

**NEW REPORTING REQUIREMENTS FOR BONDS:
An Overview of Continuing Disclosure Changes Effective July 1, 2009**
June 18, 2009

Questions and Answers

The answers below are intended to provide general information in response to participant questions and do not constitute an exhaustive discussion or legal advice.

Q. What kinds of obligations are covered by Rule 15c2-12 (the Rule)? Our school district has outstanding certificates but no bonds.

A. The Rule covers capital outlay certificates, as well as most bonds and notes (excluding state revolving fund and rural development loans) issued in an original principal amount of \$1 million or more. As discussed in more detail below, the best source to consult to determine whether the Rule applies to a given series of obligations is the transcript distributed after closing.

Q. If I am a new finance officer, what should I do to understand the continuing disclosure requirements we have with respect to our outstanding obligations?

For at least two reasons, the best place to look to understand continuing disclosure requirements with respect to any particular series is the continuing disclosure agreement executed in connection with that series.

First, it is important to remember that the amendments to Rule 15c2-12 do not change any continuing disclosure requirements for obligations issued before July 1, 2009, except with respect to the *method* of disclosure. Starting July 1, issuers must make their required disclosures through EMMA, rather than the “nationally recognized municipal securities information repositories” (NRMSIRs) (and, in certain states, the “state information depositories”).

Second, it is the continuing disclosure agreement, rather than Rule 15c2-12, that establishes and sets the scope of the issuer’s continuing disclosure duties. (Rule 15c2-12 regulates the conduct of *underwriters* and requires them to ensure that certain continuing disclosure covenants are made in writing.) With this mind, underwriters may and sometimes do require issuers to provide more extensive disclosure than what Rule 15c2-12 requires.

Continuing disclosure agreements are typically included in the transcripts distributed after closing. In some financings, the continuing disclosure covenants are part of the resolution awarding the sale of the obligations and are not set forth in a separate agreement. (The resolution should also be included in the transcript.) If you are unable to locate a particular transcript, contact the attorney who served as bond counsel for the issue in question.

Q. Regarding the limited exemption under Rule 15c2-12 for issuers with \$10 million or less in outstanding principal amount, which obligations count toward the \$10 million limit?

- A. As stated above, the Rule applies to obligations issued in an original principal amount of \$1 million or more, subject to certain limitations and exemptions. One of the partial exemptions (often called the “small issuer exemption”) applies when the issuer, at the time a given series of obligations is delivered to the underwriter, has \$10 million or less in aggregate principal amount outstanding. For purposes of determining the principal amount outstanding, all obligations of the issuer, including those exempt from the Rule when issued, are included.

If, at the time certain obligations – for example, the “Series 2009A Certificates” – are delivered, the issuer has more than \$10 million in aggregate principal amount outstanding *including* the Series 2009A Certificates, the Series 2009A Certificates will not be entitled to the so-called small issuer exemption. This means that so long as any of the Series 2009A Certificates are outstanding, the issuer will be required to file, with respect to the Series 2009A Certificates: (1) annual financial information; (2) audited financial statements if not included in the annual financial information; (3) material events notices; and (4) notices of failure to provide the annual financial information by the deadline specified in the continuing disclosure agreement.

Should the issuer’s total principal amount outstanding fall below \$10 million at any time while the Series 2009A Certificates are outstanding, such an occurrence would not change the nature of required filings above. For this and other reasons, the best source to consult to understand the disclosure requirements for any particular series is the continuing disclosure agreement that was executed in connection with that series.

Q. Are filing deadlines posted on the Electronic Municipal Markets Access (EMMA) web site, or do they depend on the issuer’s fiscal year?

Filing deadlines vary by issuer and series. Accordingly, to determine the filing deadlines applicable to a given series of obligations, issuers should consult the continuing disclosure agreement that was executed in connection with that series.

Q. Can you elaborate on the requirement that starting January 1, 2010, all PDFs uploaded to EMMA must be “word-searchable”?

Starting January 1, 2010, PDFs uploaded to EMMA must allow the viewer to search for specific terms in the document electronically through a search or find function; provided, however, that diagrams, images and other “non-textual” elements within the document need not be word-searchable. Any version of Adobe Acrobat software is able to produce a word-searchable PDF, and issuers who produce PDFs by converting Word, Excel, or such documents to PDF electronically should encounter few problems. Scanning Word, Excel, or other such documents to create PDFs, however, may yield PDFs that are not word searchable.

For more information about any of the topics addressed in the Internet seminar on continuing disclosure changes effective July 1, 2009, please contact any of the following presenters:

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