

MEMO# 30623

March 7, 2017

SEC Proposes Amendments to Exchange Act Rule 15c2-12 Relating to Municipal Securities Disclosure

[30623] March 7, 2017 TO: ICI Members

Municipal Securities Advisory Committee SUBJECTS: Municipal Securities RE: SEC Proposes Amendments to Exchange Act Rule 15c2-12 Relating to Municipal Securities Disclosure

The Securities and Exchange Commission has proposed amendments relating to municipal securities disclosure that would add two additional events to the continuing disclosure requirements of Rule 15c2-12 under the Securities Exchange Act of 1934.[\[1\]](#) The Commission believes the proposed amendments, as described below, would facilitate investors' and other market participants' access to important information in a timely manner and help to enhance transparency in the municipal securities market and improve investor protection. Comments are due 60 days after publication in the Federal Register.

Proposed Amendments

The SEC notes that beginning in 2009, municipal issuers and obligated persons have increasingly used direct placements as alternatives to public offering of municipal securities. In recent years, numerous market participants, including the MSRB have encouraged issuers and obligated persons to voluntarily disclose information about certain financial obligations that are not currently included in the list of events for which a broker, dealer, or municipal securities dealer acting as an underwriter ("Participating Underwriter") must reasonably determine that an issuer or obligated person has undertaken in a written agreement or contract to provide notice under Rule 15c2-12. Despite continued efforts by market participants to encourage disclosure of certain financial obligations, the MSRB has stated that the number of actual disclosures is limited.[\[2\]](#)

In response to these market developments, the SEC is proposing to amend the list of events for which notice must be provided to include: (i) 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 (ii) 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.

Similar to the other events listed in Rule 15c2-12, the proposed events reflect on the

creditworthiness of the issuer or obligated person and the terms of securities that they issue. The Release notes that timely access to disclosure about the incurrence of a material financial obligation by an issuer or obligated person would provide potentially important information about the current financial condition of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness. The SEC also believes that the event notice generally should include a description of the material terms of the financial obligation, such as the date of incurrence, principal amount, maturity and amortization, interest rate, if fixed, or method of computation, if variable (and any default rates).

In addition, the SEC is proposing an amendment to Rule 15c2-12(f) to add a definition for "financial obligation." Under the proposed definition, the term financial obligation means a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding.

The release explains that as proposed, the term debt obligation is intended to capture short-term and long-term debt obligations of an issuer or obligated person under the terms of an indenture, loan agreement, or similar contract that will be repaid over time. For example, a direct purchase of municipal securities by an investor and a direct loan by a bank would be debt obligations of the issuer or obligated person. The term lease is intended to capture a lease that is entered into by an issuer or obligated person, including an operating or capital lease. For example, if an issuer or obligated person enters into a lease-purchase agreement to acquire an office building or an operating lease to lease an office building for a stated period of time, both would be a lease under the proposed amendments. The term guarantee is intended to capture a contingent financial obligation of the issuer or obligated person to secure obligations of a third party or obligations of the issuer or obligated person. For example, an issuer that is a county could agree to guarantee the repayment of municipal securities issued by a town located in the county. The term derivative instrument is intended to capture any swap, security based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument to which an issuer or obligated person is a counterparty. Also included in the proposed financial obligation definition are monetary obligations resulting from a judicial, administrative, or arbitration proceeding because the requirement to pay such an obligation could adversely impact the issuer's or obligated person's overall creditworthiness and liquidity and adversely affect security holders.

The SEC also proposes to add an event notice to the list of events under Rule 15c2-12 for the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, provided the occurrence reflects financial difficulties. As with the other event notice, a Participating Underwriter would need to reasonably determine that the issuer or obligated person has agreed to provide notice of such events in its continuing disclosure agreement. As proposed, the "any of which reflect financial difficulties" qualifier applies to all of the events listed in the proposed notice (i.e., a default, event of acceleration, termination event, modification of terms, or other similar events)—a concept that has been used since the adoption of Rule 15c2-12. The release notes that investors and other market participants may not have any access or timely access to disclosure regarding the occurrence of such events, any of which reflect financial difficulties, under the terms of a financial obligation of the obligated person.

endnotes

[1] Proposed Amendments to Exchange Act Rule 15c2-12, SEC Release No. 34-80130 (March 1, 2017), available at <https://www.sec.gov/rules/proposed/2017/34-80130.pdf> (“Release”).

[2] In a comment letter addressing the 2010 amendments to Rule 15c2-12, ICI recommended that the SEC implement a disclosure requirement regarding the creation of any material financial obligation (including contingent obligations) whether in the form of direct debt, hedge, swap or other derivative instrument, capital lease, operating lease or otherwise, because of the implications these obligations may have on the credit risk and value of associated bonds. See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth Murphy, Secretary, Securities and Exchange Commission (September 8, 2009), available at <https://www.sec.gov/comments/s7-15-09/s71509-23.pdf>.