

## SEC RELEASE No. 34-33742 (March 9, 1994): Proposed Amendments to Rule 15c2-12

### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 240

Release No. 34-33742; File No. S7-5-94)

RIN 3235-AG13

#### Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

**SUMMARY:** The Securities and Exchange Commission ("SEC" or "Commission") is publishing for comment proposed amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 ("Exchange Act"), which would make it unlawful for a broker, dealer, or municipal securities dealer to act as an underwriter of an issue of municipal securities unless the broker, dealer, or municipal securities dealer has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of the holders of such municipal securities to provide certain information to a nationally recognized municipal securities information repository; or to recommend the purchase or sale of a municipal security, without having reviewed the information the issuer of the municipal security has undertaken to provide. The purpose of the proposed amendments is to further deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.

**DATES:** Comments must be received on or before July 15, 1994.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-5-94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Catherine McGuire, Esq., Chief Counsel, or Janet W. Russell-Hunter, Esq., Attorney, Office of Chief Counsel (concerning the rule and release generally), (202) 504-2418, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 7-10, 450 Fifth Street, NW., Washington, DC 20549; and Amy Meltzer Starr, Esq., Attorney, Division of Corporation Finance (concerning the definitions of "final official statement" and

"significant obligor," and concerning annual financial information and material events generally), (202) 272-3654, Division of Corporation Finance, Securities and Exchange Commission, Mail Stop 7-6, 450 Fifth Street, NW., Washington, DC 20549.

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

In a recent report to Congress,<sup>1</sup> the staff of the Division of Market Regulation ("Staff") reviewed many aspects of the municipal securities market, including whether opportunities exist for overreaching and investor deception. The Staff found that investors need sufficient current information about issuers and significant obligors to better protect themselves from fraud and manipulation, to better evaluate offering prices, to decide which municipal securities to buy, and to decide when to sell.<sup>2</sup> Moreover, the Staff found that the growing participation of individuals as both direct and indirect purchasers of municipal securities underscores the need for sound recommendations by brokers, dealers, and municipal securities dealers.<sup>3</sup>

Based on these findings, the Staff recommended that the Commission use its interpretive authority to provide guidance regarding the disclosure required by the antifraud provisions of the federal securities laws.<sup>4</sup> Today, in a companion release,<sup>5</sup> the Commission is interpreting the disclosure obligations of municipal securities issuers. The Companion Release also addresses the obligations under the antifraud provisions of brokers, dealers, and

<sup>1</sup> Securities and Exchange Commission, Division of Market Regulation, Staff Report on the Municipal Securities Market (Sept. 1993) ("Staff Report"). The Staff Report was prepared at the request of the Hon. John D. Dingell, Chairman, Committee on Energy and Commerce, United States House of Representatives, and the Hon. Edward Markey, Chairman, Subcommittee on Telecommunications and Finance, United States House of Representatives. Among the topics discussed in the Staff Report were political contributions, sales practices, transparency, audit trails, issuer disclosure, and the regulatory structure for municipal securities. See Letter from Hon. John D. Dingell, Chairman, Committee on Energy and Commerce, and Hon. Edward Markey, Chairman, Subcommittee on Telecommunications and Finance to: Mary L. Schapiro, Acting Chairman, SEC; Christopher A. Taylor, Executive Director, Municipal Securities Rulemaking Board ("MSRB"); and Joseph R. Hardiman, President and Chief Executive Officer, National Association of Securities Dealers, Inc. ("NASD") (May 24, 1993).

<sup>2</sup> Staff Report, *supra* note 1 at 38.

<sup>3</sup> *Id.* at 28.

<sup>4</sup> *Id.* at 40. Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, apply to "persons," including issuers of municipal securities.

<sup>5</sup> Securities Act Release No. 7049, Exchange Act Release No. 33741, FR-42 (March 9, 1994) ("Companion Release").

municipal securities dealers who underwrite and sell municipal securities, and the information dissemination requirements of Rule 15c2-12.<sup>6</sup>

In addition, the Staff recommended in the Staff Report that Rule 15c2-12 be amended, or that similar rules be adopted, to prohibit municipal securities dealers from recommending outstanding municipal securities unless the issuer has committed to make available ongoing information regarding its financial condition.<sup>7</sup> This release proposes to implement the Staff's recommendation.

Section 15(c)(2) of the Exchange Act prohibits municipal securities dealers from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any municipal security by means of a "fraudulent, deceptive, or manipulative act or practice."<sup>8</sup> This section specifically authorizes the Commission to promulgate rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices. Pursuant to this authority, the Commission adopted Rule 15c2-12 in 1989 for the purpose of preventing fraud by enhancing the quality, timing, and dissemination of disclosure in the municipal securities market.<sup>9</sup>

The Commission proposes to amend Rule 15c2-12 to further deter fraud and manipulation in the primary and secondary municipal securities markets by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.<sup>10</sup> For many years, the

courts and the Commission have emphasized that, under the antifraud provisions, a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for making the recommendation.<sup>11</sup> In the Proposing Release and the Adopting Release, the Commission discussed broker-dealers' obligation to have a reasonable belief in the accuracy of statements made when underwriting securities.<sup>12</sup> When recommendations in the secondary market are made, they must be based on information that is up-to-date and accessible.

The proposed amendments to Rule 15c2-12 will assist brokers, dealers, and municipal securities dealers in satisfying their obligations under the antifraud provisions of the federal securities laws, and specifically under section 15(c)(2), by conditioning the underwriting and recommendation of municipal securities on the availability of current issuer information. By providing an efficient and timely means of access to disclosure, the proposed amendments will ensure that information will be available in the future regarding underwritten securities. As a result, brokers, dealers, and municipal securities dealers will be better able to recommend municipal securities in the secondary market based on current issuer information. Fraud and manipulation in both the primary and secondary markets for municipal securities thus will be deterred. Furthermore, the availability of secondary market disclosure to all municipal securities market participants will assist investors in protecting themselves from misrepresentation or other fraudulent activities by brokers, dealers, and municipal securities dealers.

