

**MEMO# 31351**

August 27, 2018

## **SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure**

[31351]

August 27, 2018 TO: ICI Members

Municipal Securities Advisory Committee SUBJECTS: Municipal Securities RE: SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure

On August 20, the Securities and Exchange Commission adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 to enhance transparency in the municipal securities market by increasing the amount of information that is publicly disclosed about material financial obligations incurred by issuers and obligated persons.[\[1\]](#) The Commission believes that investors and other municipal market participants should have access to continuing disclosure information regarding financial obligations to improve their ability to analyze their investments and, ultimately, make more informed investment decisions.

The amendments to Rule 15c2-12 add the following two new events for which a participating underwriter in an offering must reasonably determine that the issuer or obligated person has agreed to provide in its continuing disclosure agreement:

1. 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 securities holders, if material; and
2. 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.

In response to the Commission's proposed amendments in 2017,[\[2\]](#) ICI recommended the SEC eliminate the "materiality" threshold.[\[3\]](#) The Commission disagreed explaining that it continues to believe that including a materiality qualifier is appropriate because it provides a framework for issuers and obligated persons to assess their disclosure obligations in the context of the specific facts and circumstances. They also believe that removing the materiality qualifier could result in the disclosure of financial obligations that would not otherwise raise the concerns the amendments are intended to address.

ICI also encouraged the SEC to broaden the concept of an "event" in this context to include all defaults, accelerations, terminations, modifications, and not solely those that "reflect

financial difficulties.” The Commission believes the qualifier is appropriate, and that additional guidance on the term would be difficult to provide, due to the diversity of issuers and obligated persons as well as the financial conditions affecting them.

The Commission also defined the term “financial obligation” to mean a: (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation will not include municipal securities as to which a final official statement has been provided to the MSRP consistent with the rule.

As proposed, the term financial obligation also would have included leases or mandatory obligations resulting from a judicial, administrative, or arbitration proceeding. The Commission believes the narrow definition of financial obligation is more appropriate because it will result in fewer financial obligations that issuers and obligated persons will need to review for materiality, and focuses the amendment on the types of obligations that could impact an issuer’s or obligated person’s liquidity, overall creditworthiness, or an existing security holder’s rights. With respect to the term “leases,” the Commission noted that although they removed the term from the “financial obligation” definition, the term “debt obligation” generally should be considered to include lease arrangements entered into by issuers and obligated persons that operate as vehicles to borrow money. The Commission also explained that they removed the term “mandatory obligation resulting from a judicial, administrative, or arbitration proceeding” from the definition because such obligations do not typically impact the rights or interests of security holders as issuers and obligated persons generally have reserve funding or insurance to cover such costs, which is typically reflected in their financial statements.

Issuers and obligated persons must comply with the new amendments 180 days after publication in the Federal Register.

Jane G. Heinrichs  
Associate General Counsel

#### **endnotes**

[1] See Amendments to Municipal Securities Disclosure, SEC Release No. 34-83885, available at <https://www.sec.gov/rules/final/2018/34-83885.pdf>.

[2] See ICI Memo Re SEC Proposes Amendments to Exchange Act Rule 15c2-12 Relating to Municipal Securities Disclosure (March 7, 2017), available at [https://www.ici.org/my\\_ici/memorandum/memo30623](https://www.ici.org/my_ici/memorandum/memo30623).

[3] See ICI Memo Re ICI Comment Letter on SEC’s Proposal to Enhance Disclosure Regarding Municipal Securities (May 15, 2017), available at [https://www.ici.org/my\\_ici/memorandum/memo30701](https://www.ici.org/my_ici/memorandum/memo30701).

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.