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Muni Groups: SEC Disclosure Rule Outdated, Needs Overhauling.

WASHINGTON — The Securities and Exchange Commission's Rule 15c2-12 on muni disclosure is outdated and could be overhauled to reduce the regulatory burden for issuers and underwriters, bond lawyers and underwriters told the SEC.

Muni groups sent letters to the SEC in response to its Nov. 18 call for comments on the rule, which requires underwriters to review issuers' official statements and reasonably determine that the issuer has contracted to disclose annual financial and operating information, as well as material event notices, on the Municipal Securities Rulemaking Board's EMMA website. The call for comments was required by a federal law aimed at reducing regulatory paperwork.

National Association of Bond Lawyers president Antonio Martini, a partner at Locke Lord Edwards in Boston, told the SEC that its rule hails from a time before Internet dissemination of financial information, meaning that it may not be providing any necessary investor protection in many cases.

"NABL believes that collection of information under Rule 15c2-12 is not necessary for, but generally does enhance, the proper performance of the functions of the SEC in regulating the municipal securities market," Martini wrote. "However, Rule 15c2-12 was adopted (and amended to require continuing disclosure) before the widespread adoption of the Internet as a means of exchanging information permitted issuers of municipal securities to quickly and efficiently provide pertinent updates to holders of those securities. Many issuers today maintain publicly accessible websites on which they include information of the type that is required to be provided to the MSRB pursuant to the contractual filing requirements mandated by Rule 15c2-12, and their information can easily be located by using Google or another readily available search engine."

Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at The Securities Industry and Financial Markets Association, wrote that the SEC could take several approaches to ease the regulatory burden of the rule.

"SIFMA feels that automated collection techniques or other forms of information technology can be used to reduce the burden on filers and increase the certainty that filings are made," Norwood told the commission. "For instance, the SEC should explore the possibility of whether bond insurers should be indirectly or contractually required to report rating changes on all bonds they insure to EMMA. Also, EMMA currently collects and disseminates rating changes from the majority of rating agencies. The SEC also should explore the possibility of whether all rating agencies should be required to report all rating changes on all municipal bonds they rate to EMMA."

Moody's Investors Service is the lone holdout that is not streaming its ratings to EMMA, and was rebuked by the Government Finance Officers Association last week for its inaction. Moody's maintains that its ratings are available for free on its website.

Some specific filing requirements could be changed to improve the rule, wrote Bond Dealers of America chief executive officer Mike Nicholas. For example, 15c2-12 requires certain event notices

to be posted to EMMA within 10 days of the event, even though the person responsible for posting the notices might have no way of knowing about it for days or even weeks, he told the SEC. Instead, it should be 10 days after the appropriate person becomes aware of the event, Nicholas argued.

The rule should not designate rating changes as material events that have to be reported to EMMA, and audited financial statements should only be required to be disclosed annually if they were included in the final official statement of the bonds, he wrote.

The MSRB released its own comment letter, calling for the SEC to undertake a comprehensive review of the rule. Most groups agreed that the commission's estimates of the time required to comply with the rule are low. Issuers require about 45 minutes to prepare and submit material event notices to the MSRB, the SEC estimated. Dustin McDonald, director of the GFOA's Federal Liaison Center, said issuer officials reported times ranging up to 4 hours.

The SEC has said it invites comments on 15c2-12 or any of its rules at any time.

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