



New Disclosure Rules: What You and Your Borrowers Need to Know

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History of Continuing Disclosure

Timeline – History of Continuing Disclosure

- 1975 Municipal Securities Rulemaking Board (MSRB) created by Congress to establish rules with respect to the activities of municipal securities deals – no enforcement authority
- 1975 Tower Amendment prohibits the SEC and the MSRB from requiring Issuers to file information with them prior to the sale of securities, with the intent to keep municipal issuers from being subject to federal registration and disclosure requirements
- 1989 SEC adopts Rule 15c2-12, an amendment to the Securities Exchange Act of 1934, which mandates underwriters obtain an Issuer's agreement to deliver an official statement to determine whether key factors are disclosed, and requires a contractual obligation for the benefit bondholder that Issuer prepare and file annual reports and financial information
- 1994 SEC amends Rule 15c2-12 which prohibits a broker, dealer or municipal securities dealer from purchasing or selling municipal securities unless they have reasonably determined that an Issuer or obligated person has undertaken in a written agreement to provide certain annual financial information and event notices (*in a timely manner*) for eleven (11) specific Events

Timeline – History of Continuing Disclosure (continued)

- 2008 MSRB launches the EMMA website (Electronic Municipal Market Access), a single source, free online system to provide public access to disclosure documents
 - Prior required information had to be printed and mailed to multiple information repositories to SIDs and NRMSIRs
- 2009 MSRB begins collecting and posting Continuing Disclosure documents associated with municipal bonds
- 2010 Requires Material Events to be posted in 10 business days (*not just in a “timely manner”*), adds four Material Events to the previous list, and removes the materiality determination for certain of the Events
- 2014 MCDC – Municipal Continuing Disclosure Cooperation initiative by the SEC to consider “favorable settlement terms” for Underwriters and Municipal Issuers who self-report possible violations
- 2015/2016 SEC fined 72 underwriting firms \$18 million for these self-reported violations; 71 Municipal Issuers enter into settlement agreements – no fines



New 15C2-12 Events

The New 15c2-12 Amendments

- 2019 February 27 SEC amends Rule 15c2-12 to add two new Material Events, expanding from fourteen (14) to sixteen (16) the number of Events that Issuers must report within 10 business days of occurrence *if material*
 - 15 – Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material
 - 16 – Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties

The New 15c2-12 Amendments (continued)

- Financial obligation means a:
 - Debt obligation
 - Derivative instrument entered into in connection with, or pledged as security of a source of payment for, an existing or planned debt obligation, or
 - Guarantee of either of these two
- Financial obligation does not include municipal securities for which a final official statement has been provided to the MSRB
- For any new bond offering after February 27, 2019, the two new material events must be added to the list of reportable Events and included in the Official Statement
- Subsequent “financial obligations” must be reported within 10 business days, if determined to be material
- SEC does NOT define materiality

What is a Financial Obligation?

- May include, if deemed material:
 - Loan or Debt Obligation
 - This includes a SRF or Pooled Loan Program
 - Leases that operate as a vehicle to borrow money
 - Private placements
 - Bank Loans
 - Swaps
 - Energy savings performance contracts
- Take an inventory right now of what Financial Obligations are in place
- For new Financial Obligations, be prepared to file notice on EMMA within 10 business days

Why Did the SEC Include the New Amendments?

- Significant increase in number private placements and bank loans executed by governments after 2008
 - Reasons are lower interest costs, lower transaction costs, simpler execution process, greater structuring flexibility, no rating requirements or offering document required
- Longer terms and larger amounts
- Investor and MSRB concern that these could impair the rights of existing bondholders, impact the seniority status of existing bondholders, or impact credit or liquidity profile of an issuer
- MSRB Notice 2012-18 (April 2012) encouraged Issuers to voluntarily post information about bank loan financings to EMMA
- Only 88 voluntary bank loan disclosures made on EMMA from April 2012 to January 2015



What does this Mean
for Us as Issuers?

What Does This Mean For Issuers?

