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May 15, 2017

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-01-17; Release No. 34-80130

Dear Mr. Fields:

This letter is written in response to the request of the Securities and Exchange Commission (the "Commission") for comments on proposed amendments (the "Proposed Amendments") to the Municipal Securities Disclosure Rule (Rule 15c2-12) issued under the Securities Exchange Act of 1934 (the "Act"). The Proposed Amendments would amend the list of event notices that a broker, dealer, or municipal securities dealer (collectively, "dealers"), acting in their capacity as an underwriter in a primary offering of municipal securities, must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of municipal securities to provide to the Municipal Securities Rulemaking Board ("MSRB"), through its Electronic Municipal Market Access ("EMMA") system, as further set forth in SEC Release No. 34-80130 (the "Release").

By way of background, our firm is annually listed in the top 5 of the most active municipal finance law firms, nationwide, as bond or disclosure/underwriter's counsel, both by dollar amount and by number of issues. We are particularly active as bond counsel for several states, for numerous local governmental entities (both large and small cities, but also numerous small towns, villages, school districts, special districts, etc.), and for specialized finance agencies for particular purposes (particularly housing, both single family and multifamily, student loans, airports, charter schools, higher education institutions and numerous P3s). Clearly a broad array of issuers and types of financings.

We endorse the Commission's request to solicit comments with respect to the Proposed Amendments, and offer our comments based on our firm's broad-based national municipal finance practice and the experience we have accumulated in our daily interactions with municipal entities and obligated persons for many decades. We particularly have serious reservations with the SEC estimates of the burden imposed on issuers and obligated persons, as well as dealers, and the annual costs of complying with the Proposed Amendments, particularly given the SEC's expansive terms used in the Proposed Amendments. We believe the time burdens and the attendant costs are substantially understated, and while we trust the estimates were made in good faith, an internal survey of our bond lawyers (and our municipal clients) indicates the actual time and costs to comply would be much greater – by multiple times.

We assume the initial breadth of the Proposed Amendments is the usual attempt to cast the regulatory net as broadly as possible and that it will be followed by either a revocation of the Proposed Amendment or, at a minimum, a revised set of proposed amendments which is both more specific and more reflective of the practices of governmental entities and the realities of municipal finance, and which utilizes more realistic compliance time and costs estimates. When implementing the requirements of the Act it is important to be mindful of the Executive Orders issued on January 30, 2017 and February 24, 2017 by the President which focus on regulatory reform by restricting the issuance of new regulations and calling for greater scrutiny of existing ones.

To facilitate our response to your request for comments, we have organized our comments based upon groups of questions outlined in the Release as published in the Federal Register. The Requests for Comment which we wish to address are set forth below, followed by our comments with respect to the same.

1. The Commission requests comment regarding all aspects of (i) the proposed addition of subparagraph (b)(5)(i)(C)(15) concerning the event notice for the "incurrence of a financial obligation of the obligated person, if material, or agreements to covenants, events of default, remedies, priority rights, or others similar terms of a financial obligation of the obligated person, any of which affect security holders, if material"; and (ii) the proposed definition of "financial obligation" as "a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding."

While the Commission seeks specific comment on various aspects of this proposed additional event notice such as the frequency of such event, the utility of this information in the secondary markets, and the triggering of the obligation to provide notice of such event, the overarching concern with the Proposed Amendments is the dependence on terms with unreasonably broad definitions or the use of terms that are not defined at all (either in the Rule or under common law principles). Though the underlying intent of the Commission clearly seems to be aimed at providing greater transparency in the municipal securities market due to the increased use of bank loans and private placements by issuers and obligated persons in lieu of public bond sales, the Proposed Amendments are not appropriately or reasonably tailored to address that specific subset of financial obligations which has supposedly raised concerns. The definition of "financial obligation" is overly broad in scope and encompasses significantly more than the bank loans and direct placements which purportedly gave rise to these Proposed Amendments. The term includes debt obligations, leases, guarantees, derivative instruments and monetary obligations resulting from a judicial, administrative, or arbitration proceeding. This definition casts a wide net across a range of financial obligations that are also interpreted very broadly by the Release. The Release indicates that such a definition would include both short and long term debt obligations (such as those resulting from an indenture, loan agreement or contract), both capital and operating leases, as well as guarantees (contingent obligations of the issuer itself or that of a third party secured by the issuer or obligor). Arguably, the term financial obligations not only includes the disclosure of an issuer or obligor's existing obligations, but would also require disclosure of contingent obligations.

