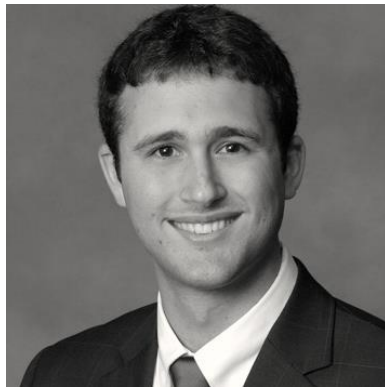


CONTINUING DISCLOSURE



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OVERVIEW

1. Primary vs. Secondary Disclosure
2. SEC Rule 15c2-12
3. Continuing Disclosure Undertakings



But...

- WE'RE AT TOPGOLF
 - » So let's have some fun!!!
 - **There are prizes** 😊



HISTORY LESSON!!!



"It may seem dull to you now, Harry, but at one time, everything in that book was breaking news."

Regulating Market Transactions

- The Securities Act of 1933 (the '33 Act)
 - » Regulates primary market transactions (initial sales of securities by issuers to underwriters)
- The Securities Exchange Act of 1934 (the '34 Act)
 - » Primarily regulates secondary market transactions
 - Rule 15c2-12



History of the '33 Act



- '33 Act
 - » Enacted by the United States Congress on May 27, 1933 during the Great Depression after the stock market crash of 1929
 - » Legislated pursuant to the Interstate Commerce Clause of the Constitution
 - » Requires every offer or sale of securities that uses the means and instrumentalities of interstate commerce to be registered with the SEC (unless an exemption from registration exists)
 - » AKA the Securities Act, the Truth in Securities Act, the Federal Securities Act

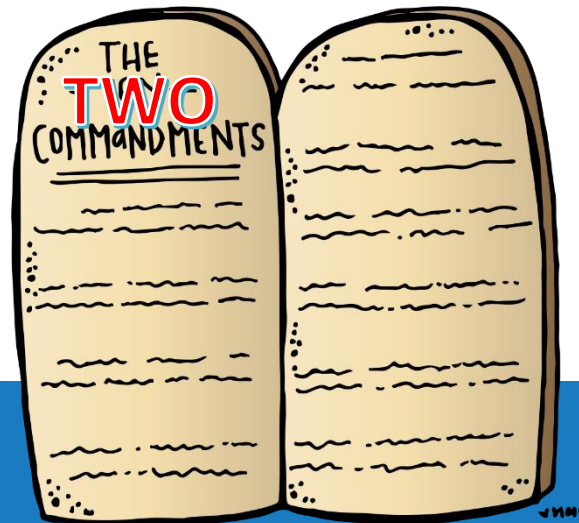
History of the '34 Act



- '34 Act
 - » Enacted June 6, 1934
 - » Governs the secondary trading of securities in the U.S.
 - » Created the U.S. Securities and Exchange Commission (SEC) to enforce federal securities laws
 - The mission of the SEC is to:
 - Protect investors,
 - Maintain fair, orderly, and efficient markets, and
 - Facilitate capital formation

“Two Guiding Principles” of the '33 and '34 Acts

- TELL THE TRUTH
 - » Issuers publicly offering securities for investment must tell the public the truth about their businesses/enterprises, the securities they are selling, and the risks involved in investing
- TREAT INVESTORS FAIRLY AND HONESTLY
 - » Those who sell and trade securities – brokers, dealers and exchanges – must treat investors fairly and honestly, putting investors’ interests first



A Bit More Information on the '33 and '34 Acts

- Municipal securities are generally exempt from the registration requirements of the '33 Act and governmental entities are generally exempt from the reporting requirements of the '34 Act, but...
 - » Not exempt from the anti-fraud provisions of the '33 Act and the '34 Act.
- “Tower Amendment” included in the 1975 amendments to the '34 Act
 - » Created the Municipal Securities Rulemaking Board (MSRB)
 - » Prohibits both the SEC and MSRB from directly or indirectly requiring issuers of municipal securities to file documents with the SEC and the MSRB prior to a sale
 - » MSRB does not have jurisdiction to regulate issuers of municipal securities

So How Are Municipal Issuers Regulated?

