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conversation today.

Send us your
questions and
comments!

Welcome

The Broadcast will begin at 2:00 PM (Eastern)

Submit your questions in advance using the GoToWebinar control panel

Moderator

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Malcolm Guy IV

Associate, Research & Technical Assistance
Council of Development Finance Agencies

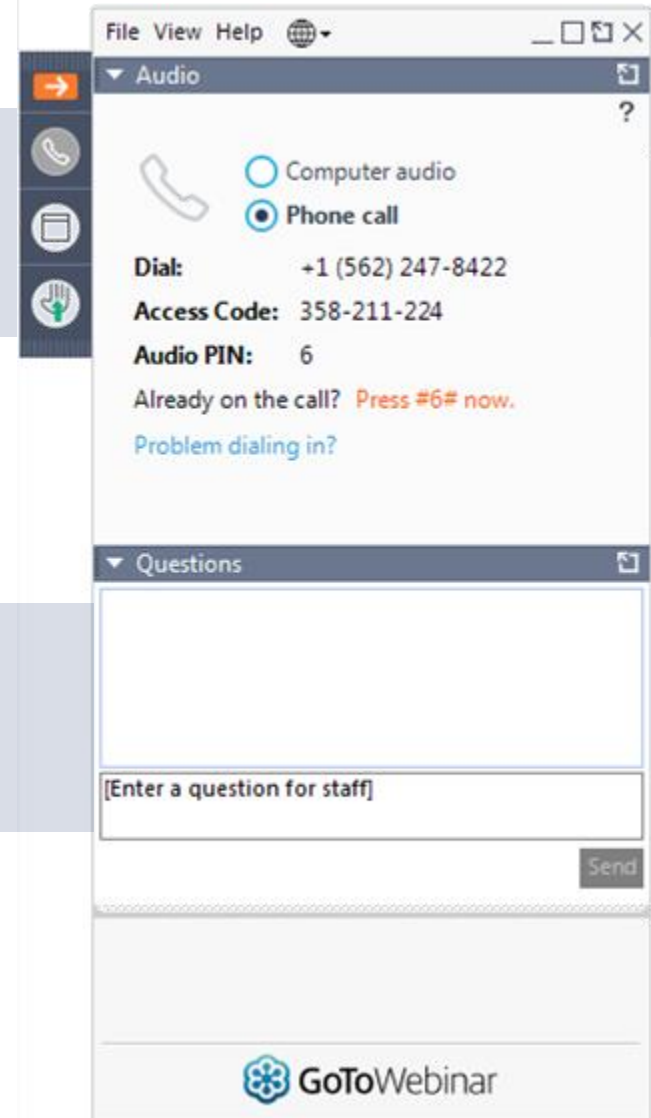
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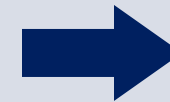
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Using your telephone will give you better audio quality.



The screenshot shows the GoToWebinar interface. At the top, there are menu options: File, View, Help, and a globe icon. Below this is a 'Audio' section with a dropdown arrow and a question mark icon. It contains two radio button options: 'Computer audio' (unselected) and 'Phone call' (selected). Below these are the following details: 'Dial: +1 (562) 247-8422', 'Access Code: 358-211-224', and 'Audio PIN: 6'. There is also a note: 'Already on the call? Press #6# now.' and a link: 'Problem dialing in?'. Below the audio section is a 'Questions' section with a text input field containing the placeholder '[Enter a question for staff]' and a 'Send' button. At the bottom of the interface is the GoToWebinar logo.

Submit your questions to the panelists here.



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Panelists



Teri Guarnaccia
Partner, Public Finance
Department
Ballard Spahr LLP



Leo Karwejna
Chief Compliance Officer
Public Financial Management



Julia Cooper
Director of Finance
City of San José

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Bob Gamble, *Moderator*
Managing Director
Public Financial Management

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Teri Guarnaccia

Partner, Public Finance Department
Ballard Spahr LLP

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Regulatory Landscape with MSRB and SEC Framework

February 7, 2019

CDFA-PFM Capital Markets Webinar Series

Teri M. Guarnaccia, Esq.