Furthermore, in addition to the inclusion of the broadly defined term "financial obligation," the Proposed Amendments include as a trigger for disclosure "agreements to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which *affect* [emphasis added] security holders." The inclusion of these specific events, as well as the catch-all "other similar terms," substantially broadens the requirement of issuers and obligors to disclose particulars of agreements or other obligations that are not even of the same nature as bank loans or direct placements. The Proposed Amendments do not indicate what kind of "affect" the event in question must have on security holders; arguably given the policy considerations and the discussion in the Release one would surmise that an issuer or obligor need only disclose those terms which *adversely affect* security holders. Furthermore, if the affect is on "any" security, must it be reported for *all* securities or just the security purportedly affected? We would suggest that the definition be clarified to include such language to make at least those distinctions, but note the inclusion of the term "adversely," or other similar term, without more guidance could lead to further ambiguity and broad interpretations of the term. More importantly, the affect should be limited to those events, or terms, which would directly impact the issuer's or obligated person's ability to fulfill its payment obligation to its security holders.

The Commission attempts to qualify, or proffers a balancing test, by only requiring disclosure of those financial obligations that are "material." The Release places great emphasis on the need to provide investors and other market participants with timely "access to disclosure that an issuer or obligated person has incurred a material obligation, or agreed to terms that affect security holders" in order to assess the potential impact on the issuer's or obligated person's liquidity or overall creditworthiness. However, of significant concern with the Proposed Amendments is that in the course of attempts by issuers or obligated persons to comply with these new disclosure requirements, the Proposed Amendments could lead to far-less meaningful disclosure and information that, for the time and expense required to monitor, gather and file, proves unhelpful in assisting investors in evaluating creditworthiness. Ultimately the utility of the disclosure and of the information provided would be diminished and frustrate the intent of the Proposed Amendments. Given the broad ambiguous nature of the Proposed Amendments, the corresponding materiality determination will likely lead to widely different outcomes regarding the meaningfulness of disclosure and the frequency by which it is provided based on the type and size of the issuer involved.

The practical application of the materiality determination without any guidance as to what is "material" will naturally result in issuers and obligated persons being faced with the sword versus the shield dilemma. While the inclusion of the materiality qualifier should be viewed as a shield from unnecessary and overly broad disclosure practices, it could very well be viewed as a sword used against issuers and obligated persons for failing to disclose events that the SEC later determines to be "material" even though the capital markets are indifferent. Despite the materiality standard established in *Basic, Inc. v. Levinson,*[1] and that provided for in the SEC's 1994 interpretive release on Amendments 15c2-12[2], the standard for materiality is ambiguous as evidenced by the complex analysis and determinations resulting from the Municipal Securities Disclosure Cooperation ("MCDC") initiative. In fact, the SEC's assertions in various MCDC Orders that obviously trivial late filings were supposedly material underscore why municipal issuers and their professionals have no trust that the SEC will act reasonably in this regard. As a result, issuers are left with the daunting task of determining whether the Commission will second guess what information is material to an investor in the municipal market and when its obligations are triggered under the Proposed Amendments. In an effort to comply, issuers and obligated persons are left with two courses of action, either provide on EMMA in whole the underlying documents (indentures, loan agreements, contracts, etc.) related to the specific financial obligations at issue without engaging in a purposeful and substantive materiality determination or provide summaries of material information (synthesized from the underlying documents) related to the financial obligations that must be disclosed. The time and costs associated with complying with the Proposed Amendments are also influenced by which course of action is taken. On one hand, notwithstanding the type or size of the issuer, generally speaking an "over-disclosure" approach may well involve less time and cost to an issuer or an obligated person if they were to simply post every contract, lease, agreement or other similar document evidencing a financial obligation of any sort (with appropriate redactions). This approach however, does little to further or advance the intent of providing the investor with meaningful information because it fails to filter out information an investor does not need to determine whether there are any concerns regarding the issuer's liquidity or to evaluate its overall creditworthiness. However, it enables the issuer or obligated persons to have some sense of assurance that they have not "omitted a material fact" that could otherwise be deemed to be of actual significance to an investor and subject them to hindsight second-guessing and scrutiny by the SEC.

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[1] Application of materiality attempts to filter out "useless information that a reasonable investor would not consider significant, even as part of a larger 'mix' of factors to consider in making his investment decision."

[2] "An omitted fact is material if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberation of the reasonable investor. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."

On the other hand, an issuer or obligated person engaging in substantive materiality determination will incur significant costs and associated time (discussed further below) with determining whether its contracts, leases, or other agreements are subject to the Proposed Amendments. Further complicating the matter, the size of the issuer will be a driving factor in the number and cost of resources that it must employ in order to engage in such determination. For example, prior to providing any notices, a state or large local issuer will first need to establish policies and procedures across its entire scope of operations in order to:

a. designate which individuals will be vested with the responsibility of determining whether an obligation meets the definition in the Proposed Amendments; and

b. establish some type of criteria by which those handling the day to day operations (to include the contracts, leases, etc. that could potentially be subject to the Proposed Amendments) can evaluate the need to elevate the issue to the designated individual; and

c. ensure that others within the organization are aware of the identity of the designated individual they are to notify regarding potential obligations that are subject to the Proposed Amendments.