- Required: Annual Audit filed on EMMA; may require Budget as well
 - Usually due within 6 to 9 months of FYE
 - May be due 180 days or 270 days, which is NOT 6 or 9 months
- Required: Annual Financial Information compiled from Issuer financial and operating data (the Tables) filed on EMMA
 - Usually due at the same time as the Annual Audit
- Required: Material Event Notice must be filed on EMMA within 10 business days of occurrence
- Voluntary: Information that Issuer may decide to make publicly available on EMMA (but not required by SEC Rule 15c2-12)




What does this Mean
for Our Borrowers?

What Does This Mean For My Borrowers?

- The potential exists for a material event #15 filing to be required for your Borrowers when they close a loan or debt obligation with your program
- The responsibility for filing a new material event #15 solely belongs to your Borrowers
 - However, in understanding the partnership between your Program and your Borrowers, you can assist them in understanding they may have a potential filing as a result of closing their loan or debt obligation with your Program

What Does This Mean For My Borrowers?

- You may want to consider communicating as part of the application process or closing process, that your Borrower should reach out to their consultants to discuss material event #15 within the context of their financial obligation with your Program
- This is potentially NOT applicable to Borrowers that do not have an existing Continuing Disclosure Agreement (CDA) or to Borrowers that receive principal forgiveness
- We do not advocate that you advise your Borrowers on this subject but simply inform them they may need to Disclose the debt and to contact their service providers (Disclosure Counsel or perhaps Bond Counsel) for further information



Where Do I Find What
Needs to be Filed
Annually and Why is
the Compliance
Important?

Where Do I Find the Information Required to be Filed Annually?

- CDA, either included in the Official Statement or as a separate document which is summarized and/or referenced in the Official Statement, will list what is required to be filed, and when it is to be filed
- EMMA, at <https://emma.msrb.org>, will have copies of Official Statements, plus any prior annual filings and material events that have been made
- Financial information that must be reported can vary from issue to issue, but the requirements are *cumulative*; ALL the information must be reported until a bond matures or is paid off

Why is Compliance with SEC Rule 15c2-12 Important?

- According to the Rule, Underwriters/institutional investors are prohibited from buying or selling municipal securities unless the Issuer has committed to providing continuing disclosure about the security and financial condition and operating data of the Issuer
- Underwriters may choose to not bid on a transaction if they are unable to confirm that all applicable continuing disclosure has been made
- Non-compliance language must be included in any public offering documents for the subsequent five years
- Inaccurate statements in bond offering documents is considered securities fraud and subject to increased SEC enforcement



Do You Have
Disclosure Policy?

<http://youtu.be/jw9sZAybDHk>



Why a Disclosure Policy?

- Why should I have a Disclosure Policy
- How to start?
- Important things to include
- Who to ask to review?
- Where to put it?
 - <http://www.owrb.ok.gov/financing/pdf/pdf>



**CONTINUING DISCLOSURE POLICY
For New and Existing Bond Issues**

OKLAHOMA WATER RESOURCES BOARD



Green Bond Disclosure

Green Bond Disclosure

- In Massachusetts, the Trust has issued the last five issues as Green Bonds.
- The Trust decided make an additional disclosure to investors not required by the SEC to provide transparency for use of proceeds as outlined in the Green Bond Principles.
- In the disclosure, the Trust provides an update to an appendix in the Official Statement.
- It shows every project financed with Green Bond proceeds and the percentage of funds left to draw.
- The disclosure is included in our Annual Report to the EPA.
- We have also been releasing an Annual Green Bond Report the past couple of years and include that as the appendix to the Annual Report to the EPA but do not list it as a disclosure requirement, just an update to the appendix.



Know Your CUSIPs

Know your CUSIPs

- EMMA is a CUSIP-based system and is how Investors track their securities ownership
- Official Statements will include CUSIPs and maturities, available on the EMMA website
- Make sure your CUSIPs are reported correctly and required information is filed on each outstanding CUSIP on EMMA for each security type
- CUSIP = Committee on Uniform Security Identification Procedures
- CUSIP numbers are frequently missed on EMMA filings

- Disclosure can be a risky business so please be diligent in maintaining proper procedures
- Make sure you also include in old records in your process and not just new documents
- Thank you for joining us for our disclosure presentation CIFA 2019 in Cleveland, OH – home to the Cleveland **Browns** and the Rock and Roll Hall of Fame

<https://www.youtube.com/watch?v=o-xKLHpSxxI>



Questions?