiality” determination before triggering the disclosure requirement; (2) imposing a ten-day deadline by which an Obligated Person must disclose the occurrence of listed events; and (3) eliminating the exemption of variable-rate demand obligations (“VRDOs”) from the requirements of the Rule.

As defined in the Rule, an “Obligated Person” means persons, including an Issuer, committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities to be sold in an offering.

Events Requiring Disclosure If “Material”

The amendments to the Rule include the addition of several events, the occurrence of which must be disclosed under various circumstances. Prior to the amendments, the occurrence of a listed event only needed to be disclosed if the Obligated Person deemed the occurrence of the event to be “material.” The Rule now provides several listed events that must be disclosed only if such event is material. These events are: (1) Non-payment related defaults; (2) Notices or determinations by the IRS with respect to the tax-exempt status of the securities (except as set forth in the following section); (3) Modifications to rights of security holders; (4) Bond calls; (5) Release, substitution, or sale of property securing repayment of the securities; (6) Mergers or consolidations of Obligated Persons; and (7) The appointment of a successor trustee or co-trustee.

This amendment to the Rule retains the former regulatory regime under which events need only be disclosed if deemed “material.” Upon the occurrence of one of the above-listed events, an Obligated Person must make a determination whether such event is “material” and, if deemed “material,” the Obligated Person must file the notice of the event within the ten-day disclosure requirement described below.

Events Requiring Disclosure Whether Deemed “Material” Or Not

The Rule as amended requires the disclosure of: (1) Principal and interest payment delinquencies; (2) Unscheduled draws on debt service reserves, reflecting financial difficulties; (3) Unscheduled draws on credit enhancements, reflecting financial difficulties; (4) Substitution of credit or liquidity providers or their failure to perform; (5) Defeasances; (6) Rating changes; (7) Tender Offers; (8) Bankruptcy, insolvency, receivership or similar event of an Obligated Person; and (9) Adverse tax opinions, the issuance, by the Internal

Revenue Service (“IRS”), 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-exempt status of securities, or other events affecting the tax-exempt status of the security.

This amendment to the Rule requires Obligated Persons to disclose the occurrence of the above-listed events whether or not the Obligated Person believes such event is “material.”

Ten-Day Reporting Period

Prior to the amendments, the Rule provided that notice of the occurrence of one of the listed events, if material, must be disclosed in a timely manner. The amendments to the Rule now require disclosure to be made within ten (10) business days after the occurrence of that event. It is important to note that the ten-day period does not begin upon the discovery by the Obligated Person of the event. Rather, the ten-day period begins upon the occurrence of the listed event.

Variable-Rate Demand Obligations Subject to Continuing Disclosure

Prior to the amendments to the Rule, Variable-Rate Demand Obligations (“VRDOs”) issued in minimum denominations of \$100,000, which could be tendered by the holder at least as frequently as every nine months, were not subject to the primary or continuing disclosure requirements of the Rule. The amendments to the Rule eliminate this exemption. The Rule now applies to: (1) the initial issuance of VRDOs; and (2) a remarketing of a previously-issued VRDO that is deemed a “primary offering.” Under the Rule, a “primary offering” is an offering of municipal securities by or on behalf of an issuer, including any remarketing of municipal securities that (a) is accompanied by a change in the authorized denomination of such securities from \$100,000 or more to less than \$100,000; or (b) is accompanied by a change in the period during which such securities may be tendered to an issuer for redemption or purchase from a period of nine months or less to a period of more than nine months.

What Bonds And Notes are Affected?

Bonds or Notes issued on or after December 1, 2010 are subject to the revised Rule. VRDOs that are issued or remarketed as a Primary Offering on or after December 1, 2010 are subject to the revised Rule.

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