



SEC Publishes Proposed Amendments to Rule 15c2-12

On July 17, 2009 the Securities and Exchange Commission (SEC) published SEC Release No. 34-60332 (Release 34-60332), [Proposed Amendment to Municipal Securities Disclosure](#), requesting comments on proposed amendments to Rule 15c2-12 (Rule). If adopted as proposed, the amendments would (i) require material event notices to be provided within 10 business days of the occurrence of the event, (ii) require disclosure of certain events without regard to materiality, (iii) add to the list of events that must be disclosed and (iv) eliminate the exemption from the Rule for variable rate demand obligations.

Several groups are in the process of preparing comments including the National Association of Bond Lawyers (NABL) and the Securities Industry and Financial Markets Association (SIFMA). Comments are due by September 8, 2009. Any final amendments will not become effective until the comment period has expired and a final notice has been published by the SEC. The proposed amendments apply to bonds issued after the effective date of the amendments and to existing bonds that are remarketed in a "primary offering" under the Rule. However, the SEC has specifically requested comment regarding the effective date and transition provisions.

The following is a brief summary of the proposed changes.

Timing of Required Filing of Material Events Notices

The proposed amendments to the Rule will require notices of "material events" to be filed within 10 business days of the *occurrence* of the event. The Rule currently does not specify a time period for filing. If

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adopted as proposed, issuers and obligated persons may need to establish procedures to monitor the occurrence of certain events (such as rating changes) in order to report these on a timely basis.

Required Disclosure of Certain Events Whether Material or Not

The proposed amendments to the Rule will remove the threshold determination by an issuer or obligated person of materiality in connection with the required disclosure of certain events. According to the SEC, some events are so important to investors and others that the events should be disclosed without regard to materiality. The events that no longer will be subject to a determination of materiality are:

- Principal and interest payment delinquencies;
- Unscheduled draws on a debt service reserve fund reflecting financial difficulty;
- Unscheduled draws on credit enhancements reflecting financial difficulty;
- Substitution of credit or liquidity providers or a performance failure on the part of such a provider;
- Defeasances; and
- Ratings changes.

Additionally, the proposed amendments expand the required event disclosure relating to changes in the tax-exempt status of the bonds by specifically requiring the disclosure, whether or not material, of the issuance by the Internal Revenue Service of a proposed or final determination of taxability of the bonds, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the bonds, or other events affecting the tax-exempt status of the bonds.

Additional Events Required to be Disclosed

The proposed amendments to the Rule add four events to the list of events required to be disclosed including:

- Tender offers with respect to the related securities (whether or not material);
- Bankruptcy, insolvency, receivership or similar proceedings (whether or not material);
- Merger, consolidation or acquisition involving the sale of all or substantially all of its assets (other than in the ordinary course of business) or the entry into or termination of an agreement relating to such actions, if material; and

- Appointment of a successor or additional trustee or change in name of a trustee with respect to the related securities, if material.

Elimination of Exemption for Variable Rate Demand Obligations

The proposed amendments to the Rule also eliminate the current exemption from the annual and "material events" disclosure requirements of the Rule for bonds that can be tendered to the issuer, at the option of the holder, at least as frequently as every nine months. Variable rate demand obligations (VRDOs) in most cases qualify for this exemption. The proposed amendments, if adopted, will not apply to outstanding VRDOs unless and until those bonds are remarketed under circumstances that meet the definition of a "primary offering" under the Rule, which include a remarketing that is accompanied by a change in authorized denominations to less than \$100,000 or a change in the tender frequency period to more than nine months.

For further information on Release 34-60332 and the proposed amendments to the Rule, please contact a lawyer in the [Squire Sanders Public Finance Practice Group](#) or your primary Squire Sanders lawyer.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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