Ballard Spahr LLP

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Rule 15c2-12 - Background

- **Rule began in 1989 as a requirement to deliver a “deemed final” Preliminary Official Statement and a “complete” Final Official Statement**
- **Amended in 1994 to require municipal securities dealers to ensure that issuers and obligated parties to undertake in writing to provide certain information to the market concerning annual operating and financial information and notices of certain material events.**
- **Prior to current amendments, previously amended in 2008 and 2010 to add more material events and clarify others**
- **Directly governs underwriters; indirectly governs issuers/obligors on bonds**
- **Applies to primary offering of municipal securities with a par amount greater than \$1 million**

Exemptions from Rule 15c2-12

- **Limited placement exemption**
 - **\$100,000 denominations**
 - **35 or fewer knowledgeable/experienced investors**
- **Short-term debt exemption**
 - **\$100,000 denominations**
 - **Maturity 9 months or less**
- **Limited exemption for continuing disclosure**
 - **Obligated person of no more than \$10 million**
- **Limited exemption from annual reporting**
 - **Maturity 18 months or less**

Initial Disclosure Requirements of Rule 15c2-12

- **Review of Deemed Final OS**
 - Participating underwriter must *obtain* and *review* prior to bidding for, purchasing, offering or selling municipal securities
 - Issuer must deem final
 - Pricing information and other permitted omissions
 - May be combination of documents
- **Dissemination to potential customers**
- **Contract to receive final OS**

Continuing Disclosure Requirements of Rule 15c2-12

- **Participating underwriter must reasonably determine that issuer and/or obligated persons have undertaken in writing to provide continuing disclosure**
- **Obligated persons**
 - **Any person committed by contract or other arrangement to support payment of all or part of security**
 - **excludes bond insurers and letter of credit or liquidity providers**
- **Scope of Continuing Disclosure**
 - **Annual financial information**
 - **Audited financial statements**
 - **Material events notices**
 - **Additional information**

Listed Events in Rule 15c2-12

In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) 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, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material;
- (11) Rating changes;
- (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;

Current Amendments to Rule 15c2-12

Effective October 30, 2018 and with a compliance date of February 27, 2019, the SEC adopted amendments to Rule 15c2-12 to add two additional events requiring notice:

- (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; and
- (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.

Financial Obligation

- “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) a guarantee of (i) or (ii). The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.
- The definition of the term “financial obligation” does not include ordinary financial and operating liabilities incurred in the normal course of an issuer’s or obligated person’s business, only an issuer’s or obligated person’s debt, debt-like, and debt-related obligations.

Panelist

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Leo Karwejna

Chief Compliance Officer
Public Financial Management

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CDFA – PFM Capital Markets Webinar Series

Regulatory Landscape with MSRB & SEC Framework

Leo Karwejna
Chief Compliance Officer

February 7, 2019



How Can You Get Ready for the Inevitable?



A few initial thoughts for dealing with regulatory uncertainty...

- *Focus on what you can control*
- *Clarify areas in need of interpretation and review*
- *Find consistency wherever possible*
- *Have a plan for everyone to know and follow*
- *Identify the risks involved*
- *Try to understand the regulatory intent within your context*





What Can You Do Now?



View from a Compliance Officer – Process Steps to Consider

◆ Process

- Identify what is required by the changes in 15c2-12 disclosure requirements?
- How does this impact your entity?
- Identification of external parties and the role(s) of those involved in required disclosures
- Who is accountable within your entity for actions/tasks and decisions in the disclosure process?
- What are the primary objectives (outcomes and results) for disclosure efforts?
- Do you recognize known issues or problems with existing disclosure processes
- Can you map back to the “listed events” to *enthusiastically* file?

...within 10 business days



View from a Compliance Officer – Additional Considerations

People

Primary accountability

Staffing resources

Communication and reporting routines

Escalation decisions

Financing team input

Procedures

Documentation of expectations

Consistency

Dealing with interpretations

Narrative

Checklist

Decision-tree

Monitoring for events and voluntary disclosures

Timing and accuracy are critical

Training

Distinctions by function and role

Addressing the fundamentals

Use practical case studies

Identify the potential risks

Timing and venue considerations

Surprises in speeches and public statements



What to Continue to Watch For?



A few concluding thoughts for dealing with regulatory uncertainty...

