THE BOND BUYER

Issuers not clear on upcoming 15c2-12 amendments

By

Sarah Wynn

Published

January 28, 2019, 2:38pm EST

WASHINGTON — With Rule 15c2-12 amendments set to take effect at the end of February, issuers at the Government Finance Officers Association meeting aired out their confusion over how the changes will affect their continuing disclosure responsibilities.

Issuer officials discussed their concerns during a meeting of the GFOA's Committee on Governmental Debt Management at the group's winter meeting here Monday. The angst is fueled by the Securities and Exchange Commission's August 2018 decision to add two new material events to the list of occurrences that issuers will have to agree to disclose within ten business days of their happening.

Event 15 says issuers have to disclose when they incur financial obligations, if material, as well as agreements to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer that could affect security holders.

Event 16 says that in connection with those financial obligations, issuers have to disclose events which "reflect financial difficulties," such as a default or modification of terms.

Members of the debt committee said they're having trouble pinning down the requirements. It can be hard to determine when financial difficulties start, and the rule doesn't specify it, they said.

Without knowing, issuers will have to turn to their lawyers to figure it out, said Kenton Tsoodle, Oklahoma City's finance director.

"It's thinking through and making that list of what are all the things that have to be included in these two new filings, but also then when," Tsoodle said.

The SEC lacks the authority to directly regulate issuers except through the antifraud provisions in the securities laws, so the rule requires underwriters of new issues of $1 million or more to “reasonably determine” that the issuer has entered into a written agreement to provide such disclosures to bondholders.

State revolving fund loans, wherein states make loans to cities for water utilities, may have to be disclosed starting Feb. 27 because they likely fall under Event 15.

Guarantees of lower-rated credits could also be disclosed, committee members said. Tsoodle said he would disclose guarantees.

“It’s somewhat broad and it’s going to be a lot more work and a lot more things for issuers to monitor, Tsoodle said. “It will remain to be seen if it’s a good thing for investors.”

A partial government shutdown caused some hiccups for issuers looking for the SEC to answer questions, and Tsoodle said for areas where they don’t get clarification, issuers will turn to their bond counsel for answers.

Cindy Harris, chief financial officer at the Iowa Finance Authority said she plans to spend more time with her bond counsel to get more guidance if she doesn’t receive more from the SEC.

At the meeting, issuers debated whether or not they would disclose a bank loan document in its entirety, terms and all, on EMMA.

“I think the issue is that you could disclose the entire agreement, so if you have a bank loan, the agreement would have all of the terms of the loan,” Harris said. “Sometimes the person you have the agreement with, may not want all of that information for the public to see like the terms, or the rate at which you’re borrowing.”

Harris worries that at the end of the day, the SEC could take enforcement action against an issuer who comes up short in its disclosure obligations, so wants to cover all bases.

“I think muni issuers are probably struggling with these new amendments,” she added.