Once that hurdle has been met and the necessary obligations have been identified for disclosure, the issuer or obligated person will need to draft the appropriate notice. Furthermore, an issuer will need to establish some type of audit procedures to ensure that personnel within the organization are in fact complying with the protocols.

Herein lies another major concern for the issuer or obligated person in applying the materiality determination. By trying to summarize or include information in the notice that is material and provides meaningful information to the investor, the issuer or obligated person is now exposed to a potential violation pursuant to Rule 10b-5 which prohibits the making of false or misleading statements or omissions of material facts, thus any discloser that an issuer or obligated person makes must not contain such false or misleading facts or omit any material facts. Currently, the Proposed Amendments do not contain specific guidance on the content of the notice. Rather, the Release states that the notice "generally should include a description of the material terms of the financial obligation" and provides by way of example the date of incurrence, principal amount, maturity and amortization, interest rate (fixed/variable) and "other terms…depending on the circumstances." There is no "checklist" or guide post for municipal securities issues to assist issuers or obligated persons in determining what must be included in a disclosure. By way of comparison, corporate entities utilize numerous forms to assist in preparing quarterly or annual notices, as well as the initial registration of corporate securities. While corporate issuers must still engage in a materiality determination during such filings, they have some benefit of the requirements of the forms to use as a guide post when complying with disclosures.

The municipal issuer or obligated person electing to provide for more meaningful disclosure will most likely have to engage the assistance of professionals or outside counsel to comply with both the threshold question of materiality and the more detailed analysis needed to determine what aspects of the financial obligation must be summarized and disclosed in the notice, as well as to assist with the preparation of such notice. Martha Mahan Haines, previously with the SEC, acknowledged as much during her remarks before the Michigan Municipal Finance Officer Association in 2000 stating that because municipal bond issuers "have primary responsibility for disclosure…it is important that they use experienced, qualified attorneys and other professionals who are familiar with the securities laws on their transactions." However, the Release seems to minimize the need for issuers and obligated persons to seek the counsel of outside professionals when complying with the Proposed Amendments. The management team of the vast majority of issuers or obligated persons is simply not sophisticated enough, sufficiently staffed or has the necessary resources to engage in these determinations without further guidance and the assistance of third party professionals. And the rating agencies have clearly stated that the ability of the management team to comply with financial and reporting covenants is an important component in the rating criteria used to evaluate the public finance sector. Consequently, given the ambiguous and legalistic nature of "materiality," the failure to use the assistance of outside counsel or other professional services could be highly detrimental to an issuer, leaving them with little choice but to expend increased time and money for additional professional advice to assure adequate disclosure compliance.

Because materiality is the pivotal balancing factor proffered by the Commission, it must be carefully analyzed and considered. However, the term is not uniformly interpreted or applied and continued ambiguity will likely result in over-disclosure of events that are not helpful to the investor or do not aid in the determination of the issuer's creditworthiness or liquidity. A determination of materiality will differ depending on the type and size of the issuer or obligated person; it is not formulaic and cannot be applied indiscriminately. The crux of any analysis must consider whether a single incurrence may not be material but, when taking into account the facts and circumstances of the issuer or obligated person, in the aggregate would be material and at what time has the scale tipped towards mandatory disclosure under the Proposed Amendments. The greatly expanded breadth and interpretative complexity of the Proposed Amendments is multiplied many times over when the nature of various types of issuers (much less obligated persons) is taken into consideration.

The complexity of state governments obviously vary by the size of the state, but states also differ operationally, and sometimes dramatically (often as a result of state constitutional provisions). In many cases bond issuances are coordinated by a single officer (sometimes the treasurer, but not always), but other types of financial obligations (such as leases, guaranty programs or other long-term contracts) are not. Typically departments have individual budgets, within which they operate on a largely autonomous basis. Classic examples are highway departments, games/parks departments (waterway/dams/recreation areas), corrections, education (particularly higher education), health/human resources and so on. They routinely enter into significant contracts with a financial aspect, yet with minimal coordination so long as within the confines of their respective budgets. The Proposed Amendments seem to presume a very simplistic state administrative structure with a single coordinating party with intimate and detailed knowledge of all those contracts—and that the single coordinating party could develop knowledge of the securities law analysis of "materiality" with regard to all those contracts, as well as obtain timely information. Or that every such department has in house securities law expertise as well as an overview of the entire state budget and debt financing implications. That simply isn't the case. Many governmental units consciously have distinct structures with internal checks and balances, whereas the classic corporate structures that the SEC routinely sees are pyramid governance structures. Thus, the training and procedural changes required of states to prepare to honor the Proposed Amendments would be expensive and time consuming, as well as require an extensive amount of time (these efforts by smaller than average states can be expected to require at least hundreds of hours) to actually implement.

