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SEC Approves Narrower 15c2-12 Disclosure Amendments.

WASHINGTON — The Securities and Exchange Commission has released a final set of more narrowly tailored amendments to its Rule 15c2-12, which will create new disclosure obligations for issuers who incur debt outside of the municipal bond market.

The SEC said that the final rules, which were approved in writing by commissioners on Aug. 15 without a meeting, "will focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights."

The compliance date for the rules will be 180 days after they are published in the Federal Register.

Reaction to the final rules was mixed, with some groups saying the revisions are helpful and others suggesting more changes should have been made.

The SEC's initial proposal last year to add two new event notices to the list of events issuers must agree to disclose through the Municipal Securities Rulemaking Board's EMMA system met with backlash for what many issuers thought was an overly broad definition of a "financial obligation."

"Our municipal securities market is a $3.844 trillion dollar market, with new issuances of approximately $448.1 billion in 2017," SEC chairman Jay Clayton said in a statement on the final rules. "Our Main Street investors are exposed to this market through many channels, including through mutual funds, money market funds, closed-end funds, and exchange-traded funds. Disclosures required by these rule amendments will better equip investors and intermediaries to make informed investment decisions about municipal securities."

The final rules will require disclosure of the incurrence of a financial obligation of the issuer or obligated person, if material, as well as any agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, if these are material.

Under the new rules, "financial obligation" means a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation or a guarantee of a debt obligation or derivative.

Gone from the rules is the broader language that included leases and "a monetary obligation resulting from a judicial, administrative or arbitration proceeding."

That change is in line with what many bond lawyers had expected, as the SEC received close to 100 comments on the proposal and a large many of those arguing for a more narrow definition of "financial obligation."

The rules also will require an event notice to be filed for certain actions or events related to the financial obligation that "reflect financial difficulties" such as a default, event of acceleration, termination event, or modification of terms.

Underwriters will have to reasonably determine that an issuer or borrower has agreed to provide notice of such events in order to be able to underwrite the bonds.

The SEC approved the final rules in an effort to better reflect the reality that many issuers have been incurring debt outside of the traditional bond market, particularly through private transactions with banks.

The SEC cited the Federal Deposit Insurance Corp.'s Consolidated Reports of Condition and Income filed by financial institutions, which show that the dollar amount of commercial bank loans to state and local governments has tripled since the financial crisis, increasing to $190.5 billion by the end of the first quarter 2018 from $66.5 billion as of the end of 2010.

Reaction to the SEC's move varied.

Securities Industry and Financial Markets Association Managing Director and Associate General Counsel Leslie Norwood said the group is disappointed that the SEC did not incorporate into the revised rule any of SIFMA's suggestions from its 2016 white paper on Rule 15c2-12. In that paper, SIFMA suggested various changes, including asking that rating changes no longer be event notices since the MSRB's EMMA website now provides live ratings information.

"SIFMA's broker-dealer members are disappointed that the SEC did not take this opportunity to adopt any of the suggestions in SIFMA's Rule 15c2-12 white paper to streamline, update, and minimize unnecessary burdens of Rule 15c2-12," Norwood said. "We hope that the SEC will address these issues in the future."

Brett Bolton, vice president of federal legislative and regulatory policy at the Bond Dealers of America said BDA will be working to digest the changes.

"The lack of transparency of bank loans within the municipal securities market has created concerns among investors for many years," Bolton said.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA will be focused on how to help issuers make materiality determinations for these new event notices.

"While we are pleased to see a narrowing of the definition of financial obligations to be only related to debt obligations and derivative instruments, and not ordinary financial and operating liabilities nor judicial, administrative or arbitration proceedings, our focus will need to be on helping communities understand how to address these issues and discuss with counsel and their financing team how to determine and make such material event filings," she said.

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