

Executive Summary of SEC Amendments to Rule 15c2-12¹

On May 26, 2010, the Securities and Exchange Commission approved amendments to Securities and Exchange Act of 1934 Rule 15c2-12 (17 CFR § 240.15c2-12). Rule 15c2-12 applies to brokers, dealers, and municipal securities dealers acting as underwriters in a primary offering² of municipal securities. In general, the Rule includes provisions regarding what an underwriter must do in connection with a primary offering of municipal securities (subsections (b)(1-4)) and what provisions must be included in an issuer's continuing disclosure agreement (subsection (b)(5)).

The amendments, which were adopted largely in the form proposed in SEC Rel. No. 34-60332 (July 17, 2009), all relate to the continuing disclosure provisions and certain exemptions. The primary disclosure provisions of the Rule were not amended. ***The amendments will apply to primary offerings that occur on or after December 1, 2010.***

The amendments are summarized below.

- The complete exemption from the Rule for variable rate demand obligations (“VRDOs”) that could be tendered at least as frequently as every nine months³ was deleted. New primary offerings of VRDOs are subject to the continuing disclosure provisions of the Rule (see new (d)(5)), but continue to be exempt from the primary offering provisions of (b)(1-4). As amended, however, the Rule requires that whatever primary offering disclosure is provided must be updated on an annual basis, and notice must be provided regarding certain events as described below. The Rule does not address, among other things, whether disclosure that is limited to the letter of credit provider and the key features of the bonds is sufficient in the context of a direct-pay, irrevocable, unconditional letter of credit providing credit and liquidity support for bonds that may be tendered on a periodic basis.
 - continuing disclosure provisions would be triggered for existing VRDOs if they are remarketed in a manner that meets the Rule’s definition of a “primary offering”
- Prior to the amendment, notice of the following events was required to be filed with the Municipal Securities Rulemaking Board, but only if determined to be material. The amendments removed the materiality determination from the following events (and, accordingly, notice of these events must be filed in all instances):
 - principal and interest payment delinquencies
 - unscheduled draws on debt service reserves reflecting financial difficulties
 - unscheduled draws on credit enhancement reflecting financial difficulties
 - substitution of credit or liquidity providers, or their failure to perform
 - adverse tax opinions
 - defeasances
 - rating changes

- The following new notice events have been added:
 - the issuance by the 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 status of the securities
 - tender offers
 - bankruptcy, insolvency, receivership or similar event of the obligated person
 - the consummation of a merger, consolidation, or acquisition, or certain asset sales, involving the obligated person, or entry into or termination of a definitive agreement relating to the foregoing, if material
 - appointment of a successor or additional trustee or the change of name of a trustee, if material

- The prior requirement to provide notice “in a timely manner” is now subject to an outside limit of ten business days after the occurrence of the event.

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² “Primary offering” is defined by Rule 15c2-12 to include any initial offering of municipal securities and certain remarketings that involve a change in denomination or in the period during which the subject securities may be tendered. Rule 15c2-12(f)(7).

³ This complete exemption was previously provided by paragraph (d)(1)(iii) of the Rule.