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Increased Transparency to Continuing Disclosure Requirements.

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In an effort to increase transparency and protect holders of municipal securities, on August 20, 2018, the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") added two new requirements to the continuing disclosure requirements of Rule 15c2-12 of the Securities Exchange Act (the "Rule").

The Rule requires underwriters in certain offerings of municipal securities to reasonably determine that the issuer or obligated person, such as a borrower of the proceeds from the sale of such securities, has agreed pursuant to a written agreement to provide to the Municipal Securities Rulemaking Board annual financial information, certain operating data and timely notice of certain listed events.

The following two requirements were added to the Rule (the "Amendment"):

– Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the 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 a financial obligation of the obligated person, any of which reflect financial difficulties.

The term "financial obligation" 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). The term "financial obligation" shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

Debt, Debt-Like and Debt-Related Obligations of Issuers and Obligated Persons

The Commission stated that the additional requirements to the Rule focus on "material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights." In particular, the focus of the Amendment is on "debt, debt-like and debt-related obligations," such as private placements and bank loans.

In addition, the Commission stated that "a financial obligation generally should be considered to be incurred when it is enforceable against an issuer or obligated person." For example, if an issuer enters into an agreement regarding a draw-down bond, the issuer or the obligated person should, according to the Commission, "provide notice at the time the terms of the obligation are legally enforceable against the issuer or obligated person, instead of each time a draw is made."

Form of Notice

The Commission did not prescribe a form of event notice for the Amendment. Instead, the Commission believes that market participants should consider developing best practices regarding the form of notice. However, the Commission stated that the event notices should generally include a description of the material terms of the financial obligation, including the date of the agreement, principal amounts, maturity dates, interest rates, default rates, method of computation for variable rates and acceleration provisions. Under the Rule, issuers and obligated persons will be required to file the new notices no later than ten business days following the occurrence of the event.

Compliance Date

The Amendment is effective as of February 27, 2019. This Amendment will only affect those continuing disclosure agreements entered into on or after February 27, 2019.

The new requirements added to the Rule are complex, and whether an event notice will need to be filed in connection with a financial obligation in accordance with a continuing disclosure obligation will depend on the specific facts and circumstances at hand. We recommend that you stay in touch with your counsel to discuss how the new requirements may affect your continuing disclosure obligations. It will be important to review and revise your continuing disclosure policies and procedures to incorporate the Amendment for any new bonds issued on or after February 27, 2019.

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