The flip side are the tens of thousands of small issuers—the villages, towns, small school districts, numerous special districts, etc. with minimal staff who are not financially sophisticated (especially in the vagaries of the concept of "material," which even the SEC is unwilling to provide guidance on) and will be required to turn to (expensive) third-party advisors who are trained in the arcane world of Rule 15c2-12 and "materiality." These small issuers regularly borrow on a short-term basis to handle cash flow variations (for many of them, taxes are collected only annually, so they routinely borrow in anticipation of tax collections, or to address collections slow-downs), as well as routinely enter into financing leases for equipment and a wide variety of other financially related contracts (e.g., building construction contracts, school bus service contracts, teacher union contracts, streets or roads contracts, repair contracts, sewer construction/replacement, garbage pickup/disposal, etc.). Virtually all such issuers have no resident counsel and rely on third party counsel who are usually general practitioners and do not practice in the area of federal securities laws. The time and cost of developing procedures, and then training staff (or hiring third party experts) will be substantial.

A few types of issuers—primarily larger active specialized issuers with a narrow governmental focus and a limited number of major third party contracts—may be better equipped to handle the additional reporting requirements, although even for those issuers the time required to comply on an annual basis is clearly more than the SEC has estimated, particularly with respect to the possible interaction among complex contracts the payments of which are technically unrelated. Many major airports fit this mode, as typically the finance officials are both financially sophisticated and familiar with all major financial contracts, and the number of those contracts are limited. Even for those issuers, initially they will need training as to the breadth of the new reporting requirements and will need to make organizational changes to reflect the new requirements. Even if such changes are minimal for such issuers, just the training and changes will probably mean 10-20 hours of staff time, as well as costs of training by third parties (typically outside counsel).

Mid-sized cities and governmental entities have more staff than their small issuer counterparts, but most do not have persons on staff specifically trained to identify and address the financial and securities law matters required by the Proposed Amendments. Clearly they, too, will need to develop procedures which reflect the expansive and ambiguous nature of the Proposed Amendments, and either attempt to learn about the legal import of the terms used in the Proposed Amendments, or retain third party expert advisors. In most cases in-house city attorneys will not have the securities law expertise to handle such matters, as evidenced by their general reliance on their bond counsel for such matters.

Finally, scant attention seems to have been paid to obligated parties which are not issuers, especially borrowers in so-called "conduit" financing, such as colleges and universities, hospitals, zoos, Salvation Army entities, religious based schools, charter schools, museums, art galleries and so on, not to mention the for-profit entities such as single asset multi-family project LLCs, etc. Many of such entities borrow through municipal issuers infrequently, such as once every five years or so. Yet all those entities would need to develop procedures and train their staff as described above.

Regardless of what disclosure approach an issuer or obligated person chooses, it is unreasonable to expect an issuer or obligated person to provide such notice within 10 business days of the incurrence of the financial obligation. The ability to meet the time constraints will largely depend on the type or size of issuer or obligated person involved and its sphere of responsibility (such as a state issuer accountable for financial obligations entered into by its subordinate agencies). Particularly in the case of large municipal issuers, it is unlikely that every listed event in the Proposed Amendments would occur within the knowledge of the responsible official of the issuer. For a large statewide issuer to be aware of the incurrence of all financial obligations within its authority, it would need to monitor its operations in great detail on a daily basis—something few issuers are staffed to do, or can afford. Many issuers we serve require staff to work through committees comprised of members of the governing body. Such committees refer action items to the governing body. Of course, with no definition of materiality, city staff, including members of a city's finance department, legal department and manager department, would need an adequate understanding in order to appropriately report to committees and the governing body. Committee and council meetings can take substantial time. If a financial obligation arises from a judicial, administrative or arbitration proceeding, there would be significant time spent on analyzing the proceeding, even if the actual filing to comply with the Proposed Amendment, once determined material, would be quite less.

