

# **Bond Case Briefs**

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## **MSRB to SEC: Do Comprehensive Review of Rule 15c2-12.**

WASHINGTON - The Municipal Securities Rulemaking Board is urging the Securities and Exchange Commission to conduct a comprehensive review of its Rule 15c2-12 on muni disclosure, and to consider requiring the disclosure of debt-like arrangements such as bank loans, swap transactions, guarantees and lease financing arrangements.

The MSRB made the request in a letter sent to the commission on Tuesday in response to its request in November for comment mandated by the Paperwork Reduction Act of 1995.

The SEC has received wide-ranging comments on the rule, but lawyers with the Office of Municipal Securities said last month that its staff is only able to respond to comments under the PRA with respect to the amount of time and resources spent providing required information to the SEC.

Rule 15c2-12 requires dealers to review issuers' official statements in primary offerings and reasonably determine that the issuers have contracted in writing to disclose annual financial and operating information, as well as material event notices.

"The MSRB recognizes that the SEC is fulfilling its duty to regularly review the volume of regulatory paperwork involved in complying with its rules," said MSRB executive director Lynnette Kelly. "However we are taking this opportunity to encourage more extensive dialogue about the federal disclosure framework by urging the SEC to conduct a wholesale re-examination of the rule and consider potential changes to improve its operation and reflect current market practices."

The rule's primary disclosure requirements were adopted in 1989. Its secondary market requirements were approved in 1994 and the rule last amended in 2010.

The MSRB has been encouraging issuers to disclose their bank loan debt since 2012, and the board told the SEC that the increasing popularity of bank loans warrant a good look at the current disclosure regime.

"The MSRB is concerned that bank loans or other debt-like obligations such as swap transactions, guarantees and lease financing arrangements, that create significant obligations and which similarly do not get reported, could impair the rights of existing bondholders, including the seniority status of such bondholders, or impact the credit or liquidity profile of an issuer," said the letter, signed by chair Kym Arnone, managing director and head of municipal securitization initiatives at Barclays.

"Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported," said the MSRB's letter. "The MSRB believes that the availability of timely disclosure of additional debt in any form and debt-like obligations is essential to foster market transparency and to ensure a fair and efficient municipal market."

The board said the SEC could take various measures to enhance the quality of disclosure, even looking at corporate "Form 8-K, as precedent for events that might be appropriate to include for

continuing disclosure by municipal issuers as additional material events.”

The MSRB also told the SEC that the commission’s estimates for the disclosure costs to MSRB are understated. The MSRB’s costs have grown with increased EMMA use in the wake of actions by the SEC, Arnone told the board, including the issuance of a March 2012 risk alert warning issuers and underwriters about potential violations of the rule and the recent Municipalities Continuing Disclosure Cooperation Initiative. The MCDC allowed issuers and underwriters to self-report instances in which they sold bonds with offering documents containing false claims that they were in compliance with disclosure requirements.

The MCDC showed a lot of issuers were not meeting their self-imposed deadlines for disclosing annual financial and operating information.

The SEC had estimated the MSRB would require 9,360 hours each year for work related to 15c2-12, but last fiscal year, which was from Sept. 30, 2013 to Oct. 1, 2014 the board required 12,699 hours and at least \$10,000 in hardware and software costs for that job, the letter said.

THE BOND BUYER

BY KYLE GLAZIER

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