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SEC Adopts Amendments to Rule 15c2-12.

On August 20, 2018, the U.S. Securities and Exchange Commission ("SEC") announced it adopted amendments to Rule 15c2-12 of the Securities Exchange Act ("Rule 15c2-12"). Rule 15c2-12 requires brokers, dealers, and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities to reasonably determine that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board ("MSRB") timely notice of certain events.

The adopted amendments add two new events to the list included in the rule:

(15) 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 (16) 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.

The amendments define the term "financial obligation" to mean 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). The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

While the amendments address some of the concerns raised by market participants, the amendments do not address all of the concerns. For example, numerous commenters asked the SEC to provide guidance on how to determine the materiality of a financial obligation. The SEC responds by stating that an issuer may consider a number of factors when assessing the materiality of a particular financial obligation, however, at this time, the SEC does not believe it is necessary to provide additional guidance.

The compliance date for the amendments is 180 days after the amendments are published in the Federal Register (the "Compliance Date"). The amendments will only affect those continuing disclosure agreements entered into on or after the Compliance Date. However, an event under the terms of a financial obligation pursuant to (b)(5)(i)(C)(16) that occurs on or after the Compliance Date must be disclosed regardless of whether such obligation was incurred before or after the Compliance Date.

A copy of the SEC's adopting release may be found here.

It is important that market participants understand the impact of the amendments on their current obligations, including under the federal securities laws and MSRB rules.

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