Clearly the requirement that a filing made within 10 business days from when the event occurs is unreasonably short (assuming one can figure out what technically constitutes an "occurrence"). The Proposed Amendments create a complicated decision tree that an issuer or obligated person must contend with prior to filing any required notices. The determinations necessary to navigate each step of the decision making process are not simple and will require the assistance of outside professionals. It is difficult to imagine how an issuer or obligated person will be able to comply, in all instances, as 10 days is not nearly enough time to engage in the analysis necessary in order to even begin preparing an event notice. Sophisticated issuers may have dozens of variable rate obligations and swap counterparties, with thousands of pages of implementing documents (many or all of which may already be on file with EMMA), which the Proposed Amendments may require an issuer to review.

We encourage the Commission to either not adopt the Proposed Amendments, or substantially revise them to more appropriately address the underlying policy concerns and emphasis provided for in the Release as related to the disclosure of bank loans and private placements. The Commission should also identify a more objective threshold that would help filter out certain kinds of generally irrelevant obligations, for example "true" equipment leases, or perhaps only include an obligation that rises to a certain percentage of an issuer's assets or total obligations as a threshold.

2. The Commission requests comment regarding all aspects of the proposed addition of subparagraph (b)(5)(i)(C)(16) concerning the event notice for an occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

Based on the Release, the Commission intends this event to provide investors and market participants with access to information that would indicate an issuer or obligated person is experiencing "financial difficulty" far sooner than in its annual filings, or in the event that such annual filing would not provide sufficient detail as to such "financial difficulty." As with the inclusion of "materiality" in the event notice of the proposed addition of subparagraph (b)(5)(i)(C)(16), the addition of the qualifier "reflecting financial difficulties," though intended (we presume) to place some nexus limit on the breadth of the obligation of the issuer or obligated person, is clearly overly broad and ambiguous. The interpretation and application of the term "financial difficulty" will vary depending on the issuer or obligated person involved. Its current use or "understanding" in (b)(5)(i)(C)(3) and (4) as applied to very distinct events (unscheduled draws on debt service reserves and credit enhancements) is not necessarily helpful in the context of the Proposed Amendments because the specific events the term modifies are not clearly defined. The addition of "default" rather than an *event of default*, which is usually a defined term in a particular obligation, is unclear and could be interpreted very broadly, triggering a notice requirement that mandates thoughtful analysis unlike a more clearly defined documentary "event of default." Additionally, the inclusion of "other similar events under the terms of a financial obligation" is similarly fraught with problems related to interpretation and application.

The phrase "financial difficulties" has no objective or well developed legal meaning, and is particularly vague and ambiguous with respect to the governmental sector because governmental entities operate under different economic restrictions and parameters than do corporate entities. We assume the SEC is familiar with the normal budgetary process of taxing governmental entities—revenues are estimated (largely based on taxes estimated to be collected in the ensuing fiscal year, but subject to real world variances, which are often totally unpredictable) and then a budget is developed based on those revenue estimates. But revenues may run below estimates (for example, in oil/gas states because oil/gas market prices drop as does production, or the economy slows and an issuer's income/sales tax receipts drop substantially, or trickle down tax reductions fail to generate estimated increased economic activity). Is that evidence of "financial difficulty"? If the governmental entity taps a "rainy day" fund, is that evidence of "financial difficulty"? Is that not precisely the purpose of a "rainy day" fund? If a state or city renegotiates leases, or refunds bonds rather than paying them off as scheduled, does that evidence "financial difficulty"? Does extending debt payments from 30 to 60 days, or even 30 to 31 days evidence "financial difficulty"? Does restructuring pension contributions evidence "financial difficulty"? This vague and ambiguous phrase creates obvious uncertainty for governmental entities, meaning they either consult expensive advisors on a regular basis, or over-report less they be accused of under-reporting (as evidenced by the MCDC second-guessing by the SEC). If a non-profit obligated party experiences a decrease in projected donations due to an economic downturn, or a major donor reneges on or questions a significant pledge, does that "reflect" financial difficulties? When does an increase in a multi-family project's vacancies indicate "financial difficulties"? Does a draw on its replacement/reserve fund indicate the same? Or a restructuring of subordinate debt owed the developer?

Perhaps more concerning than the scope of such terms is the scope of the requirement of this particular subparagraph of the Proposed Amendments. Unlike subparagraph (b)(5)(i)(C)(15) of the Proposed Amendments which requires a notice upon the incurrence of a financial obligation related to a continuing disclosure agreement entered into after the date of the amendment, it would appear that the notice requirement of (b)(5)(i)(C)(16) encompasses any of the issuer or obligated person's financial obligations. The Proposed Amendments do not even require that the "financial difficulty" indicate a possible inability to pay its outstanding securities. This broad scope alone makes compliance with the Proposed Amendments arduous and burdensome.