For these reasons, the Commission proposes to amend Rule 15c2-12 to prohibit a broker, dealer, or municipal securities dealer ("Participating Underwriter")<sup>13</sup> from purchasing or selling municipal securities in connection with a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more ("Offering")<sup>14</sup> unless the Participating Underwriter has reasonably determined that the issuer or its

<sup>6</sup> 17 CFR 240.15c2-12. See Securities Exchange Act Release No. 26100 (Sept. 22, 1988), 53 FR 37778 ("Proposing Release"); Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 ("Adopting Release"). Rule 15c2-12 requires an underwriter of municipal securities (1) to obtain and review an issuer's official statement that, except for certain information, is "deemed final" by an issuer, prior to making a purchase, offer, or sale of municipal securities; (2) in negotiated sales, to provide the issuer's most recent preliminary official statement (if one exists) to potential customers; (3) to deliver to customers, upon request, copies of the final official statement for a specified period of time; and (4) to contract to receive, within a specified time, sufficient copies of the issuer's final official statement to comply with the rule's delivery requirement, and the requirements of MSRB rules. Rule 15c2-12 also contains specific exemptions for three types of municipal securities offerings.

<sup>7</sup> Staff Report, *supra* note 1 at 40. See also Testimony of Arthur Levitt, Chairman, SEC, Concerning the Municipal Securities Market, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, United States House of Representatives (Sept. 9, 1993) at 5-7; Remarks of Arthur Levitt, Chairman, SEC, The Bond Buyer Ethics in Public Finance Conference (Jan. 24, 1994) at 6; Remarks of Richard Y. Roberts, Commissioner, SEC, "Alternatives for Improving Municipal Secondary Market Disclosure," The Southern Municipal Finance Society 13th Annual Fall Conference (Sept. 15, 1993) at 9-12.

<sup>8</sup> Exchange Act Section 15(c)(2), 15 U.S.C. 78o(c)(2).

<sup>9</sup> See Adopting Release, *supra* note 6 at 54 FR 28800.

<sup>10</sup> Under the antifraud provisions of the federal securities laws, issuer disclosure not only must be accurate in all material respects, but also must not omit information necessary to make the statements made, in light of the circumstances, not misleading. The proposed amendment will assist issuers in satisfying their obligations under the antifraud provisions by creating a mechanism for the dissemination of primary and secondary market disclosure. See Companion Release, *supra* note 5 at Section III.A.

<sup>11</sup> See e.g. *Feeney v. SEC*, 564 F.2d 260 (8th Cir. 1977); *Cortlandt Investing Corporation*, 44 SEC 45 (1969); *Crow, Bourman & Chotkin, Inc.*, 42 SEC 938 (1966); *Shearson, Hammill & Co.*, 42 SEC 811 (1965).

<sup>12</sup> See Proposing Release, *supra* note 6 at 53 FR 37787; Adopting Release, *supra* note 6 at 54 FR 28811. See also *Sanders v. John Nuveen & Co.*, 524 F.2d 1064, 1069-70 (7th Cir. 1973) (noting underwriter's heightened obligation when it has an opportunity to require disclosure from the issuer, and when there are special selling pressures involved in underwriting a security), vacated and remanded on other grounds, 425 U.S. 929 (1976), on remand, 554 F.2d 790 (7th Cir. 1977), reh'g denied, 619 F.2d 1222 (7th Cir. 1980), cert. denied 450 U.S. 1005 (1981); *Donaldson, Lufkin & Jenrette Securities Corp.*, Securities Exchange Act Release No. 31207 (Sept. 22, 1992); *Hamilton Grant & Co.*, Securities Exchange Act Release No. 24679 (July 7, 1987); *Walston & Co.*, Securities Exchange Act Release No. 8165 (Sept. 22, 1967) (stating that it is incumbent on dealers participating in offerings, as well as on dealers recommending municipal bonds, to make a diligent inquiry as to material facts relating to the issuer and bearing on the issuer's ability to service the bonds).

<sup>13</sup> See Rule 15c2-12(a).

<sup>14</sup> The proposed amendments also include an exemption for small and infrequent issuers. See Section II.D., *infra*.

designated agent has undertaken in a written agreement or contract for the benefit of the holders of such municipal securities to provide certain information to a nationally recognized municipal securities information repository ("NRMSIR"). The prohibition would apply to underwriters that have committed contractually to act as an underwriter in an Offering on or after the effective date of the rule amendment. This proposal responds, in part, to a suggestion in the Joint Statement on Improvements in Municipal Securities Market Disclosure,<sup>15</sup> in which a broad spectrum of municipal securities market participants supported wider dissemination of issuer information and improved mechanisms for such dissemination, to assure that securities professionals have a sufficient factual basis on which to recommend secondary market transactions.

The Commission is proposing further to amend Rule 15c2-12 to require brokers, dealers, and municipal securities dealers, prior to recommending the purchase or sale of a municipal security, to review the information the issuer of the municipal security has undertaken to provide. This amendment would apply to municipal securities issued on or after the effective date of the proposed amendment discussed in the preceding paragraph.

Finally, the proposed amendments would define the term "significant obligor," and amend the definition of the term "final official statement" for purposes of Rule 15c2-12.

