



NEW AMENDMENT TO RULE 15c2-12 (CONTINUING DISCLOSURE) GOES INTO EFFECT 2/27/2019

The new amendment to Rule 15c2-12 goes into effect for public offerings that settle on or after February 27, 2019 (and thus should be addressed in a Preliminary Official Statement that posts prior to that date if the bonds settle on or after February 27, 2019). New continuing disclosure undertakings which execute and deliver on or after such effective date shall include, in addition to the existing list of 14 ongoing event disclosure obligations, the following:

1. Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material (a “new obligation”); and (Event 15)

2. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties (a “financial distress event”). (Event 16).

Once these two new undertakings are in place contractually, as a practical matter, a public official should be designated at each issuer of publicly offered bonds to do the following (i.e., an internal continuing disclosure czar) to, in addition to monitoring the original list of 14 events as has been the case for several years: (i) inventory all existing financial obligations on a spreadsheet as a living and breathing document, using the issuer’s CAFR as a starting point, deleting ones as they mature and adding ones new ones as they occur; (ii) monitor all such financial obligations on an

ongoing basis for a financial distress event, and if such a financial distress event occurs, to ensure the filing of a notice on EMMA of such within 10 business dates of the occurrence of such event; and (iii) if a new obligation occurs, to ensure the filing of a notice of such on EMMA within 10 business dates of such occurrence.

Such public official should consult with its ongoing Disclosure Counsel, or if there is not one, Bond Counsel, in preparing for and executing this new responsibility as things happen fast when they happen. You may recall that material failures to timely comply with continuing disclosure undertakings in official statements must occur for 5 years following non-compliance.

Examples of a financial obligation (i.e., a new obligation) include but are not limited to a debt obligation, a bank loan, a line of credit, a new commercial paper program, a forward interest rate swap, a cap, a collar, a traditional interest rate swap, a derivative, a guarantee, an interlocal funding agreement, a capital equipment lease, a certificate of participation, a subject to annual appropriation financial obligation, etc.

Determining materiality can best be done in terms of determining whether the information would be important to a reasonable investor making a decision of buy or sell the issuer's bonds.

For more practical advice, a webinar about amended Rule 15c2-12 and the EMMA website, conducted by the MSRB with panelists from the [Government Finance Officers Association](#) (GFOA), [National Association of Bond Lawyers](#) (NABL), [Bond Dealers of America](#) (BDA) and the [Securities Industry and Financial Markets Association](#) (SIFMA), is available [on-demand](#).



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