

SEC Adopts Amendments to Rule 15c2-12 to Enhance Financial Condition Disclosure

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On August 20, 2018, the Securities and Exchange Commission (the “SEC”) adopted amendments (the “Amendments”) to the continuing disclosure provisions of Rule 15c2-12 (the “Rule”), with the goal of enhancing disclosure of the current financial condition of municipal securities issuers and obligated persons. Prior to the Amendments, the Rule required disclosure of fourteen enumerated significant events. The Amendments add the following two new significant events to this list:

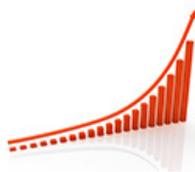
- Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

Compliance with the Amendments will be required for continuing disclosure agreements entered into beginning 180 days after publication of the Amendments in the Federal Register. The term “financial obligation” in the newly added significant events means: “a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii).” Municipal securities for which a final official statement is available on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) website are excluded from the definition of “financial obligation.”

The new disclosure obligations will cover the issuance of direct purchase bonds and direct loans, which have increased significantly in recent years compared to publicly offered bonds. These borrowings are not themselves subject to the continuing disclosure requirements of the Rule but will be picked up as “financial obligations” under the Rule. The definition of “financial obligation” in the Amendments is narrower than the definition in the SEC’s original proposal issued in March 2017, which would have included leases and other monetary obligations of an obligated person resulting from certain judicial-type proceedings. Under the Amendments, only financing leases will be covered as “financial obligations.” Consistent with its historical position, the SEC does not provide guidance in the Amendments about the definition of “material,” other than that an issuer should consider whether the disclosure of a financial obligation would be important to the investment decision of a reasonable investor, leaving it to the parties to make their own determination.

The addition of the new significant events to the municipal continuing disclosure requirements under the Rule has precedents in the disclosure obligations of public SEC-reporting companies under Items 2.03 and 2.04 of Form 8-K to disclose the creation of direct financial obligations and events indicating financial difficulties, although there are some significant differences that should be kept in mind.

We recommend that municipal issuers and obligated persons begin the process of educating those responsible for continuing disclosure and revisit their disclosure controls and procedures to accommodate the new required disclosures well in advance of the compliance date of the Amendments.



For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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