## II. Description of the Proposed Amendments to Rule 15c2-12

### A. Underwriting Requirement

One amendment proposed today would add paragraph (b)(5) to Rule 15c2-12. This paragraph would prohibit a Participating Underwriter from purchasing or selling municipal securities in connection with an Offering, unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of holders of such municipal securities to provide certain information to a NRMSIR. In using the terms "purchase" or "sale," the proposed amendment contemplates that, at such time as the issuer of municipal securities delivers the securities to the Participating Underwriters, the issuer will have undertaken, in

<sup>15</sup> Joint Statement on Improvements in Municipal Securities Market Disclosure (Dec. 20, 1993) ("Joint Statement") at 2-3. The Joint Statement was issued by twelve groups representing participants in all aspects of the municipal securities market. The groups included were the American Bankers Association's Corporate Trust Committee; the American Public Power Association; the Association of Local Housing Finance Agencies; the Council of Infrastructure Financing Authorities; the Government Finance Officers Association; the National Association of Bond Lawyers; the National Association of Counties; the National Association of State Auditors, Comptrollers and Treasurers; the National Association of State Treasurers; the National Council of State Housing Agencies; the National Federation of Municipal Analysts; and the Public Securities Association.

a written contract or agreement for the benefit of holders of the municipal securities, to provide information to a NRMSIR.<sup>16</sup>

With the exception of general obligation bonds, most offerings include a trust indenture which sets forth the undertakings between the issuer and the holders of municipal securities, and thus delineates the bondholders' rights. If there is no trust indenture, as in a general obligation bond offering, a bond resolution, ordinance, or written agreement or contract sets out the undertakings by the issuer for the benefit of the holders of the municipal securities. In order to satisfy its obligation under the rule, a Participating Underwriter would need to look to these documents for undertakings by the issuer to supply secondary market disclosure to a NRMSIR. A Participating Underwriter will have satisfied its obligation under proposed paragraph (b)(5), so long as it can conclude that all of the appropriate undertakings have been made. While the issuer's duty will be to its bondholders, all participants in the municipal securities market will benefit from having access to this information.

Comment is requested on the use of a written agreement or contract for the provision of secondary market information by issuers for the benefit of holders of municipal securities, particularly in light of the provisions of proposed paragraph (c) prohibiting the recommendation by brokers, dealers, and municipal securities dealers of municipal securities when issuer information is unavailable. Comments should address specifically the consequences of a failure by an issuer to comply with its secondary market disclosure undertakings after the initial issuance of municipal securities. Comment is requested on whether the use of the issuer's undertakings is a necessary or appropriate approach to implementing procedures for providing information to the municipal securities market. Comment also is requested on whether, as an alternative to written undertakings, a statement in the final official statement of the issuer of municipal securities that it will provide secondary market disclosure would be sufficient. In addition, commenters are requested to address whether the use of written undertakings provides sufficient flexibility for issuers that, in the future, wish to change the type, timing, or presentation of the information, or whether some alternative mechanism should be used.

#### 1. Annual Information

Proposed paragraph (b)(5)(i)(A) would prohibit Participating Underwriters from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken to provide to a NRMSIR, at least annually, current financial information concerning the issuer of the municipal security and any significant obligors, including annual audited financial statements and pertinent operating information.

<sup>16</sup> A Participating Underwriter would need to receive assurances from the issuer that such undertakings would be made before agreeing to act as an underwriter.

Current annual financial information is an important source of updated information for the market. The format for presenting such information is not specified in the proposed amendment, and may be accomplished through any disclosure document, whatever its form or principal purpose, that includes annual audited financial statements and pertinent operating information. The proposed amendment contemplates that sequential final official statements prepared by frequent issuers of municipal securities may meet the standards of the rule. Similarly, the audited financial statements should fairly present the current financial condition, the results of operations, and cash flows of the municipal issuer and any significant obligor. Proposed paragraph (b)(5) also does not dictate the content of the annual financial information, other than the audited financial statements. Rather, it provides discretion to offering participants.

The Commission recognizes that there is great diversity in the municipal marketplace, both in terms of the types of issuers and the types of issues of municipal securities. The proposed amendment is, therefore, intended to permit issuers the flexibility to address the needs of the market by specifying in the written agreement or contract the particular financial and operating information that is to be provided on an annual basis, in addition to the annual audited financial statements. The Commission anticipates that issuers and offering participants will look to various voluntary guidelines, as well as the guidance provided in the Companion Release, in establishing an appropriate level of disclosure for each municipal securities issue. Of course, additional information, such as unaudited quarterly information, also could be specified.

Under the proposed amendment, in paragraph (b)(5)(ii), the issuer of the municipal security also would be required to specify what accounting principles will be used in the preparation of the audited financial statements, the time within which the annual information for each year will be available, and the specific operating and financial information that will be provided on an annual basis, in addition to the audited financial statements. The covenant would not limit the issuer in its ability to supplement the specific information, where necessary or appropriate.

Proposed paragraph (b)(5)(ii) does not specify the timing of availability of the annual financial information in each year. Rather, any written contract or agreement would be required to specify the annual time frame in which the current financial information covering the previous fiscal year will be provided by the issuer of the municipal security and any significant obligors. As noted above, this permits issuers some flexibility in disseminating this information, and also allows investors and the marketplace to know when such information will be available.

Comment is requested on whether the rule should specify the minimum content of the information to be provided on an annual basis. Comment is requested on whether audited financial statements should be required, and whether they should be required to be audited using GAAS. Comment also is requested on whether the financial statements should be required to conform to generally accepted accounting principles ("GAAP") or should include discussions of material deviations from GAAP if prepared on some other basis. Further, comment is requested on whether the rule should specify the time frame, such as six months or nine months after the fiscal year end, in which the annual financial information should be made available in each year.

## 2. Material Events

Proposed paragraph (b)(5)(i)(B) requires that Participating Underwriters assure themselves that issuers have undertaken to provide, in a timely manner, notice of any of the following events, if material:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (7) Modifications to rights of security holders;
- (8) Bond calls;
- (9) Defeasances;
- (10) Matters affecting collateral; and
- (11) Rating changes.

