

MEMO# 30682

April 25, 2017

ICI Draft Comment Letter on SEC Proposed Amendments to Municipal Securities Disclosure; Comments Due May 9

[30682] April 25, 2017 TO: Municipal Securities Advisory Committee RE: ICI Draft Comment Letter on SEC Proposed Amendments to Municipal Securities Disclosure; Comments Due May 9

As you know, 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. Comments are due to the SEC by May 15. ICI has prepared a draft comment letter, which is attached and briefly summarized below. All comments, suggestions, or edits to the draft letter should be sent in writing to Jane Heinrichs at jheinrichs@ici.org by Tuesday, May 9.

Proposal

The SEC is proposing to amend the list of events for which notice must be provided under Rule 15c2-12 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. Under the proposal, a financial obligation is defined as a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding.

ICI's draft comment letter expresses strong support for these amendments. Indeed, with respect to the first proposed event notice, the draft letter notes that in response to the SEC's 2009 proposed amendments to Rule 15c2-12 (which were adopted in 2010), we recommended that the SEC implement a similar disclosure requirement to reflect the creation of any material financial obligation (including contingent obligations) whether in the form of long- or short-term 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 the associated bonds.

Also, although the draft letter generally supports the SEC's preliminary assessment that

disclosure of such an occurrence include a materiality determination, the letter recommends that the SEC require mandatory disclosure for any terms in connection with a material financial obligation that affect security holders. The letter explains that terms that reflect on the obligated person's creditworthiness or overall liquidity and affect security holders' rights to assets or revenues are by their very nature essential pieces of information that should always be publicly disclosed. It therefore recommends that the SEC eliminate the proposed second "materiality" qualifier in the first proposed event notice.

The letter also supports the second proposed event notice that would require an obligated person to disclose 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 obligated person, any of which reflect financial difficulties. The letter explains that timely disclosure about defaults or other events that reflect financial difficulties would help to enhance transparency in the municipal securities market and enhance investor protection.

Additional Event Notices

Consistent with recommendations we made in response to the SEC's 2009 proposed amendments, the draft letter also recommends two additional event notices to the disclosure requirements of Rule 15c2-12 to capture events that significantly reflect upon the value of a municipal bond.

First, the letter recommends that the SEC include a "catch-all" event notice in Rule 15c2-12, subject to a materiality determination. The letter explains that any event materially impacting the value of a bond should be disclosed to investors, in part as recognition that the market is lending these issuers money. A catch-all provision would account for developments in the municipal securities markets that have a major effect on creditworthiness of municipal debt securities but outpace regulatory response.

Second, the letter recommends that the SEC adopt an event notice to disclose modifications to escrow agreements or escrows. Similar to credit or liquidity agreements, the letter explains that a change to, or substitution of, the security in an escrow agreement or the amount of or type of securities held or eligible to be held in an escrow could significantly alter an investor's assessment of the credit quality of a particular bond and, therefore, the investor's decision to buy or sell the bond.

Materiality Determination for Certain Events

Also consistent with our response to the SEC's 2009 proposed amendments, the draft letter recommends that the SEC eliminate the current "materiality" threshold for determining whether submission of certain event notices is required for at least two of the Rule 15c2-12 event notices and expand the scope of one of the existing event notices.

First, the letter reiterates our belief that bond calls are always material to investors, regardless of the type of bond call. Thus, we would urge the SEC to require disclosure for all bond calls.

Second, the draft letter recommends the SEC require the disclosure of all non-payment related defaults. The letter explains that we believe that a violation of a legal covenant is an important component of an investor's analysis of the bond being offered, and its disclosure should not be discretionary.

Finally, the letter recommends that the SEC modify the event notice regarding substitution

of credit or liquidity providers, or their failure to perform, to include any material modification of any credit or liquidity facility or other agreement supporting or otherwise material to a municipal security. The letter explains that material changes to or violations of any of the credit or liquidity agreements structured into a municipal security can have significant implications for an investor by modifying the overall security, causing a mandatory tender event, and/or impacting the prospects for remarketing.

Jane G. Heinrichs
Associate General Counsel

[Attachment](#)

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