- Indirectly...
 - » But how???



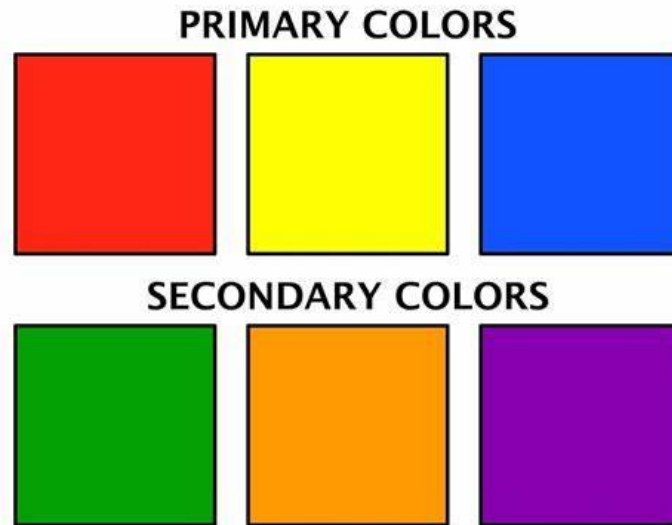


SEC RULE 15c2-12



Primary Disclosure

- What is the difference between primary disclosure and secondary disclosure?



Primary Disclosure

- Disclosures made when bonds are issued (or remarketed)
 - » Done through a public offering (i.e. offering document, oftentimes referred to as a “[preliminary] official statement”)
 - The POS is used to market bonds prior to signing a bond purchase agreement (BPA) in a negotiated sale or awarding the sale of bonds through a competitive sale process
 - The POS is then finalized to become the final OS
 - A POS is permitted to exclude certain pieces of information...
 - Which are completed in the final OS...
 - » Such as pricing information

Secondary Disclosure

- Disclosure after the initial issuance of securities...
 - » We will get to it shortly



Anti-Fraud Provisions

- Anti-Fraud Provisions
 - » Section 17(a) of the '33 Act and Section 10(b) of the '34 Act (Rule 10b-5 under the '34 Act)
- Section 17(a) of the Securities Act of 1933
 - » Regulates primary market transactions (i.e. primary disclosure)
 - » Prohibits obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading
 - What makes a fact material?



Anti-Fraud Provisions

- Materiality
 - » A fact is material if there is a substantial likelihood that a reasonable investor would have viewed the information as “having significantly altered the ‘total mix’ of information available”
 - » To the extent the omitted information relates to contingent future events, materiality depends upon “a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of circumstances”
- *Negligence* is sufficient to prove violations
 - » Failure to use reasonable care

First Quiz Question!!!

- Municipality X is offering its sewer system bonds pursuant to a POS and states in the POS that the sewage treatment plant employs 25 full-time employees when in actuality it employs 20 full-time employees. Municipality employee who provided this information for inclusion in the POS used their “best guess” as to the number of employees working at the plant when they could have looked to official records for an accurate count. Is this likely to classify as a material misstatement under Section 17(a) of the '33 Act?



Section 17(a) of the '33 Act

➤ Section 17(a) of the '33 Act

- » It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly:
 - to employ any device, scheme or artifice to defraud, or
 - to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser

Section 10(b) of the '34 Act

- Prohibits the use, in connection with the purchase or sale of a security of any manipulative or deceptive device
- Requires a showing that defendants acted with “scienter” or a culpable state of mind
 - » *Scienter* requirement for antifraud violations may be satisfied by a showing of recklessness as well as a showing of guilty knowledge and intent
 - State of mind may be shown by circumstantial evidence
 - » *Recklessness*: “An extreme departure from the standards of ordinary care, and which represents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it”



Rule 10(b)(5)

- Prohibits the use of any instrumentality of interstate commerce, mails, or facilities of national securities exchange, in connection with the purchase or sale of any security, to:
 - » employ any device, scheme or artifice to defraud,
 - » make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - » engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person

Now on to Secondary Disclosure... And our Second(ary) Quiz Question!!!

