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SEC to Propose Issuer Disclosures on Bank Loans, Private Placements.

WASHINGTON – The Securities and Exchange Commission is set to propose changes that would require issuers and borrowers to disclose information about the growing number of alternative financial obligations to municipal bonds, such as bank loans, private placements, swaps, guarantees and leases.

Acting Chairman Michael Piwowar, a Republican, and Commissioner Kara Stein, a Democrat, voted on Wednesday to propose adding two new material events to the list of events that must be disclosed by issuers and borrowers under the SEC's muni disclosure Rule 15c2-12. The proposed amendments could be on the SEC's Wednesday or Thursday this week and published in the Federal Register next week. There will likely be a 60-day comment period after that, sources said.

While muni issuers and borrowers must contractually agree to disclose financial and operating data at least annually as well as notices of material events when they occur in order for firms to underwrite and sell their bonds under Rule 15c2-12, other financial obligations fall outside of that disclosure regime.

In many cases, credit analysts and other market participants either have no information about bank loans, private placements and swaps or do not have information on a timely basis, even though these obligations can affect the issuer's indebtedness, creditworthiness and liquidity.

Currently the SEC has 14 specified material events as well as a requirement for issuers to disclose if they have failed to meet their disclosure filing requirements within the last five years. These two amendments would make 16 specified events.

The proposed amendments also set forth a definition for the term "financial obligation."

The first amendment would require issuers and borrowers to file material event notices when they enter into certain financial obligations, if they are material. They must all file such notices if for those obligations they adopt agreements to covenants, events of default, remedies, priority rights or similar terms of obligations that could affect security holders, if material.

The second one would require material event notices to be filed when certain events are triggered such as acceleration of the debt, terminations, modifications, or other actions or terms indicating financial difficulties.

In discussing the proposals at the commission meeting, Piwowar noted that issuers' use of alternatives to publicly offered municipal bond financings, such as bank loans, have more than doubled since the financial crisis. Bank loans increased to $153 billion in 2015 from $67 billion in 2010, he said.

Both he and Jessica Kane, director of the SEC's Office of Municipal Securities, said that these alternative financial obligations can impact an issuer's indebtedness, creditworthiness and liquidity,

creating risks for its existing muni bondholders.

Market participants said these disclosures are needed, but that they want to see the details of what the SEC is proposing.

“We have asked the SEC previously to require the disclosure of bank loan and private placement terms that could affect outstanding bondholders so in that respect we’re happy with today’s commission action,” said Michael Decker, managing director and co-head of the municipal division for the Securities Industry and Financial Markets Association. “We need to look at the details of the proposal to ensure it’s comprehensive and workable. We’ll be looking at the rule from the perspective of dealer due diligence and whether dealers can efficiently determine when issuers are in compliance with previous disclosure agreements.”

Ernie Lanza, senior counsel at Clark Hill and former Municipal Securities Rulemaking Board general counsel, said, “The definition of financial obligation is important to see what scope of arrangements will be covered and whether [the term] is well-defined or open to interpretation.”

Jessica Giroux, general counsel and managing director of Bond Dealers of America, said, “Since the market has continued to see challenges in the area of disclosure, we support the concept of these amendments to improve market transparency. Once the rule text is available, our membership will review the details and will submit a comment letter to the SEC.”

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said GFOA called for issuers to disclose bank loans in its best practice “Understanding Bank Loans” but has concerns about mandating such disclosures.

“We recognize that bank loans, which are an important financing tool in a government’s financing toolkit, may be executed in an environment that is not as transparent as the public bond market,” she said. “For that reason, the GFOA remains engaged in independent and municipal market coalition efforts to improve voluntary disclosure of bank loans and have significant concerns with the process and procedural effect of mandatory disclosure. We plan to issue comments on these particular rule amendments to 15c2-12.”

The Bond Buyer

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