One must consider why an issuer or obligated person would choose to make the effort to engage in a disclosure practice that would result in increased cost, time and exposure when "speaking to the market" in a manner that provides investors and market participants meaningful disclosure. We expect that the Proposed Amendments could well result in a flood of event notices to EMMA as a result of the generality and vagueness of the listed events that must be disclosed, despite the requirement of materiality and a reflection of financial difficulties. The voluminous amount of information found on EMMA would potentially be more than investors desire to sort through and digest and may actually raise concerns from investors questioning why there is such a large "data dump" of information by the issuer or obligated person. The sheer volume of information would likely not aid in a determination of the issuer or obligated person's financial condition or its ability to meet its debt obligations. It is the potential for the issuer to default on its bond obligations that is of interest to bondholders.

3. The Commission requests comments regarding the costs associated with the additional events.

There is a very significant difference between the existing Rule 15c2-12 events and the Proposed Amendment events. The existing events under Rule 15c2-12 are generally objectively ascertainable by most laymen and rarely occur, making them easily identifiable by issuers and relatively inexpensive to handle as a result (even if third party professionals must be retained the few times the "materiality" aspect is applicable); redemption notices being the exception as to frequency, however they too are so objectively ascertainable that they are routinely filed on behalf of issuers by trustees or paying agents with little issuer involvement. However, the proposed events are just the opposite—they are not objectively or readily ascertainable, require sophisticated securities laws analysis to determine if they require a filing, and for many issuers the events may occur quite often. Obviously the SEC recognizes this—as many of the SEC requests for comments outlined in the Release center on the vagueness and ambiguity inherent in the terms of the Proposed Amendments listing new events. This is clearly a sea-change in the nature of Rule 15c2-12 filing "events." As drafted, the Proposed Amendments levy upon municipal issuers (and obligated persons) new requirements that are akin to the current continuous disclosure obligations of corporate issuers.

Whenever the SEC modifies Rule 15c2-12 to add reportable events as proposed, issuers (and obligated persons) are required to go through several steps to comply:

a. The form of existing continuing disclosure agreements must be modified. The SEC correctly states that this is a relatively simple process of inserting the additional event language (although the SEC estimate of 15 minutes must reflect only actual typing time, as it clearly ignores the fact that the form must often be drafted, reviewed and approved internally by several people, and then be distributed to and reviewed by other parties to a financing, especially the underwriter and its counsel).

b. Procedures must be established by the issuer/obligated party to assure timely reporting of the new events – the SEC has been adamant in this regard for many years (as a number of issuers have learned at a substantial cost for third party advisors). In light of the breadth and lack of easily identifiable guidelines to determine which events are reportable under the Proposed Amendments, and the unreasonably short 10 business day filing requirement, significantly more complicated procedures would have to be developed—and in most (if not all) cases also with the aid of third party professionals with securities law expertise.

c. Clearly extensive and detailed training in the securities laws will be required for responsible persons so they can recognize a "financial agreement," or an "agreement to covenants, events of default remedies, priority rights or similar terms" which "affect" "security holders," if "material," or "default, event of acceleration, termination event, modification of terms or similar events" which "reflect" "financial difficulties" (apparently regardless of "materiality"). A law school could devote an entire course to trying to explain the breadth and depth of those concepts. Clearly any such "training" of staff would be time-consuming and require the significant expenditure or financial resources, and in most cases probably necessitate advice from securities law and bond security specialists, both to train and to respond to inquiries from issuer staff. Then—for just a minute—contemplate how a town of 1,000 people with a part-time administrator/clerk, a full-time secretary (who handles routine matters like paying the electric bills) and a part-time town police officer are supposed to handle this!! And there are thousands and thousands of such towns and like issuers which would be subject to the Proposed Amendments.

d. The actual filings are usually not terribly time-consuming, once an issuer's staff person has spent the time to become familiar with the mechanics of making filings. (Note – contrary to public statements by SEC and MSRB officials, EMMA is <u>not</u> user-friendly for the small and unsophisticated filer.) However, if the "financial agreement" is actually a composite of a number of agreements (e.g., a hospital master indenture, related series indentures, standby financing agreements, continuing compliance agreements, swap ISDA documents and remarketing agreements), the filings could easily take hours. (We were recently involved in a large health care debt financing in which it took almost 4 hours to file all of the major debt documents on EMMA and large national health care systems routinely spend far more time than that.) Is EMMA even equipped to handle the influx of information that could potentially result from issuers taking a more conservative approach (e.g., when in doubt-file) to filing event notices triggered by the Proposed Amendments?