- Secondary disclosure is often referred to as:
 - (A) Additional Disclosure
 - (B) Bothersome Disclosure
 - (C) Continuing Disclosure
 - (D) Don't care; when do I get to hit some golf balls?



Primary Forms of Regulation of “Obligated Persons”

- “Obligated Person”
 - » Issuer of municipal securities, or any person committed by contract or other arrangement to support payment of all, or part, of the obligations on municipal securities (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)
- Regulation
 - » Indirectly by SEC/MSRB regulation of broker-dealers, banks, and financial advisors
 - » Directly through anti-fraud provisions of the '33 Act and the '34 Act

SEC Rule 15c2-12

- *Rule 15c2-12 (the Rule)*: governs primary offering disclosure AND continuing disclosure, including submission of annual financial information and material event notices
 - » Primary offering of municipal securities in principal amount of \$1 million or more, subject to exemptions
 - » The Rule directly regulates underwriters, but indirectly regulates issuers and obligated persons.





Continuing Disclosure Undertakings

Continuing Disclosure Agreements

- Persons subject to Rule 15c2-12 (Obligated Persons) must enter into an undertaking to provide continuing disclosure
 - » Continuing Disclosure Undertaking/Continuing Disclosure Agreement (CDU/CDA)
 - » Each debt issuance subject to Rule 15c2-12 will have its own Continuing Disclosure Agreement



Another Quiz Question!!!

- Municipality X decides to issue debt to build a municipal building. Local Bank offers to purchase the debt in a private sale (i.e. no OS). Is Municipality X required to enter into a CDA in connection with the sale of the debt to Local Bank?



15c2-12(b)(5)(i)

- A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent...

What Needs to be Provided?

- Three general categories of information must be disclosed pursuant to SEC Rule 15c2-12(b)(5)(i) by the deadlines indicated below:
 1. Audited financial statements*
 - a. By the filing deadline stated in the CDA
 2. Selected annual financial/operating data from the Official Statement
 - a. By the filing deadline stated in the CDA
 3. Material Event Notices (rating change, late payment, etc.)
 - a. To be filed in a timely manner not in excess of ten business days after the occurrence of the event

*if audit not available by filing date, is to be filed once it becomes available

Continuing Disclosure Material Events

	Events	Materiality
1	Principal and interest payment delinquencies	Without regard to materiality
2	Non-payment related defaults	If material
3	Unscheduled draws on debt service reserves reflecting financial difficulties	Without regard to materiality
4	Unscheduled draws on credit enhancements reflecting financial difficulties	Without regard to materiality
5	Substitution of credit or liquidity providers, or their failure to perform	Without regard to materiality
6	Adverse tax opinions or events affecting the tax-exempt status of the security	Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the security
7	Modifications to rights of security holders	If material

Continuing Disclosure Material Events

	Events	Materiality
8	Bond calls and tender offers	If material
9	Defeasances	Without regard to materiality
10	Release, substitution, or sale of property securing repayment of the securities	If material
11	Rating changes	Without regard to materiality
12	Bankruptcy, insolvency, receivership or similar event of the obligated person	
13	The consummation of a merger, consolidation, or acquisition involving an obligated person, or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms	If material
14	Appointment of a successor or additional trustee or the change of name of a trustee	If material

Continuing Disclosure Material Events

	Events	Materiality
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
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	Without regard to materiality
17	Failure to file continuing disclosures by deadline*	

*Does not appear on the list of material events but required by Rule 15(c)2-12.

2019 Amendments to Rule 15c2-12(b)(5)(i)(C)

➤ Event 15

- » 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

➤ Event 16

- » 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

Effect of Amendments



- As of February 27, 2019, SEC Rule 15c2-12 requires disclosure of the terms of private (bank) placements
 - » Under a private placement, there is no need to enter into a Continuing Disclosure Agreement...
 - » HOWEVER, the 2019 amendments to SEC Rule 15c2-12 amendments require bank placement disclosure in connection with public transactions
 - Must disclose private placements in connection with CDAs executed in public transactions
 - Effective on and after February 27, 2019 (unless a CDA requires this disclosure sooner)

Key Term For New Event 15 and 16

- “Financial Obligation”
 - » The term financial obligation means 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.