- *Take a deep breath and do not panic*
- *Monitor for 'best' or at least 'good' practices as they continue to develop*
- *Expect to over communicate and require additional time needed to address questions*
- *Internalize guidance and update process and policy accordingly*
- *Establish checks-and-balances to flag for needed escalations for review*

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Julia Cooper

Director of Finance
City of San José

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Regulatory Landscape with MSRB & SEC Framework

February 7, 2019

**Julia H. Cooper
Director of Finance, City of San Jose**



Amended SEC Rule 15c2-12
EMMA Enhancements



SEC Rule 15c2-12 – Event Disclosure

Principal and interest payment delinquencies

Non-payment related defaults*

Unscheduled draws on debt service reserves reflecting financial difficulties

Unscheduled draws on credit enhancements reflecting financial difficulties

Substitution of credit or liquidity providers, or their failure to perform

Adverse tax opinions or events affecting the tax-exempt status of the security

Modifications to rights of security holders*

Bond calls and tender offers*

Defeasances

Release, substitution or sale of property securing repayment of the securities*

Rating changes

Bankruptcy, insolvency or receivership

Merger, acquisition or sale of assets*

Appointment of successor trustee*

Amendments to SEC Rule 15c2-12



Rule 15c2-12(b)(5)(i)(C)(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.



Rule 15c2-12(b)(5)(i)(C)(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.

Changes to EMMA®

- Accepting two new disclosure filing types
 - EMMA Dataport
 - Computer-to-computer submissions
- Displaying two new disclosure filing types
 - Continuing disclosure pages
 - **EMMA®** issuer homepage
 - Issue Details and Security Details
 - Advanced Search, MyEMMA® and Market Statistics

Resources



For Investors

Preparing to Invest

Buying and Selling Bonds

Monitoring Bonds

For State & Local Governments

Issuing Municipal Securities

Monitoring Securities

Disclosing Information to Investors

Understanding the Municipal Market

About Municipal Securities

Lifecycle of a Bond

529 Plans and ABLE Programs

About MuniEdPro

Strengthen Industry Knowledge

Earn Continuing Education Credit



Disclosing Information to Investors

Access resources for making timely and complete disclosures to investors as required by SEC Rule 15c2-12. Issuers submit these and other voluntary disclosures to the MSRB, which makes them publicly available on the EMMA website.



Watch a short video that explains the roles of key participants involved when a bond is issued.

Disclosure Framework

- SEC Rule 15c2-12
- Making Financial Disclosures: A Guide for Issuers
- The Conduit Issuer's Guide to Continuing Disclosures
- Financial Disclosures: Protecting Market Access for Issuers
- Voluntary Disclosure

Preparing to Submit Disclosures

- Providing Disclosure Information to Investors
- Resources for Developing Disclosure Documents
- Flowchart for Identifying Continuing Disclosure Requirements
- Suggested Practices for Submitting Financial Disclosures to EMMA
- Preparing to Submit Financial Disclosures to EMMA

EMMA Disclosure Resources

- How Can Bond Issuers Use EMMA to Communicate with Investors?
- Email Reminders for Recurring Financial Disclosures
- Instructions for Email Reminders for Recurring Financial Disclosures
- Customizing an EMMA Issuer Homepage
- Tutorial on Submitting Financial Disclosures

Resources

- 10 Things to Know Educational Resource
- Updated EMMA Dataport Manual for Continuing Disclosure Submissions
- **MSRB Support**
202-838-1330
MSRBsupport@mspb.org
Hours of Operation:
7:30 a.m. - 6:30 p.m. ET

The screenshot shows a document from the Municipal Securities Rulemaking Board (MSRB) titled "10 Things to Know: Disclosing Financial Obligation Information". The document is part of a series on "DISCLOSING INFORMATION TO INVESTORS". It explains that the MSRB operates the Electronic Municipal Market Access (EMMA®) website as the official platform for disclosing important information to the market. The document is provided to support compliance with regulatory changes requiring timely public disclosure through the EMMA website of events relating to certain financial obligations.

