



# Bricker & Eckler Bulletin



*Keeping clients and friends informed of breaking legal developments*

June 2008

## Bricker & Eckler LLP

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## Municipal Insurer Ratings Reductions: Do You Have a Duty To Disclose?

The recent turmoil in the credit markets has been well publicized in the media. Part of the changing credit market landscape has included the downgrading of the ratings of several municipal bond insurers by several rating agencies, and, consequently, the automatic change of the insured ratings of all the note and bond issues guaranteed by such insurers. Although no individual notice is being given to municipal issuers who have note or bond issues for which insured ratings have been automatically reduced, issuers may still have an obligation to disclose the occurrence of that event. Whether an issuer has a duty to disclose depends on the continuing disclosure obligation the issuer undertook at the time of the issuance of the bonds or notes.

### Which insurers have been downgraded?

Through June 12, 2008, the ratings on the listed insurers had been reduced by the indicated rating agency:

Insurer	Rating Agencies
Ambac	Fitch, Standard & Poor's
Assured Guaranty	Fitch
CIFG	Fitch, Moody's, Standard & Poor's
FGIC	Fitch, Moody's, Standard & Poor's
MBIA	Fitch, Standard & Poor's
XL Capital Assurance	Fitch, Moody's, Standard & Poor's

### Must disclosure of the ratings downgrade be made?

The terms of the continuing disclosure agreement for each note or bond issue will determine an issuer's obligation to disclose a ratings change. Generally, continuing disclosure agreements require the filing of a notice if a material event, including a ratings change, occurs.

Some question exists as to whether an issuer must disclose the effect on its securities of "general events" of which it has received no individual notice. Bricker & Eckler LLP believes that, for issuers who have undertaken to provide continuing disclosure in connection with an issue, a prudent first step is to determine whether the rating has changed on such issue as a result of a ratings downgrade of an insurer. As the table indicates, every rating agency has not reduced the ratings of all insurers. If a ratings change has occurred, a relatively brief notice may be all that is necessary to discharge an issuer's disclosure obligation.

### How to determine whether the rating on an issue has been changed

Listings of all issues rated by a rating agency are available on the websites of each rating agency (all three sites require registration to view the sites, but registration is free).

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- Banking & Financial Services
- Construction
- Education
- Health Care
- Insurance
- Investment Banking & Structured Finance
- Manufacturing & Logistics
- Nonprofit Organizations
- Public Sector
- Real Estate
- Technology & Intellectual Property

### The websites for the rating agencies

Fitch	<a href="http://www.fitchratings.com/corporate/sectors/highlight_rpt.cfm?sector_flag=&amp;marketsector=3&amp;body_content=research_hlite&amp;m_mode=">www.fitchratings.com/corporate/sectors/highlight_rpt.cfm?sector_flag=&amp;marketsector=3&amp;body_content=research_hlite&amp;m_mode=</a>
Moody's	<a href="http://www.moodys.com/cust/content/loadcontent.aspx?source=staticcontent/businesslines/FinancialGuarantors/FG-RL.htm">www.moodys.com/cust/content/loadcontent.aspx?source=staticcontent/businesslines/FinancialGuarantors/FG-RL.htm</a>
S&P	<a href="http://www2.standardandpoors.com/portal/site/sp/en/us/page.ratingssearch/ratings_search/2,1,1,5,0,0,0,0,0,0,0,0,0,0,0,0,0,0,0,0.html">http://www2.standardandpoors.com/portal/site/sp/en/us/page.ratingssearch/ratings_search/2,1,1,5,0,0,0,0,0,0,0,0,0,0,0,0,0,0,0,0.html</a>

While not necessary to search the sites, descriptive information for your outstanding notes and bonds such as the CUSIP numbers and the dates of issue will make your search more efficient.

### For further information...

For assistance with determining whether your issue has been downgraded, whether you need to disclose the change in rating, the proper method for disclosing such information, or any other questions you may have, please contact any of the attorneys listed below.

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*This client bulletin was prepared by Bill Conard and Shadya Yazback.*

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