SEC “Guidance” on “Financial Obligations”

- Includes both short-term and long-term debt obligations of an obligated person under the terms of an indenture, loan agreement, lease, or similar contract regardless of the length of the repayment period of the debt obligation
- Leases that “operate as vehicles to borrow money” (i.e. financing leases) are financial obligations
 - » Operating leases are not financial obligations



A THREE-PART QUIZ QUESTION!!!

- Municipality X entered into a continuing disclosure agreement in 2020 in connection with the issuance of its \$15 million municipal building bonds which were sold by an underwriter pursuant to an OS. In 2022, Municipality X decides to issue \$5 million of bonds to acquire another building, but this time Local Bank offers to purchase the debt in a private sale (i.e. no OS).
 - » Is Municipality X required to enter into a CDA in connection with the sale of the debt to Local Bank?
 - » Is Municipality X required to disclose the incurrence of the new debt?
 - » Now let's say that rather than selling the debt directly to Local Bank, Municipality X offers the debt for public sale using an underwriter in connection with an OS. Does Municipality X have to disclose the incurrence of the new debt?



Disclosing Material Financial Obligations

- Notice of the incurrence of a “material financial obligation” should include a description of the “material” terms of the financial obligation
 - » The SEC provided little guidance on its interpretation of materiality; the following examples of material terms were provided:
 - Date of incurrence, principal amount, maturity and amortization, interest rate (if fixed) or method of computation (if variable) plus any default rates, and other terms, depending on the circumstances
 - » The determination is ultimately left to the obligated person



Exemptions From SEC Rule 15c2-12

- [15c2-12] shall not apply to a primary offering of municipal securities in authorized denominations of \$100,000 or more, if such securities:
 - » Are sold to no more than 35 persons each of whom the Participating Underwriter reasonably believes:
 - Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment (i.e. sophisticated investor); and
 - Is not purchasing for more than one account or with a view to distributing the securities; or
 - » Have a maturity of 9 months or less

CONSEQUENCES OF FAILURE TO MAKE REQUIRED DISCLOSURE

- The CDA is an enforceable obligation, and the Obligated Person may be compelled, either by the underwriter, or by any holder of the Bonds to make the disclosure reports called for
- Rule 15(c)2-12 requires Obligated Persons to file a Notice of Failure to Comply
- Prior noncompliance may appear in the Obligated Person's next Official Statement: Rule 15(c)2-12, requires that a final official statement must include a statement of any instances in the prior five years when any "obligated person for whom financial information or operating data" has been included in an Official Statement has "failed to comply in all material respects" with a prior CDA
- May "chill the market" - bond market may feel it cannot rely on that Obligated Person to comply in the future
- Possible action for securities fraud if, for example, investor asserts they would have bought/sold based on timely disclosure of the missing information






Final Quiz Question!!!

- What is the name of the electronic repository operated by the MSRB that serves as the official source for municipal securities disclosures and related financial data in the United States?
 - (A) Financial Repository Assistance Network (FRAN)
 - (B) Electronic Municipal Market Access system (EMMA)
 - (C) Electronic Securities System of America (ESSA)
 - (D) Repository for Electronic Information Disclosure (REID)



- Electronic Municipal Market Access System
 - » Serves as a national repository for:
 - Municipal securities disclosure documents (POS/OS);
 - Continuing disclosure;
 - Real-time municipal bond trade price information;
 - Trading activity; and
 - More!!!

-  Customizing an Issuer Homepage
-  How Can Issuers Use EMMA?
-  Contact Us

Issues | Trade Activity | Pre-Sale Documents | Official Statements | Refunded Issues | Financial Disclosures | Event-Based Disclosures

Click on the issue description to view details about the issue.

Display results | Search within list:

First | Previous | **1** | 2 | 3 | Next | Last

Issue Description	Dated Date	Maturity Dates
COMBINED REVENUE REFUNDING BONDS SERIES 2020	08/19/2020	2021 to 2035



Questions?

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