This portion of the proposed amendment, like that addressing annual financial information, is intended to provide guidance to issuers and other participants in the municipal securities market regarding the dissemination of notices of material events. As discussed in the Companion Release,<sup>17</sup> this list consists of recognized material events that reflect on the creditworthiness of the issuer of the municipal security or any significant obligor, as well as on the terms of the securities they issue. The issuer must determine whether information needs to be disseminated about a listed event in any particular situation, and if so, when the information dissemination should occur in order to be "timely." For example, an issuer would be free to determine that a *de minimis* draw on a reserve fund by an issuer financing agency resulting from a delay by the obligor in transmitting a payment, where the draw is

<sup>17</sup> Companion Release, *supra* note 5, at Section IV.B.2.

replaced immediately and is not the result of the obligor's financial difficulties, is not a material event requiring notice to the market.

Comment is requested as to whether the listed items of material events should be expanded. Comment also is requested on whether timing, for example, within a certain number of days, for the dissemination of notice of these events should be specified as part of the undertaking.

### *B. Recommendations Without Specified Information*

As proposed, a new paragraph (c) would be added to the rule, which would prohibit any broker, dealer, or municipal securities dealer from recommending the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has reviewed the information the issuer of such municipal security has undertaken to provide pursuant to paragraph (b)(5).

As noted above, broker-dealers imply by recommending securities that they have a reasonable basis for making such recommendations. In the Commission's view, most situations in which a broker, dealer, or municipal securities dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer.

The proposed amendment neither specifies the form in which information must be reviewed, nor specifies which documents must be obtained.<sup>18</sup> Rather, it requires brokers, dealers, and municipal securities dealers to review the information that the issuer of the municipal security has agreed to provide. The proposed amendment is intended to allow this information to be obtained and reviewed through any means of dissemination used by participants in the municipal securities market.<sup>19</sup> While the information may be available from documents placed in a NRMSIR, this may not be the only source of information. Thus, to satisfy the requirements of the rule, brokers, dealers, and municipal securities dealers may obtain this information directly from the issuer, from professionals such as attorneys, accountants, or other municipal securities dealers, or from any other reliable source. If, in reviewing this information, they discover any factors that suggest that disclosure is inaccurate or

<sup>18</sup> C.f. Rule 15c2-11, 17 CFR 270.15c2-11. Rule 15c2-11 requires that brokers and dealers, prior to entering quotations for securities in a "quotation medium", have in their records certain specific information, and, based on a review of this information, have a reasonable basis under the circumstances for believing that the information is accurate in all material respects, and that the sources of the information are reliable. Submissions of quotations respecting municipal securities are exempt from the application of Rule 15c2-11. Rule 15c2-11(f)(4).

<sup>19</sup> Therefore, brokers, dealers, and municipal securities dealers could review information received through electronic dissemination, in response to telephone inquiries, facsimile, by mail, or by messenger service, so long as the information is complete.

incomplete, or that signal the need for additional investigation, brokers, dealers, and municipal securities dealers may need to obtain additional information, or seek to verify existing information.<sup>20</sup> If, however, the rating is known and information placed with a NRMSIR has been reviewed and raises no questions, a broker, dealer, or municipal securities dealer would need to look no further for information about the security recommended. Furthermore, a broker, dealer, or municipal securities dealer would not be prohibited from recommending the purchase or sale of a municipal security solely because of the existence of material events of which, after its review, it has no knowledge. This could occur if an issuer failed to disclose the occurrence of a material event to a NRMSIR or to disseminate notice of such an occurrence in any other manner. Under paragraph (c), if the specified information is not available, no recommendation may be made.

Comment is requested on the provisions of proposed paragraph (c). Specifically, comment is requested on the application of the term "recommend," and whether the requirement to review information is burdensome, or requires further clarification.

In view of the importance of ensuring the secondary market liquidity of municipal issues, comment also is requested on whether market participants believe that the proposed amendments would have a substantial or long-lasting effect on market liquidity. Questions have been raised about whether municipal securities dealers will be willing to effect secondary market transactions in a broad range of municipal securities in light of the specificity with which the requirement of paragraph (c) is articulated. The Commission is of the view that once the proposed amendments are in effect, and dissemination systems are operating, liquidity will not be affected, and that municipal securities dealers will be willing and able to purchase and sell as broad a range of securities as before. Commenters should consider this analysis and suggest any factors that may have effects on liquidity, and what operational changes or repository arrangements, or changes to the proposed amendment to the rule, would reduce these effects.

### *C. Definitions*

#### 1. Final Official Statement

Rule 15c2-12(e)(3) presently defines the term "final official statement" as a document or set of documents prepared by the

<sup>20</sup> See *M.G. Davis & Co.*, 44 SEC 153, 157-58 (1970) (broker-dealer registration revoked because "representations and predictions" made and, market letter relied on by registrant "were without reasonable basis," and "registrant could not reasonably accept all of the statements in the (market letter) without further investigation"), *aff'd sub nom. Levine v. SEC*, 436 F.2d 88 (2d Cir. 1971); *Merrill, Lynch, Pierce, Fenner & Smith, Securities Exchange Act Release No. 14149* (Nov. 9, 1977) (noting that if a broker-dealer lacks sufficient information to make a recommendation, the lack of information is material and should be disclosed). See also *Companion Release*, *supra* note 5 at Section V (discussing the obligations of brokers, dealers, and municipal securities dealers to investigate information in order to have a reasonable basis for making a recommendation).