Understanding the Regulatory Disclosure Changes

- 1 Additional requirements have been established under SEC Rule 15c2-12.**
The U.S. Securities and Exchange Commission's (SEC) Rule 15c2-12 requires an underwriter in a primary offering of certain municipal securities to reasonably determine that an issuer or obligated person has entered into a continuing disclosure agreement. A continuing disclosure agreement commits an issuer and/or obligated person to provide certain information to the MSRB about their securities on an ongoing basis. Since 2010, Rule 15c2-12 has listed the financial and operational information and 14 events expected to be included in the continuing disclosure agreement.
Recent amendments to Rule 15c2-12 add two events for continuing disclosure agreements entered into on or after February 27, 2019.
- 2 The two additional events relate to certain financial obligations of the issuer.**
Events 15 and 16 under amended SEC Rule 15c2-12 are:
 - (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; and
 - (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**.
- 3 The SEC defines the term "financial obligation."**
The SEC defines "financial obligation" to include:
 - certain **debt obligations**;
 - **derivative instruments** entered into in connection with, or pledged as security

[Read the SEC's adopting release amending SEC Rule 15c2-12.](#)

Subscribe to issuer education and EMMA email updates from the MSRB.

MSRB Contact Information

MSRB Online

msrb.org

emma.msrb.org

MSRB Support

202-838-1330

MSRBSupport@msrb.org

Hours of Operation:

7:30 a.m. - 6:30 p.m. ET

MSRB Email Updates

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City of San Jose – Debt Management Policy

- City Council adopted Debt Management Policy * objectives and goals include among other items, *“Maintain full and complete financial disclosure and reporting”*
- **Disclosure Practices and Procedures – Statement of Policy**

“... committed to full and complete primary (prior to issuance) and secondary (post issuance) market disclosure in accordance with disclosure requirements established by the Securities and Exchange Commission and Municipal Securities Rulemaking Board, as may be amended from time to time. ... committed to cooperating fully with rating agencies, institutional and individual investors, other levels of government, and the general public to share clear, timely, and accurate financial information.”

City of San Jose – Debt Management Policy

Responsibility for Disclosure

The City Manager and the Director of Finance are the designated officials for communicating information concerning the finances and other information about the City and the Successor Agency that a reasonable investor would consider to be material in making a decision to purchase or sell debt issued by the City, the Successor Agency or a Covered Entity on behalf of the City. Communications from other City or Successor Agency officials or employees regarding the financial condition of the City or Successor Agency will not be considered to be official communications to the investor marketplace.

Disclosure Policies and Procedures

- Detailed Written Disclosure Policies and Procedures developed in order to carry out City Council Debt Policy objectives
 - related to the provision of financial and other relevant information to investors including preparation and review of Offering Documents before submission to the City Council or Successor Agency Board for approval, and
 - compliance with Continuing Disclosure Agreements, and other related topics.

Disclosure Policies and Procedures

- Outlines responsibilities of key players including those members of the Core Disclosure Working Group
 - Core Disclosure Working Group membership – City Manager, City Attorney, Finance Director, Budget Director and other members of the City’s senior staff as the City Manager or Finance Director deems to be appropriate in consultation with the City Attorney.
 - Core Disclosure Working Group convened for review of all primary disclosure and City’s Comprehensive Annual Financial Report

Disclosure Policies and Procedures

- Listed Events and Voluntary Disclosures
 - Procedures contemplate convening meeting of Core Disclosure Working Group to determine if an Listed Event requires a Listed Event Notice to be posted if material, to determine materiality
 - If insufficient time for the assembly of the Core Disclosure Working Group in order to meet filing deadline, Finance Director consults with the City Attorney's Office who may consult with disclosure counsel on whether a Listed Event Notice should be posted to EMMA
 - Voluntary Disclosure -- If any member of the Core Disclosure Working Group concludes an event has occurred that is not a Listed Event and it may be material with respect to any Bonds, he/she instructs a convening of the Core Disclosure Working Group to discuss the event and evaluate whether notice of such event should be posted to EMMA

Primary and Secondary Market Disclosure

- Ongoing and continual process
- Not limited to once a year when annual report and CAFR (audited financial statements) are posted
- Requires diligence across the organization
 - Active engagement
 - Might be easier in smaller organizations
 - Development of policies and procedures key to success

Question and Answer

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ON CAPITAL MARKETS

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Upcoming Webinars in the CDFA – PFM Capital Markets Series

Financing for Climate Resilience

March 14, 2019

2:00 PM – 3:30 PM Eastern

Capital Markets Back to the Future

April 16, 2019

2:00 PM – 3:30 PM Eastern

What Your Bond Finance Team Worries About

May 7, 2019

2:00 PM – 3:30 PM Eastern

Register online at www.cdfa.net

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