The SEC's position simply does not indicate a realistic consideration of the time that is needed to monitor and comply with the Proposed Amendments. While in some instances the actual preparation of the notice may not involve a great amount of time, the discussions, analyses and determinations required prior to preparing a notice will take a significant amount of time. Two hours is ridiculously low. For some cities, the total time involved initially could exceed more than 50 times the SEC's estimate, and in larger cities the burdens could be more than 100 times what the SEC estimates will be required. The burden is more appropriately measured by the number of financial obligations required to be analyzed by issuers, not by the number that result in filing. For many of the existing event filings, a determination of materiality is not a consideration, so the number of hours required for those filings is less than that would be required for the incurrence of financial obligations under the Proposed Amendments which require significant consideration of materiality.

Take for example a large state issuer, where the state departmental units responsible for preparing a debt finance transaction (the "Bond Department") and satisfying both securities and tax post-issuance compliance obligations are often minimally staffed, with a majority of their time devoted to other legislative and budgeting duties. But more importantly, these Bond Departments do not currently have any way of monitoring all of the myriad budgeted transactions in which other departments, agencies and other state units participate that might fall within the definition of "financial obligation." For example, some states have enacted programs by which local school district and certain municipal debt is directly or indirectly guaranteed by the state in the event of a default. In addition, many states operate master equipment lease programs, and other departments and agencies within the state are also independently authorized to enter into capital and operating leases. However, the Bond Department does not participate in these transactions and is not made aware of the incurrence of such obligations for a significant period of time after the related transactional closing. In order to provide material event notices for such obligations within 10 business days after their "incurrence," the state would need to establish detailed procedures indicated above across a multitude of departments and agencies designed to ensure that notice of the incurrence of any financial obligation, without regard to materiality, be reported immediately to the Bond Department. The departmental staff would also need to be expanded, significantly, in order to both monitor all transactions, but also review the terms of each such financial obligation and, in consultation with bond counsel and personnel with the department, agency or other unit of state government that incurred to the obligation, determine whether such obligation is material and a filing is required. The preceding discussion would obviously hold true even for those states that do not issue long-term debt, but may operate small equipment leasing programs in connection with which they have entered into continuing disclosure undertakings. In our conversation with representatives of one state, the representatives estimated that the Proposed Amendments might reasonably be expected to require the state to make 100 additional material event filings per year. One issuer noted that an event notice and related time for a draw on a debt service reserve fund for tax-increment finance bonds with no general obligation backing required in excess of 75 hours of time responding to inquiries, communication with members of the governing body, the legal team, including outside counsel and the dissemination agent, and preparing and reviewing the event notice.

Smaller, local or specialized issuers, whose issuances are often exempt from Rule 15c2-12, would also have a very difficult time complying with the time requirements and the costs related to managing the frequency of possible filings. For example, some local districts have maintenance responsibilities, such as contracts for lawn mowing or landscape maintenance. It would be a significant hardship to disclose each of those short-term maintenance and repair type contracts—would these be considered "financial obligations"? While any long-term debt, such as bank loans, or financing leases would already be reported in the district's annual audit, 10 business days is an impossibly short time for most district issuers to comply with the overall requirements, and if the filing is not consolidated into a once a year report the cost would be steep. In addition, the districts rarely have substantial staff and operate through outside district managers and accountants, thus any new requirements, such as the Proposed Amendments, that add to the consultants' duties or is perceived as increasing risk will significantly increase general fund expenses. A great concern of some local districts is the frequency by which some of the event filings could occur, or at a minimum, the analysis that must be undertaken. For example, would districts that issue hundreds of construction warrants (arguably a "financial obligation" under the Proposed Amendments) through the use of a base warrant offering circular be required to engage in a materiality determination each and every time a new warrant is issued? At some point would a particular issuance tip the scale of materiality, thus requiring a notice? If so, would the notice then need to capture the entire history of the warrants issued by the district? While the districts post an addendum to each base circular on EMMA, the addendum is not tied to a specific base circular in the way an event notice would be.

Other issuers that are governmental entities provide technical assistance to organizations within the state through grant funding agreements—are these grants now subject to the Proposed Amendments? Are they considered a "financial obligation"? What about issuers that enter into commitments to purchase mortgage loans and mortgage-backed securities in advance of the issuance of their bonds?

Some issuers that we assist have previously engaged in voluntary filings relating to privately-placed borrowings, such as bank loans or the private placement of bonds to private purchasers. Even these issuers have expended in the range of 10-20 hours of outside counsel time in preparation of initial event filings, utilizing bond counsel or other counsel familiar with municipal securities disclosure.

In light of the lack of clarity as to what is "material" and the limited period of time allowed to make determinations as to materiality, the representatives with whom we spoke expressed their belief that they might often be forced to forgo any detailed analysis and simply elect to make a material event filing. Again, this could lead to an unnecessary deluge of such filings which would not only provide little meaningful information to the investor, but more importantly may obscure filings that an investor would find important.