issuer or its representatives setting forth information concerning the issuer and the securities to be issued that is complete as of the date the document is delivered to the Participating Underwriter. The definition does not prescribe the specific information required to be included in the documents. In order to ensure that the purposes of Rule 15c2-12 are met, and in light of the proposed amendment obligating Participating Underwriters to assure that issuers have undertaken to provide to a repository issuer-identified minimum annual financial information, as well as notices of material events, the Commission is proposing to amend the definition of final official statement to include an information requirement. The definition of final official statement also governs the items of information to be included in the near final official statement, subject to availability considerations.<sup>21</sup> Having a standard with which to compare the contents of near final official statements should assist Participating Underwriters in satisfying their obligation to have a reasonable basis on which to recommend securities.<sup>22</sup>

The proposed amendment would define the final official statement to include information concerning the terms of the proposed issue of securities, and financial and operating information concerning the issuer that is adequate to provide a fair presentation of the issuer's current financial condition and results of operations and cash flows, including audited financial statements. Financial and operating information also would be required for any "significant obligor" with respect to the municipal security. The term "significant obligor" is defined in the proposed amendment, and is discussed below. As discussed in the Companion Release, reliable financial information, prepared on a consistent basis, that fairly presents the issuer's and any significant obligor's financial position, is an important component of a disclosure scheme designed to prevent fraud.

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<sup>21</sup> See Public Securities Association (Aug. 24, 1992) (interpretation regarding the information to be contained in near final official statement obtained and reviewed by underwriters pursuant to Rule 15c2-12(b)(1)).

<sup>22</sup> For a discussion of the delivery requirement of a near final official statement pursuant to Rule 15c2-12(b)(1), see Companion Release, *supra* note 5, at Section III.E.6.

Comment is requested on whether an amendment to the definition of final official statement is necessary. If commenters consider amendment necessary, comment is requested on whether audited financial statements should be required, whether audited financial statements should be required to be audited using GAAS, the number of years of audited financial statements that should be included, if any, and if audited financial statements are included, whether unaudited financial statements covering interim periods also should be included. Comment also is requested on whether the definition should be amended to require that the financial statements conform to GAAP, or should include discussions of material deviations from GAAP if prepared on some other basis.

The final official statement can be composed of a set of documents. Comment is requested on whether a seasoned issuer should be permitted to incorporate previously prepared documents by reference into the final official statement and, if incorporation by reference is permitted, what limitations or requirements should be imposed. Comment is requested on whether seasoned issuers should be required to provide documents incorporated by reference upon request and at no charge, and on what definition should be used for "seasoned issuers." For example, seasoned issuers could be defined as repeat issuers having in excess of a specified dollar amount of outstanding securities.

## 2. Significant Obligors

Proposed paragraph (b)(5) of the amendment would require financial and operating information on "significant obligors" of an issuer of a municipal security to be provided in the final official statement and in annual financial information. The proposed amendments, in paragraph (f)(9), also would define the term "significant obligor."

An obligor is any person who, directly or indirectly, under a lease, loan, sale, or other agreement or arrangement, is obligated to make payments to the issuer, which cash payments are the source of the cash flow servicing the obligations on municipal securities. The term "obligor" is not limited to issuers of separate securities under Rule 3b-5 under the Exchange Act and Rule 131 under the Securities Act.<sup>23</sup> [FN23] Under the proposed definition, an obligor would be viewed as "significant" if it is the source of 20 percent or more of the cash flow servicing the obligations on the municipal securities.

This definition is designed to make available to the municipal securities market, at the time of issuance and on an annual basis, information on persons who ultimately are responsible for the cash flow servicing the municipal securities. The proposed definition

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<sup>23</sup> An obligor is not only an industrial or commercial enterprise, but may include governmental and nonprofit entities as well. See the definition of issuer in Rule 15c2-12(e)(4), 17 CFR 240.15c2-12(e)(4); Rule 3b-5, 17 CFR 240.3b-5, and Rule 131, 17 CFR 230.131, under the Securities Act.

recognizes that, with portfolio and concentration risk diversification, the "significant obligor" of an issuer of a municipal security may not be constant, but may change from year to year.

Comment is requested on whether 20 percent is an appropriate threshold level of cash flow to require disclosure concerning a significant obligor, or whether a different threshold, such as 10, 15, or 30 percent, should be used. Comment also is requested on whether this standard should differ for a final official statement and annual financial information. Finally, comment is requested as to whether the issuer's obligation to provide information concerning significant obligors should be conditioned on a minimum threshold, for example, payment obligations in excess of \$1,000,000, or some other dollar threshold.

#### *D. Exemptions*

Consistent with other provisions of Rule 15c2-12, the proposed amendments are limited in application to primary offerings of municipal securities with an aggregate principal amount of \$1,000,000 or more.

The proposed amendments include a new exemption in paragraph (d)(2), applicable to paragraph (b)(5). This new exemption would provide that, in addition to the \$1,000,000 threshold applicable to Rule 15c2-12 generally, Offerings would be exempt from the operation of paragraph (b)(5) if, at such time as the issuer of municipal securities delivers the securities to the Participating Underwriter, the issuer: (a) will have less than \$10,000,000 in aggregate amount of municipal securities outstanding, including the offered securities; and (b) the issuer will have issued less than \$3,000,000 in aggregate amount of municipal securities in the most recent 48 months preceding the Offering. This exemption is designed to exclude from the application of paragraph (b)(5) small issuers that do not frequently issue municipal securities. Comment is requested on the use of these thresholds. Comment also is requested on whether a different or additional threshold should be applicable to paragraph (b)(5). Such a threshold could be based on the number of holders of municipal securities, or on the number of holders falling below a certain level at the end of a fiscal year, for example, 300 or 500 debt holders. Comment is requested on whether issuers of conduit securities that are non-governmental private activity bonds should be excepted from this exemption, or if lower or different thresholds should be used for such issuers. Comment also is requested on whether the exemption in proposed paragraph (d)(2) is appropriate for conduit financings, in light of the fact that, in many instances, issuing authorities are created for the sole purpose of issuing bonds to finance a particular facility.

