Increased Disclosure Obligations Aimed at Greater Transparency in Municipal Securities Market

By Lisa A. Chiesa / Aug 27, 2018

On August 15, 2018, the Securities and Exchange Commission ("SEC") created new disclosure obligations for borrowers that issue debt through the municipal bond market. The amendments to Rule 15c2-12 (the "Rule") added two (2) new events that must be disclosed by issuers and obligated persons on EMMA (the Electronic Municipal Market Access website), a free online library of information for buyers and sellers of municipal securities. According to the Securities and Exchange Commission, the added obligations are "designed to focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights."

On or after the compliance date (180 days after publication of the amended Rule in the Federal Register) all new continuing disclosure agreements must provide that, in addition to the currently 14 reportable events, the following must be disclosed within ten (10) business days of occurrence:

1. incurring a financial obligation, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material, and
2. default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation if such event reflects financial difficulties.

The amended Rule defines a "financial obligation" as a (i) debt obligation, (ii) derivative instrument (like a Swap) entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (iii) a guarantee of a debt obligation or derivative.

Note that the Rule is directed at underwriters of municipal securities. It requires them to verify that issuers and obligated persons have made a written commitment to provide notice of the enumerated events (as amended), and to provide annual updates of certain financial and operating data. If an issuer or obligated person has not made the promise, the underwriter may not purchase or sell the municipal securities. So, while the Rule provides no direct consequence to a borrower that fails to file the notices, the borrower would be blocked from accessing capital available through the public municipal bond market.