While some issuers could produce a filing via EMMA stating that they have entered into a financial obligation, few of them would have the internal expertise or the resources necessary for outside legal help on (i) how to describe the obligation beyond the basics and (ii) how to parse through these instruments to determine which covenants might or might not be material and then describe each of them. And of course, with the rare exception of a private offering memorandum, there is nothing akin to an official statement that could be simply filed. Many who enter into financial obligations triggering the notice requirement will simply say "file the agreement" along with the notice. Then the question becomes "what document should be filed?" In the simplest standalone deals, depending on whether the issuer is itself a governmental unit or going through a conduit or is issuing taxable debt, there is likely a two or three party financing agreement or loan agreement, and an accompanying note or bond. However, as is more often the case, where existing debt is backed by a pledge of the gross revenues, then the "instruments" to the bank financing may include a bond indenture and a loan agreement, and perhaps a separate bank "covenant agreement," or, in some cases, a bond indenture, loan agreement, Master Indenture Supplement and perhaps a separate bank covenant agreement. To ensure an issuer has included the "material terms" of the particular financial obligation in the event notice, absent providing a comprehensive summary that would likely involve significant time and expense (which would probably be largely akin to a full-fledged official statement), one would probably have to file them all, and maybe the base Master Indenture, including all prior supplements.

Subsequent filings might require less time to the extent that the circumstances remain the same with respect to the event being disclosed and the obligated person's outstanding public obligations (for which the event disclosure is being made). But to the extent that new financial obligations or other events are different from past events for which filings have been made, the efficiencies of subsequent would be minimal, such as those related to the format of the filing itself, or the ministerial aspects, such as the mechanics of making EMMA filings. To the extent that the substance of the financial obligation differs, a review of materiality will be required each time a financial obligation is incurred. This can only be properly done by taking into account the relevant circumstances with respect to the issuer/obligated person, the financial obligation being incurred and the outstanding municipal securities for which the event filing would be made.

The Proposed Amendments would also substantially increase the burden on underwriters to diligence compliance by the issuer and obligated person. As noted above, the present events are generally objectively ascertainable (which is why a system like DAC—so often praised by SEC officials at conferences—can be used; it is just a computer program which matches dates of objectively ascertainable event filings requirements, like annual reports or bond redemptions, with the actual EMMA filing dates). However, the events included in the Proposed Amendment which may trigger filings are not only difficult to objectively ascertain, but require sophisticated securities law and security analyses to determine if purportedly "material." As noted in the Release, in fulfilling its responsibility, the underwriter may not simply rely on assertions or certifications made by the issuer or obligated person with respect to disclosure events. However, can the underwriter rely on the issuer to provide a list of such events? Or must an underwriter diligence the issuer's list, and if so, to what extent? If every finance related agreement must be checked, is the underwriter obligated to check every contract or borrowing the issuer has incurred in the previous 5 years? And how does an underwriter satisfy itself that the issuer is informing it of all such contracts or borrowings? There is generally no central registry of any such sort. An underwriter will need to revise its existing due diligence process and develop procedures to ascertain whether events under the Proposed Amendments have occurred, and if so, to what extent they are material and require timely reporting to EMMA. Clearly the Proposed Amendments significantly expand the breadth of an underwriter's obligations under Rule 15c2-12, with a concomitant significant increase in the time needed to do so which are far, far greater than the SEC's estimates.

4. Evaluation of the Transition Period

We strongly recommend that a transition period much longer than three months be provided for in the Proposed Amendments. Based on a cross section of issuers, a reasonable estimate of the time required for states or governmental entities to implement internal procedures necessary to comply with the Proposed Amendments is in excess of a year. Additionally, the implementation costs would need to be provided for and appropriated in the governmental budget. The Commission established the transition period for the Proposed Amendments from its comparison to that of the six month transition period established for the 2010 Amendments indicating that the "limited scope of the proposed amendments as compared to the 2010 Amendments" would require less transition time. This is just plain wrong. As indicated in this commentary, if the Proposed Amendments are adopted as proposed, we believe that a great many issuers will need substantial time to implement monitoring, internal reporting and analytic procedures not currently in effect.

5. Conclusion

While we support the underlying principles of the Proposed Amendments, we are concerned that if implemented in their current form the Proposed Amendments will not have the desired effect of providing greater transparency to investors. Rather, the Proposed Amendments will impose upon issuers and obligated persons unnecessary compliance burdens and divert precious financial resources away from their mission-oriented programs, which ultimately harm local taxpayers and investors.

We would be pleased to discuss any of the foregoing comments in greater detail.

Very truly yours,

John J. Wagner