The proposed amendments also include a new exemption in

paragraph (d)(3), exempting from the application of paragraph (c) of the rule a primary offering of municipal securities (1) not sold in an Offering to which paragraph (b)(5) applied, or (2) sold in an Offering exempt under paragraph (d)(1) or paragraph (d)(2). The purpose of this exemption is to permit the recommendation in the secondary market of securities that were not subject to paragraph (b)(5), either because they were sold in a primary offering of municipal securities with an aggregate principal amount of less than \$1,000,000, or because they came within the existing exemptions under newly designated paragraph (d)(1) for limited placements, short-term securities, and securities with demand features, or within the exemption in new paragraph (d)(2) for small, infrequent issuers. Comment is requested on this exemption. Specifically, comment is requested on whether paragraph (c) of the proposed amendments should be made applicable to all outstanding issues of municipal securities. The existing transactional exemption in newly designated paragraph (d) would apply to the amendments.

#### *E. Transitional Provision*

Newly designated paragraph (g) of the rule would contain a transitional provision for the proposed amendments. The provisions of paragraph (b)(5) would apply to a Participating Underwriter that had contractually committed to act as an underwriter in an Offering on or after the effective date of the rule. Comment is requested on whether this transitional provision is appropriate, and on whether the effective date of the proposed amendments should be delayed.

### **III. Nationally Recognized Municipal Securities Information Repositories**

While the term "NRMSIR" currently is used in paragraph (b)(4) of Rule 15c2-12, it is not defined in the rule. In proposing the rule, however, the Commission requested comment on the creation of one or more repositories for municipal securities disclosure documents.<sup>24</sup> At that time, the Commission strongly supported the development of one or more central repositories.<sup>25</sup> Of the more

<sup>24</sup> Proposing Release, *supra* note 6 at 54 FR 37791.

<sup>25</sup> Adopting Release, *supra* note 6 at 54 FR 28807. The Commission recognized the benefits that would accrue from the creation of competing private repositories. *Id.*

In 1989, the MSRB announced its intention to establish and manage a central repository to provide for the collection and dissemination of official statements and refunding documents. Letter from John W. Rowe, Chairman, MSRB, to Jonathan G. Katz, Secretary, SEC (June 1, 1989). The MSRB developed its Municipal Securities Information Library ("MSIL") system, which presently collects information and disseminates it electronically to market participants and information vendors. Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194.

In January 1993, the MSRB began operating its Continuing Disclosure Information pilot system ("CDI System"), which is a central repository for voluntarily submitted official continuing disclosure documents relating to outstanding municipal securities issues. Securities Exchange Act Release No. 30556 (April 6, 1992), 57 FR 12534. The CDI System operates as part of MSIL, and currently is capable of accepting documents of three or fewer pages in length.

than sixty comment letters that the Commission received, forty-five expressed views regarding the concept of repositories. Forty of the forty-five commenters expressed support for some form of a central repository.<sup>26</sup>

NRMSIRs were discussed in the Adopting Release, where the Commission noted that in determining whether a particular entity is a NRMSIR, it would look, among other things, at whether the repository: (1) Is national in scope; (2) maintains current, accurate information about municipal offerings in the form of official statements; (3) has effective retrieval and dissemination systems; (4) places no limits on the issuers from which it will accept official statements or related information; (5) provides access to the documents deposited with it to anyone willing and able to pay the applicable fees; and (6) charges reasonable fees.<sup>27</sup> The Joint Statement has further refined the concept to suggest the designation of state-based repositories, and the creation of an index, maintained by the MSRB, for market participants to learn of the availability of information provided to the MSRB or to a NRMSIR.<sup>28</sup>

The proposed amendments do not define the term NRMSIR. The Commission requests comment on whether NRMSIR should be defined in the rule, with specific standards established for NRMSIRs. If standards were established, the Commission believes the following standards are appropriate. It requests comment on these standards.

NRMSIRs should maintain current, accurate information about municipal securities, including final official statements, the issuers' annual financial information, and issuers' notices of material events. Moreover, NRMSIRs should have effective systems for the timely collection, indexing, storage, and retrieval of these documents.

NRMSIRs should be capable of national dissemination of final official statements, annual financial information, and

notices of material events through electronic dissemination systems, in response to telephone inquiries, and hard copy delivery via facsimile, by mail, and by messenger service. Specific dissemination systems and standards should be delineated in order to emphasize the importance of effective information dissemination. Timely public availability upon receipt of information by a NRMSIR also is important. For example, final official statements and annual financial information could be made available by the next business day after their receipt by a NRMSIR, and notices of material events could be made available within fifteen minutes of their receipt by a NRMSIR. Comment is requested on the provision by NRMSIRs of electronic dissemination of information, and on the suggested timing requirements for availability of documents for dissemination.

Repositories created and operated by states would be required to accept submissions from all issuers within their own states, and would not be permitted to accept documents from issuers in any other state. National dissemination requirements, however, would be applicable to single-state repositories. All other repositories would not be permitted to limit the issuers from which they will accept final official statements, annual financial information, and reports of material events. Comment is requested on whether state-based repositories can serve as an effective means to disseminate information to the market for a nationally traded security, so the issuer of that security can meet its disclosure obligations using a state-based repository. Comment also is requested on whether a significant number of states are willing to make the necessary financial commitment to create a state-based system. NRMSIRs would not be permitted to discriminate on the basis of the requestor in providing documents, and would be required to charge reasonable fees.

