August 21, 2018

SEC Amends Municipal Bond Continuing Disclosure Rules

On August 15, the Securities and Exchange Commission (SEC) adopted amendments to the Securities Exchange Act Rule 15c2-12 (the "Rule") intended to better inform investors and others about the current financial condition of issuers of municipal securities and obligated persons. In its press release announcing the amendments to the Rule, the SEC noted as background that "[d]irect placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities have increased since 2009, demonstrating the need for more timely disclosure."

The Amendments

The Rule governs continuing disclosure by prohibiting an underwriter in a primary offering from underwriting most municipal securities unless the underwriter has reasonably determined that the issuer of such securities, or an obligated person, has agreed in writing (e.g., pursuant to a Continuing Disclosure Agreement) to make the required post-issuance disclosures. The amendments add additional events to the list of event notices that an issuer or obligated person needs to provide to the Municipal Securities Rulemaking Board via its electronic platform "EMMA" within 10 business days of the event's occurrence. The two new events are:

- 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 term "financial obligation" is defined as a (i) debt obligation, (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for an existing or planned debt obligation, or (iii) guarantee of (i) or (ii). The term financial obligation does not include municipal securities for which a final official statement has been filed with EMMA pursuant to the Rule.

The Effective Date

The compliance date is February 27, 2019.

The attorneys in Day Pitney's Municipal Finance Group routinely counsel clients on addressing compliance with their disclosure obligations. Please feel free to contact any of the attorneys listed to the right of this alert if you would like to discuss this alert or your disclosure obligations.

UPDATED: *This alert was updated to include the compliance date of the amendments, issued by the SEC on August 31.*

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