MUNICIPAL SECURITIES DISCLOSURE
Selected Key Issues for Issuers & Officials

Presented to

IMLA 2017 Mid-Year Seminar

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April 23, 2017

FIRST TIME:

"Control Person" Liability for Issuer Officials (Joint & Several with Primary Violator)

- **Mayors of—**
  Harvey, Illinois
  Allen Park, Michigan

- **Shift in Burden of Proof**

- **SEC Need Only Prove Control, Not Knowledge**

- **Participation in Fraud Unnecessary**

CONTROL PERSON LIABILITY:

- **To Establish Successful Defense, "Control Persons" Must Prove—**
  - **"Good Faith"**
  - ***—and—***
  - **Did Not "Directly or Indirectly" Induce Action of Primary Violator**

CONTROL PERSON LIABILITY:

- **Poses Significant New Risks for Community Leaders—Mayors, Board Chairs, City Managers/Administrators, Department Heads**
- **Absolute "Control" Not Required**
- **Defense May Require Exercise of Oversight to Evidence "Good Faith"**
- **If Policies/Procedures Adopted & Implemented, May Be Helpful**

FIRST TIME:

Issuer Former CEO Fined and Barred for NOT Reading Official Statement He Signed

Not Charged with Knowledge of Misrepresentations

However, OS Contained Material Misstatements/ Omitted Material Information He Should Have Known

Only Charged with Negligence

Barred from Future Offerings; $10,000 Civil Penalty

(CEO of United Neighborhood Organization of Chicago)

"REASONABLE" RELIANCE ON PROFESSIONALS

Four Factors Applied by Courts:

- Complete Disclosure to Professional Regarding Issue
- Seeking Professional Advice as to Appropriateness of Conduct (Participation in Transaction Inadequate)
- Receipt of Advice that Conduct Is Appropriate (Not Merely Negative Assurance)
- Reliance on Advice in Good Faith

Miami Jury Verdict Found None of the Factors Present

RISK DISCLOSURE:

Governmental Issuer Alleged to Have Failed to Disclose—

Information Regarding Private Conduit Borrower

In Credit Enhanced Bond Issue

Generalized Risks Disclosed, BUT NOT Risks Specific to the Transaction

(Rhode Island Commerce Commission—Pending)
(Two Officials Settled—Barred & Civil Penalties)

NOTABLE:

Local Issuer Counsel

(Westlands, California, Water District & Ramapo, New York)

COMMON PROBLEM AREAS:

- **Overly Optimistic Information Regarding Economic Development Projects—**
  (*e.g.*, Wenatchee Events Center, Allen Park Movie Studio, Ramapo Baseball Stadium, Rhode Island EDC Private Online Game Company, Harvey Holiday Inn)

- **Assumptions & Other Information Supporting Projections & Expert Reports—**
  (Wenatchee Events Center, Public Health Trust)

COMMON PROBLEM AREAS:

- **Stale Information**
  (Allen Park, Public Health Trust)

- **Conflicts of Interest**
  (UNO Charter School Network, Harvey)

- **Insufficient Internal Controls**
  (South Miami, Public Health Trust)

- **Misleading Generalized Risk Disclosures**
  (Rhode Island Commerce Commission)

Amendments Proposed to SEC Rule 15c2-12

SEC Rule 15c2-12

- **Applies to Only Underwriters, Not Directly to Issuers**
- **But Underwriters Cannot Underwrite Bonds Unless Issuers Enter into Continuing Disclosure Agreements**
- **Issuers Must Agree to Make Annual Disclosure of Operating and Financial Information**
- **Issuers Must Also Agree to Make Disclosure within Ten Days of Certain Events**

Proposed Amendments

- **Added Two Proposed Events—**

(15) 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

(16) 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.

Proposed Amendments

- **Added Definition of "Financial Obligation"—**

The term financial obligation means a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

THE END

Press Release

SEC Proposes Rule Amendments to Improve Municipal Securities Disclosures

FOR IMMEDIATE RELEASE
2017-57

Washington D.C., March 1, 2017 — The Securities and Exchange Commission (SEC) today voted to propose rule amendments to improve investor protection and enhance transparency in the municipal securities market.

Rule 15c2-12 under the Securities Exchange Act of 1934 requires brokers, dealers, and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities subject to the Rule, to reasonably determine, among other things, that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board (MSRB) timely notice of certain events. The amendments proposed by the SEC today would add two new event notices:

- 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; and

- 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.

“Today the SEC took steps to empower investors by improving their access to current information about the financial obligations incurred by municipal issuers and conduit borrowers,” said SEC Acting Chairman Michael S. Piwowar.

These proposed amendments would provide timely access to important information regarding certain financial obligations incurred by issuers and obligated persons that could impact such entities’ liquidity and overall creditworthiness.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

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FACT SHEET

SEC Open Meeting

March 1, 2017

Action

The Commission will consider whether to propose amendments designed to better inform investors and other market participants about the current financial condition of issuers of municipal securities and obligated persons. Specifically, the proposed amendments would facilitate timely access to important

information regarding certain financial obligations incurred by issuers and obligated persons, which could impact an issuer's or obligated person's liquidity and overall creditworthiness and create risks for existing security holders.

Highlights

The proposed amendments to Exchange Act Rule 15c2-12 would amend the list of event notices that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities subject to the Rule must reasonably determine that an issuer or obligated person has undertaken, in a written agreement for the benefit of holders of municipal securities, to provide to the Municipal Securities Rulemaking Board within ten business days of the event's occurrence.

Specifically, the proposed amendments would add two new events to the list included in the Rule:

- 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; and

- 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.

The proposed amendments also would set forth a definition for the term "financial obligation."

Background

Adopted in 1989, Rule 15c2-12 is designed to address fraud and manipulation in the municipal securities market by prohibiting the underwriting of municipal securities and subsequent recommendation of those municipal securities by brokers, dealers, and municipal securities dealers for which adequate information is not available.

What's Next

The Commission will seek public comment on the proposed amendments to Rule 15c2-12 for 60 days following publication in the Federal Register.

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Related Materials

- Proposed Rule Amendments

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l,* 78m, 78n, 78n-1, 78*o,* 78*o*-4, 78*o*-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78*ll,* 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

2. Section 240.15c2-12 is amended by the following:

A. In paragraph (b)(5)(i)(C)(14) remove "and";

B. Add new paragraphs (b)(5)(i)(C)(15) and (16);

C. Add new paragraph (f)(11);

The additions and revisions read as follows.

§ 240.15c2-12 Municipal securities disclosure.

* * * * *

(b) * * *

(5)(i)(C) * * *

(15) 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

(16) 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.

* * * * *

(f) * * *

(11) The term financial obligation means a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

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By the Commission.

Brent J. Fields
Secretary

Dated: March 1, 2017