
Reminder: SEC Requires Disclosure of Rating Changes and Financial Obligations - Dinsmore & Shohl

When it comes to continuing disclosure, two of the more common "material events" to occur are rating changes and the incurrence of a "financial obligation." As a general matter, these are reportable events that should be posted to Electronic Municipal Market Access (EMMA). However, as a practical matter, these material events are frequently overlooked.

Whether a rating change involves an upgrade or a downgrade, it is necessary to post such changes to EMMA pursuant to SEC Rule 15c2-12 (the SEC Rule) for those issuers who are subject to the SEC Rule, even though municipal ratings are usually considered public knowledge. Typically, a change in outlook (such as stable, positive, or negative) is not considered a rating change for the purpose of the SEC Rule, although there is no prohibition in voluntarily posting a notice of such a change on EMMA.

On March 18, 2022, Moody's Investors Service upgraded the "insurance financial strength" rating of bond insurer Assured Guaranty Municipal Corp. (AGM) and Assured Guaranty UK Limited (AGUK) to A1 from A2. A number of holding companies of Assured Guaranty were also upgraded. For those issuers, and other obligated persons, having issued bonds or other municipal obligations utilizing the credit of Assured Guaranty in the form of bond insurance or other credit enhancement, and who have continuing disclosure responsibilities under the SEC Rule, consideration should be given to disclosing this upgrade.

In the absence of an exception, the SEC Rule mandates underwriters of municipal securities ensure issuers or other obligated persons undertake to provide to the public continuing disclosure information presumed to be important to investors by filing that information with EMMA. Among other things, the SEC Rule requires issuers or obligated persons who have agreed to a continuing disclosure undertaking must provide the MSRB notice of: (a) payment delinquencies and defaults; (b) unscheduled draws on debt service reserves or credit enhancements; (c) substitution of credit or liquidity providers; (d) adverse opinions or notices from the Internal Revenue Service (IRS); (e) bond calls or tender offers; (f) defeasances; (g) bankruptcy; (h) ratings changes; and (i) a default, event of acceleration, termination event, modification of terms or similar event. Although there are other material events, those material events are qualified by a "materiality" standard, such as the disclosure of the incurrence of "financial obligations." Any issuer or obligated person who has agreed to a continuing disclosure undertaking must notify the MSRB of the forgoing events within 10 business days.

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