



Paul S. Rutter

Partner
Columbus
614.227.2372
prutter@bricker.com

SEC expands event-based disclosure requirements

August 31, 2018

On August 20, 2018, the Securities and Exchange Commission (SEC) announced that it had adopted amendments to Rule 15c2-12 (the Rule) under the Securities Exchange Act of 1934, which governs the continuing disclosure responsibilities of issuers in the municipal securities market. The amendments had initially been proposed by the SEC in March 2017, and, after receiving extensive comments from various participants in the municipal securities market, the SEC ultimately adopted the amendments with few changes from their initial wording.

The amendments to Rule 15c2-12 include two new categories of required event notices in addition to the 14 categories of event notices already required by the Rule. The two new categories of event notices were adopted with no changes from the 2017 proposal, and read as follows:

(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. [emphasis added]

(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. [emphasis added]

Within the context of the Rule, the term "obligated person" includes an issuer of municipal securities who is subject to a continuing disclosure undertaking.

The amendments to the Rule also include a definition for the term "financial obligation," which definition was narrowed by the SEC from the form in which it was first proposed. "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 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.

While not defined in the Rule, the SEC stated that the term "'debt obligation' was intended to capture the short-term and long-term obligations of an issuer or obligated person under the terms of an indenture, loan agreement, or similar contract that will be repaid over time." Debt obligations include private/direct placements of a loan with a bank, and the term also includes lease arrangements if the lease was used as a "vehicle to borrow money."

The two new categories of event notices are subject to the Rule's existing filing deadline of 10 business days after a listed event has occurred. It is important to note that these amendments are not retroactive; they will only affect those continuing disclosure agreements entered into on or after the compliance date of the amendments. The SEC set the compliance date as 180 days after the amendments to the Rule are published in the Federal Register, which publication occurred on August 31, 2018. This sets the compliance date for the amendments as February 27, 2019.