Finally, in order to implement the indexing system suggested by the Joint Statement, a NRMSIR would be required to provide notice to the MSRB of its designation by an issuer as the repository for the issuer's final official statements, annual financial information, and notices of material events. This would allow the creation of an index by the MSRB for informing the municipal securities market of where an issuer is sending its secondary market disclosure. Comment is requested on the feasibility of expanding this provision to require a NRMSIR to inform the MSRB whenever it receives information from an issuer. Comment also is requested on whether documents should be required to be placed with the MSRB either in addition to or in lieu of a NRMSIR.<sup>29</sup>

The MSRB has expressed concern that permitting issuers to place documents with multiple NRMSIRs may result in repositories receiving information at different times. This raises the issue of when the information becomes "public," and thus when dealers are

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Neither MSIL nor the CDI System is a NRMSIR. In considering the approval of MSRB rule G-36, which requires underwriters to provide the MSRB with copies of final official statements and certain other information prepared by issuers, the Commission noted that the MSRB did not intend to seek NRMSIR status. The Commission noted that if the MSRB sought NRMSIR status, it would consider the competitive implications of such a request. See Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333, 23337 n.26.

<sup>26</sup> See Adopting Release, supra note 6 at 54 FR 28807.

<sup>27</sup> See Adopting Release, supra note 6 at 54 FR 28808, n.65.

<sup>28</sup> The Joint Statement suggested that in order to be recognized as a NRMSIR, a repository should, among other things: (1) maintain current, accurate information about municipal securities in the form of annual financial reports, operating data, and other current information; (2) have an effective retrieval and dissemination system; (3) place no limits on the issuers from which it will accept information unless it is a single-state repository; (4) provide access to the documents to anyone willing and able to pay the applicable fee; (5) charge reasonable fees; (6) collect information on at least a state-wide basis; and (7) provide for timely notification to an MSRB index of names of issuers about which it is to receive information. Joint Statement, supra note 15 at Addendum.

<sup>29</sup> FN29 See supra note 25 (regarding the competitive implications of the MSRB's seeking NRMSIR status).

considered accountable for it.<sup>30</sup> Comment is requested on these issues, and, in particular, on how to assure that NRMSIRs simultaneously receive secondary market disclosure. Comment also is requested on whether any proposal should require that secondary market disclosure is deposited with all designated NRMSIRs. In addition, comment is requested on whether the proposal should designate specific methods for sending information to NRMSIRs.

Since the Commission adopted Rule 15c2-12, the Division of Market Regulation has issued three letters taking no-action positions recognizing national information vendors as NRMSIRs, based on the standards set out in the Adopting Release.<sup>31</sup> The Commission anticipates that if standards for NRMSIRs were adopted, these NRMSIRs, as well as new NRMSIRs, would be required to have their operations meet the new standards. Comment is requested on the ability and willingness of both potential NRMSIRs, and those presently operating under no-action letters, to meet the standards described. Furthermore, comment is requested as to whether designation by Commission order, pursuant to standards set out in Rule 15c2-12, is an appropriate method for recognizing NRMSIRs, or whether it is appropriate to continue the current no-action policies of the Division.

#### IV. Application of the Tower Amendment

With the passage of the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress provided for a limited regulatory scheme for municipal securities.<sup>32</sup> Prior to the passage of the 1975 Amendments, municipal issuers were exempt from the registration and continuous reporting provisions of both the Securities Act and the Exchange Act. While municipal issuers continued to be exempt from all but the antifraud provisions of the federal securities laws, the 1975 Amendments required the registration of municipal securities brokers and dealers,<sup>33</sup> and established the MSRB,<sup>34</sup> granting it the authority to promulgate rules governing the sale of municipal securities.

In so crafting the 1975 Amendments, Congress struck a balance between investor protection and intergovernmental comity. This concern is reflected in Section 15B(d)(1) of the

<sup>30</sup> Letter from Christopher A. Taylor, Executive Director, MSRB, to Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC (December 20, 1993).

<sup>31</sup> Letters from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to: Joseph V. Riccobono, Executive Vice-President, American Banker-Bond Buyer (Jan. 4, 1990); J. Kevin Kenny, President, Chief Executive Officer, J.J. Kenny Co. (Jan. 4, 1990); and Michael R. Bloomberg, President, Bloomberg, L.P. (Jan. 11, 1990).

<sup>32</sup> The Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (June 4, 1975).

<sup>33</sup> 15 U.S.C. 78o-4(a)(1).

<sup>34</sup> 15 U.S.C. 78o-4(b)(1).

Exchange Act, which prohibits the MSRB from requiring "any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document, in connection with the issuance, sale, or distribution of such securities."<sup>35</sup> While narrowly tailoring the authority of the MSRB to require that disclosure documents be provided to investors,<sup>36</sup> Congress was careful to preserve the authority of the Commission under Section 15(c)(2) of the Exchange Act.<sup>37</sup>

Moreover, Section 15B(d)(2) expressly indicates that "(n)othing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title."<sup>38</sup> Thus, while prohibiting the Commission from requiring municipal issuers to file reports or documents prior to issuing securities in Section 15B(d)(1),<sup>39</sup> Congress expanded the Commission's authority to adopt rules reasonably designed to prevent fraud. The Commission believes that the proposed amendments to Rule 15c2-12 are consistent with its Congressional mandate to adopt rules reasonably designed to prevent fraud in the municipal securities market.<sup>40</sup>

#### V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act<sup>41</sup> requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed amendments to Rule 15c2-12 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from amendment of the rule. Moreover, while the amendments apply equally to all brokers, dealers, and municipal securities dealers, the Commission is interested in receiving comments on the extent to which the proposed dollar threshold in the new exemption in paragraph (e) would burden one segment of the industry more than another.

<sup>35</sup> 15 U.S.C. 78 o-4(d)(1).

<sup>36</sup> The so-called "Tower Amendment," adding section 15B(d)(2), 15 U.S.C. 78o-4(d)(2) to the Exchange Act, prohibits the MSRB from requiring municipal issuers, directly or indirectly, through municipal securities broker-dealers or otherwise, to furnish the MSRB or prospective investors with any documents, including official statements. The MSRB specifically is permitted, however, to require that official statements or other documents that are available from sources other than the issuer, such as the underwriter, be provided to investors.

