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## **Changes in the Bond Market Part 2: The Issuer's Perspective – Managing through Constant Change**

October 2013

## **Importance of Disclosure**



## SEC RULE 15C2-12

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- Obligates issuers to file accurate annual financial information and notices of material events to improve disclosure in Secondary Market.
  - Audits, Budgets, Notice of Certain Events (defined in OS)
  - Compliance with Prior Undertakings (defined in OS)
  
- It prohibits dealers and underwriters from buying municipal securities unless the 15c2-12 obligation is met.



## REQUIRED MATERIAL EVENTS

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*The following must be filed regardless of materiality:*

1. Principal and interest payment delinquencies
2. Unscheduled draws on debt service reserves reflecting financial difficulties
3. Unscheduled draws on credit enhancements reflecting financial difficulties
4. Substitution of credit or liquidity providers, or their failure to perform
5. Adverse tax opinions
6. Defeasances
7. Rating changes
8. The issuance by the IRS 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 securities\*
9. Tender offers\*
10. Bankruptcy, insolvency, receivership or similar proceeding\*

\* Newly required material events for issuances on or after December 1, 2010, must be filed 10 days from date of occurrence



## REQUIRED MATERIAL EVENTS (CONTINUED)

*The following must be filed if deemed material:*

11. Non-payment related defaults
12. Modifications to rights of security holders (changes to bond covenants or the continuing disclosure agreement)
13. Bond Calls
14. Release, substitution, or sale of property securing repayment of the securities
15. Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated person or their termination\*
16. Appointment of a successor or additional trustee or the change of the name of a trustee\*

\* Newly required material events for issuances on or after December 1, 2010, must be filed 10 business day from date of occurrence.



## IMPORTANCE OF DISCLOSURE

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- The SEC has direct authority over investment banking firms and Municipal Advisors (MA's). Currently, it does **not directly** oversee the municipalities.
- The SEC has urged Congress to grant them direct authority over municipal issuers.
- With no action from Congress, the SEC turned to one of its most powerful tools. “**Enforcement actions**”.
- The agency filed its first securities case against a state in 2010, charging it with misleading investors about two major pension funds and also fined four former City officials for misleading investors about the city's fiscal problems. SEC has issued 4 cease and desist orders regarding disclosure failures in 2013 already.
- The obvious message is regardless of size and frequency of issuance the SEC is motivated, and is devoting the resources necessary to detect and prosecute violations.

# WHY DO I CARE?



- Can Restrict Access to the Market
- Must Disclose 5 years in Official Statement
- Could Increase Borrowing Costs
- May Impact Rating
- Inaccurate Statements could be considered Securities Fraud
- **Issuers, are Ultimately Responsible for content of their documents – Primary (Initial Sale) and Secondary (Continuing Disclosure)**
- Whether Positive or Negative disclosing accurate and complete information is critical to issuers, investors and Muni-Market.
- Disclosure Protects You

