DAY PITNEY LLP

MUNICIPAL FINANCE

ALERT: March 28, 2010

Moody's and Fitch Credit Rating Recalibrations May Trigger SEC Rule 15c2-12 Material Event Filing Obligations for Towns and Cities

Fitch Ratings and Moody's Investors Service each recently announced a recalibration of municipal finance credit ratings in an effort to enhance the comparability of ratings across municipal and non-municipal sectors. We alert municipal issuers of the need to determine whether these rating changes require them to file material event notices with the Municipal Securities Rulemaking Board's EMMA system pursuant to their bond and note continuing disclosure agreements.

Background

The recalibrations will result, generally, in state and local government general obligation ratings moving up one to two notches. Special tax-based bonds and other credits are expected to see less movement. Moody's points out that certain municipal ratings may not change, including ratings on housing, healthcare and other enterprise bonds, as well as short-term ratings, which Moody's already determined to be aligned with short-term ratings in other sectors.

Fitch and Moody's both indicate that their respective recalibrations are not upgrades and should not be interpreted as an improvement in the rating or in the agency's opinion of the credit quality of the underlying security. Instead, Fitch and Moody's say that these rating changes are "revision ratings" or "adjustments" to facilitate a comparison of the level of credit risk across other sectors.

Fitch expects that its "rating watches" and "rating outlooks" will be carried over post-recalibration. Moody's, on the other hand, has stated that it will update its "rating outlook," if any, for a credit when its rating is recalibrated, but ratings that were under review for upgrade or downgrade before the recalibration will remain under review after.

Fitch's state ratings were already recalibrated. Recalibrations in all the other affected sectors (local general obligation ratings, special tax-based ratings, water/sewer and public power ratings, and public higher education ratings) are projected to be implemented on April 30 and to be available at *www.fitchratings.com*.

Moody's has also already recalibrated its state ratings, with recalibration of local government ratings to be done in stages and an expected completion date in mid-May. Moody's ratings of local governments in Connecticut are

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projected to be recalibrated starting on May 3 and to be available at www.moodys.com.

It is important that issuers monitor these changes, as both Moody's and Fitch have indicated that they will not be separately notifying an issuer of recalibrations affecting its credits.

What Does This Mean for Municipal Bond and Note Issuers?

All issuers should consult their continuing disclosure undertaking to determine if these rating recalibrations require the filing of a material event notice with the Municipal Securities Rulemaking Board's EMMA system at www.emma.msrb.org. This is the same system used for the annual filing of financial statements and operating data as required under bond and note continuing disclosure agreements.

The SEC's municipal disclosure rule, Rule 15c2-12, requires that a material event notice be timely filed upon a rating change if that change is material. This leaves each issuer to determine if such an event is material. In doing so, issuers should consider that in July 2009, the SEC proposed amendments to Rule 15c2-12 that included a proposal to delete the "if material" condition. This suggests that the SEC takes the position that any rating change warrants the filing of a material event notice with EMMA.

The municipal finance lawyers at Day Pitney LLP, including those listed on the right, have considerable experience advising municipal bond and note issuers on their continuing disclosure obligations. Please contact them if you have any questions or would like assistance in your analysis of the issues raised in this alert.

Bar Admissions: Connecticut [CT]