<sup>37</sup> 15 U.S.C. 78o(c)(2).

<sup>38</sup> 15 U.S.C. 78o-4(d)(2).

<sup>39</sup> 15 U.S.C. 78o-4(d)(1).

<sup>40</sup> Rule 15c2-12 was adopted pursuant to the Commission's authority under Exchange Act Sections 2, 3, 10, 15, 15B, and 23; 15 U.S.C. 78b, 78c, 78j, 78o, 78o-4, 78q, and 78w.

<sup>41</sup> 15 U.S.C. 78w(a)(2).

In addition, the Commission has prepared an initial regulatory flexibility analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act<sup>42</sup> [FN42] regarding the proposed amendments to Rule 15c2-12. The IRFA indicates that the amendments to the rule could impose some additional costs on small broker-dealers and municipal issuers. Nonetheless, the Commission is of the view that many of the substantive requirements of the rule amendments already are observed by broker-dealers and issuers as a matter of business practice, or to fulfill their existing obligations under the general antifraud provisions of the federal securities laws. The Commission requests comment on the extent to which current practice deviates from the requirements of the proposed amendments, and the extent to which additional costs may be imposed on small broker-dealers and municipal issuers if the amendments are adopted as proposed.

A copy of the IRFA may be obtained from Janet W. Russell-Hunter, Esq., Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7-10, Washington, DC 20549, (202) 504-2418.

**List of Subjects in 17 CFR part 240**

Reporting and recordkeeping requirements, Securities

**Text of Proposed Amendments to Rule 15c2-12**

In accordance with the foregoing, title 17, chapter II of title 17 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 240--GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

\* \* \* \* \*

2. Section 240.15c2-12 is amended by adding a Preliminary Note preceding paragraph (a); adding paragraph (b)(5); redesignating paragraph (c) through paragraph (f) as paragraph (d) through paragraph (g); adding paragraph (c); revising newly designated paragraph (d) and paragraph (f)(3); adding

paragraph (f)(9); and adding one sentence to the end of newly designated paragraph (g) to read as follows:

**s240.15c2-12 Municipal securities disclosure.**

*Preliminary Note:* For a discussion of disclosure obligations relating to municipal securities, issuers, brokers, dealers, and municipal securities dealers should refer to Securities Act Release No. 7049, Exchange Act Release No. 33741, FR-42 (March 9, 1994). For a discussion of the obligations of underwriters to have a reasonable basis for recommendations of municipal securities, brokers, dealers, and municipal securities dealers should refer to Securities Exchange Act Release No. 26100 (Sept. 22, 1988) and Securities Exchange Act Release No. 26985 (June 28, 1989).

\* \* \* \* \*

(b) Requirements. \* \* \*

(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of holders of such securities, to provide to a nationally recognized municipal securities information repository:

(A) At least annually, current financial information concerning the issuer of the municipal securities and any significant obligors, including annual audited financial statements and pertinent operating information; and

(B) In a timely manner, notice of any of the following events, if material:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (7) Modifications to rights of security holders;
- (8) Bond calls;
- (9) Defeasances;
- (10) Matters affecting collateral; and
- (11) Rating changes.

(ii) Such written agreement or contract for the benefit of holders of such securities shall also specify:

- (A) The accounting principles pursuant to which the audited financial statements will be prepared;
- (B) The financial and pertinent operating information to be provided on an annual basis, in addition to audited financial statements; and
- (C) The time within which the annual information for the preceding year will be provided to the repository.

(c) *Recommendations without specified information.* As a means reasonably designed to prevent fraudulent, deceptive, or

<sup>42</sup> 5 U.S.C. 604.

manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has reviewed the information the issuer of the municipal security has undertaken to provide pursuant to paragraph (b)(5) of this section.

(d) *Exemptions.* (1) This section shall not apply to a primary offering of municipal securities in authorized denominations of \$100,000 or more, if such securities:

(i) Are sold to no more than thirty five persons each of whom the Participating Underwriter reasonably believes:

(A) Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and

(B) Is not purchasing for more than one account or with a view to distributing the securities; or

(ii) Have a maturity of nine months or less; or

(iii) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(2) Paragraph (b)(5) of this section shall not apply to an Offering of municipal securities if, at such time as the issuer of municipal securities delivers the securities to the Participating Underwriters:

(i) The issuer will have less than \$10,000,000 in aggregate amount of municipal securities outstanding, including the offered securities; and

(ii) The issuer will have issued less than \$3,000,000 in aggregate amount, in the 48 months preceding the Offering.

(3) The provisions of paragraph (c) of this section shall not apply to a primary offering of municipal securities:

(i) Not sold in an Offering to which paragraph (b)(5) of this section applied; or

(ii) Sold in an Offering exempt under paragraph (d)(1) or paragraph (d)(2) of this section.

\* \* \* \* \*

(f) *Definitions.* \* \* \*

(3) The term final official statement means a document or set of documents prepared by the issuer of municipal securities or its representatives setting forth, among other matters, information concerning the terms of the proposed issue of securities, and financial and operating information adequate to provide a fair presentation of the issuer's and any significant obligor's current financial condition and results of operations, and cash flows, including audited financial statements, that is complete as of the date delivered to the Participating Underwriter.

\* \* \* \* \*

(9) The term significant obligor means any person who, directly or indirectly, is the source of 20 percent or more of the cash flow servicing the obligations on the municipal securities.

(g) *Transitional Provision.* \* \* \*

Paragraph (b)(5) of this section shall not apply to a Participating Underwriter that has contractually committed to act as an underwriter in an Offering of municipal securities before (effective date of final rule).

By the Commission.

Dated: March 9, 1994.

**Margaret H. McFarland,**

*Deputy Secretary.*

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