

Most issuers of municipal bonds must provide certain financial information (“Annual Information Filing”) to the market and update that information on an ongoing basis after the closing of a bond issue in an annual filing called continuing disclosure. This information mainly reflects the financial health of the issuer after an issuance of bonds and is made available to the public and more specifically for bondholders and other stakeholders.

SEC Rule 15c2-12 (the “Rule”) requires dealers that underwrite municipal securities to enter into an agreement with the issuer, who covenants to provide updates to certain required information as outlined in the “Continuing Disclosure Agreement.” The issuer can also hire a third party, known as a “Dissemination Agent,” to handle these ongoing submissions.

Continuing disclosure documents must be filed in a word-searchable PDF on the Municipal Securities Rule-making Board’s Electronic Municipal Market Access (EMMA) website. Filings of Annual Financial Information must be posted within a certain number of days from the end of the fiscal year. For example, if an issuer’s fiscal year ends on June 30th and the filing deadline is within 210 days, the Annual Financial Information must be posted by January 26th of the following year. If the issuer is unable to provide the information by the due date, the issuer may be required to post a “Failure to File Notice” on EMMA on or before the filing deadline. Some undertakings may state that the Audited Financial Statements must be submitted to EMMA within 30 days after availability to the issuer. The requirements vary by state and often times, by the firm(s) the issuer chooses to underwrite the issuance of its securities. As a result, it is important for issuers to obtain, read and understand their requirements.

In recent years, additional scrutiny has been placed on disclosure compliance by the Securities and Exchange Commission (the “SEC”). This scrutiny was highlighted by the Municipalities Continuing Disclosure Cooperative

(MCDC) initiative, initially announced in March 2014, as well as subsequent enforcement actions brought against governmental entities and officials. In 2016, the SEC announced settlements with 71 municipal issuers and obligated persons under its MCDC initiative. This initiative and other recent SEC actions highlight the importance of issuers fulfilling their disclosure obligations in a timely manner and describing their prior compliance accurately in their official statements.

CONSEQUENCES FOR FAILURE TO MAKE REQUIRED DISCLOSURES

There are several consequences for a failure to comply with continuing disclosure obligations including, but not limited to:

- Bondholders may sue an issuer for specific performance
- It may affect an issuer’s access to the municipal bond market or result in increased interest rates on new issues
- It may affect the secondary market liquidity of an issuer’s bonds
- Issuers must disclose continuing disclosure non-compliance in future official statements (five year look back)

TYPES OF CONTINUING DISCLOSURE

There are two main categories of continuing disclosure: Annual Financial Information and Reportable Event Notices. Each bond issue has its own set of required information that must be disclosed. Issuers are also encouraged to disclose certain information such as a bank loan or alternative financings. Annual Financial Information includes audited financial statements, operating/statistical data and other financial information provided by the issuer.

Reportable Event Notices include any of the events listed below and are required to be filed on EMMA within 10 business days after the occurrence of the event. Events 15 and 16 were added for continuing disclosure agreements entered into on or after February 27, 2019.

1. Principal and interest payment delinquencies
2. Non-payment related defaults
3. Unscheduled draws on debt service reserved reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions or events affecting the tax-exempt status of the security
7. Modifications to rights of security holders
8. Bond calls and tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities
11. Rating changes
12. Bankruptcy, insolvency or receivership
13. Merger, acquisition or sale of all issuer assets
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material
15. 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
16. 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.

Event 15 was originally intended to ensure current investors are made aware of private placements not covered by the Rule that could be material to an investor. An unintended consequence is that the market has deemed certain capital leases to be material requiring disclosure to EMMA. Therefore, an issuer must either post to EMMA details regarding material leases or contact its PMA public finance professional for assistance in determining materiality and/or to make a posting as the issuer's dissemination agent.

LIMITED CONTINUING DISCLOSURE

When bonds are issued in an aggregate amount less than \$10,000,000, the issuer is subject to a limited continuing disclosure, as long as a prior bond issue does not subject the issuer to a full continuing disclosure. In a limited continuing disclosure, annual financial information is still required to be filed to EMMA but is typically limited to audited financial statements. Conversely, a full Annual Financial Information report contains updates to various tables of certain information originally provided in the issuer's official statement.

EXEMPTIONS FROM THE RULE

Issuers are exempt from continuing disclosure under certain circumstances if:

- The bond issue is less than \$1,000,000 in aggregate principal
- The bonds are sold to investors in authorized denominations of \$100,000 or more to no more than 35 sophisticated investors
- The bonds are sold in authorized denominations of \$100,000 or more and mature in nine months or less from initial issuance
- Any offerings sold directly to an investor without using an underwriter (direct loan).

Complying with continuing disclosure is very important to maintain the liquidity of an issuer's bonds and to ensure investors will be interested in purchasing a future issuance of securities. In addition, issuers that provide timely and accurate disclosure may also avoid regulatory scrutiny from the SEC.

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