## IMPORTANCE OF DISCLOSURE:

## RECENT HEADLINES FROM *THE BOND BUYER AND WASHINGTON POST*



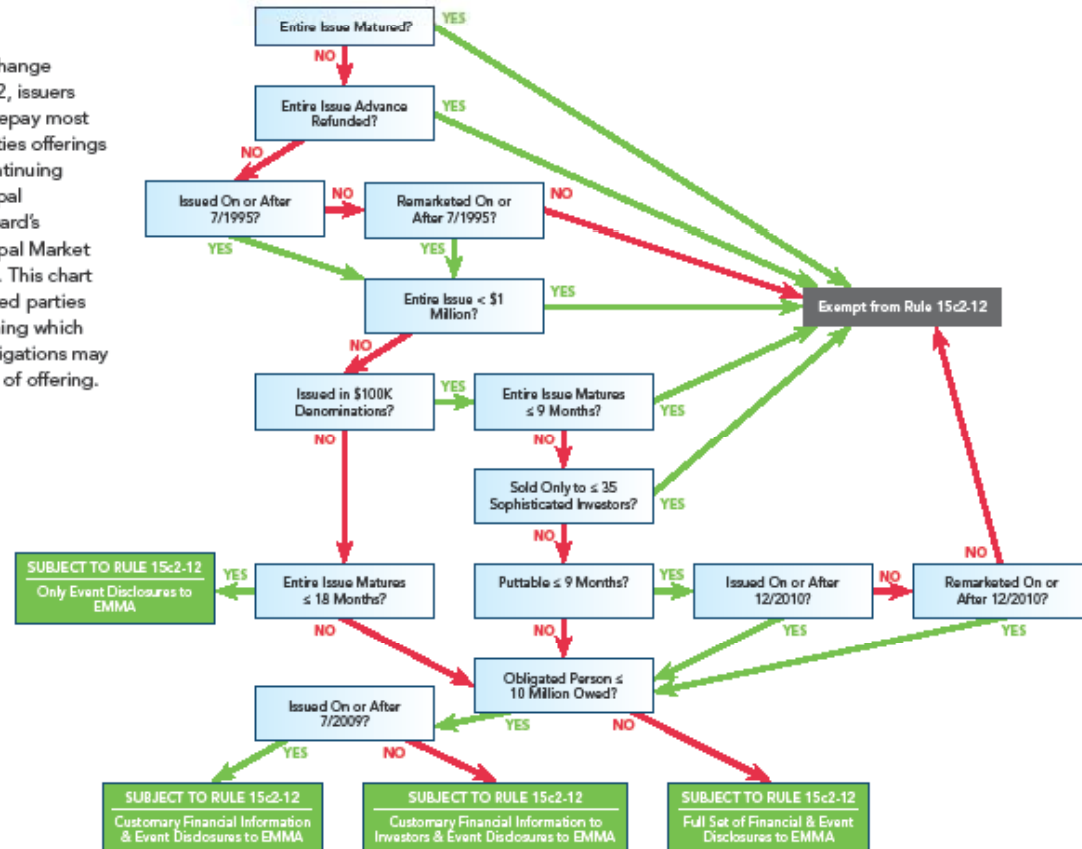
- "Issuer Officials Worry About SEC Rules. Enforcement Actions" – 6-3-2013
- "SEC Cracks Down on Disclosure in Municipal Bond Sales" – 6-28-2013
- "SEC Charges Former Budget Director with Securities Fraud" – 7-19-2013
- "SEC Charges School District, Underwriter Over False Statements" – 7-29-2013
- "SEC Charges Underwriter, Issuer Over Disclosure" – 7-29-2013
- "Municipal Advisor (MA) Rule May Change Dealer Practices" – 10-4-2013
- "IRS Agent Warns Jail Bonds in Texas May Be Taxable" – 10-16-2013
- "MSRB to Focus on Key Issues Affecting Fairness, Transparency, Efficiency" – 10-17-2013

# IDENTIFYING CONTINUING DISCLOSURE REQUIREMENTS



## Flowchart for Identifying Continuing Disclosure Requirements

Under Securities and Exchange Commission Rule 15c2-12, issuers and others obligated to repay most types of municipal securities offerings must agree to submit continuing disclosures to the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) website. This chart can assist issuers, obligated parties and investors in determining which continuing disclosure obligations may apply to a particular type of offering.





# MSRB STATE AND LOCAL GOVERNMENT TOOL KIT



- Provides information required for disclosure and use of Electronic Municipal Market Access (EMMA)
- MSRB created a State and Local Government Toolkit at <http://www.msrb.org/MSRB-For/Issuers/Issuer-Toolkit.aspx>
- GFOA Best Practices [http://www.gfoa.org/index.php?option=com\\_content&task=view&id=1588](http://www.gfoa.org/index.php?option=com_content&task=view&id=1588)

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