



New Reporting Requirements for Bonds: An Overview of Continuing Disclosure Changes

June 18, 2009

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Presenters

- Alan Polsky, Dougherty & Company LLC
- Todd Meierhenry, Meierhenry Sargent LLP
- Andrea Specht, Dorsey & Whitney LLP
- Facilitated by Thomas Grimmond,
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SEC Rule 15c2-12: Overview and Policy

- Conduct and parties regulated by the Rule
- Broad purposes served by the Rule
- Policy behind amendments effective July 1, 2009:
 - Expanded reporting requirements for issuers with \$10M or less of principal amount outstanding
 - Creation of EMMA / designation of EMMA as sole NRMSIR

SEC Rule 15c2-12: Overview and Policy

- Thoughts on potential future developments
- Text of Rule 15c2-12 with link to amendments available at <http://tinyurl.com/lf7ozt> and should be read in conjunction with MSRB Notice 2008-47, available at <http://tinyurl.com/m9qocl>

Current Provisions of Rule (Not Changing)

- Subject to certain exemptions, Rule applies whenever municipality or district issues \$1 million or more (original principal amount), of:
 - Bonds
 - Capital Outlay Certificates
 - Notes

- Does not apply to state revolving fund and rural development loans

- Does not apply to obligations sold in authorized denominations of \$100K or more under certain circumstances

Current Provisions of Rule (Not Changing)

- Issuers with \$10 million or less in principal amount outstanding are exempted from some of Rule's requirements
- All issuers who have issued or will issue obligations covered by the Rule must provide notice of specified material events regarding those obligations
 - Notice may be provided by issuer directly or indirectly through a trustee or other designated agent

Current Provisions of Rule (Not Changing)

- Material events include:
 - P&I 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 tax-exempt status of the obligations

Current Provisions of Rule (Not Changing)

- Material events, continued:
 - Modifications to rights of holders
 - Bond calls
 - Defeasances
 - Release, substitution, or sale of property serving as security for obligations
 - Rating changes

Current Provisions of Rule (Not Changing)

- In addition, issuers with more than \$10 million of principal amount outstanding must provide:
 - Annual financial information as defined in the Rule, including audited financial statements; and
 - Notice of any failure to provide annual financial information by the date specified in the continuing disclosure agreement

New Requirements Under Rule Amendments

- Annual reporting for issuers with \$10 million or less principal outstanding
 - In connection with issuance of \$1 million or more of obligations issued after July 1, will have to provide at least annually, “that financial information and operating data which is customarily prepared” by the issuer and “publicly available”
 - Will no longer be sufficient to provide such information “on request”

New Requirements Under Rule Amendments

- As under current rule, annual financial information filings (and material events notices) may be provided by issuer directly or indirectly through trustee or other designated agent

New Requirements Under Rule Amendments

- New reporting method for all required filings starting July 1, 2009
 - All required filings must be made to the MSRB through its Electronic Municipal Markets Access (EMMA) system
 - All required filings must be made in the form and accompanied by certain “identifying information” prescribed by the MSRB

New Requirements Under Rule Amendments

- Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) and State Information Depositories (n/a in SD) are being replaced by EMMA

Filing Through EMMA: Practical Matters

➤ Form of Disclosure Documents

- Must be in portable document format (PDF)
- Starting January 1, 2010, must be “word-searchable” (excluding diagrams, images, other non-textual elements)
 - Any version of Adobe Acrobat will work
 - Avoid scanned documents

Filing Through EMMA: Practical Matters

- “Accompanying Information” must be provided for each disclosure document:
 - Category of information provided (financial/operating vs. material event notice)
 - Period covered by any financial information
 - The obligations to which the document is related (CUSIP number, issuer name, name and description of obligations, dated date, maturity date and/or coupon rate)

Filing Through EMMA: Practical Matters

- Accompanying Information, cont'd:
 - Name of any obligated person other than the issuer
 - Name and date of disclosure document
 - Contact information for submitter

Filing Through EMMA: Practical Matters

- Two methods for filing through EMMA:
 - (1) Electronic computer-to-computer data connection for transmitting on a “bulk” or continuous basis (outside the scope of this webinar); or
 - (2) Web-based electronic submission interface

Filing Through EMMA: Practical Matters

- For Web-based interface, submitter must register in order to use EMMA
 - If not already registered, register for MSRB Gateway, available at <http://emma.msrb.org> (choose EMMA Dataport from the navigation menu)
 - You will receive an e-mail with password for logging in

Filing Through EMMA: Practical Matters

➤ Uploading documents to EMMA:

- After logging in to the MSRB Gateway, submitters are prompted to enter the required “accompanying information”
 - Sources to check for accompanying information (e.g., CUSIPs): bond transcript, EMMA search by issuer, or visit www.cusip.com (select “municipal issuer access” link)
- Upload PDF(s)
- Click “publish” to complete filing process

Filing Through EMMA: Practical Matters

- For more information about registering for MSRB Gateway and using EMMA, visit <http://emma.msrb.org> and select “EMMA Dataport” from the navigation menu
 - FAQ documents, manuals, and instruction sheets are available on the Dataport main page
- For free MSRB webinars on EMMA (future events and replays), visit <http://www.msrb.org/msrb1/events/default.asp>

Filing Through EMMA: Practical Matters

- EMMA and independent auditor contracts
 - Consult with your auditor regarding receiving audited financial statements in PDF format
 - Ensure that contract does not contain any problematic “use of report” limitations



Live Q & A

To ask a question, type it into the Chat box on the bottom left of the screen. Your question will only be visible to the presenters. We will answer as many questions as time allows.

Thank you.



For More Information

**For more information on any of today's topics
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Presenter Biographies

ALAN D. POLSKY, CFA, is a senior vice president at Dougherty & Company and is responsible for Dougherty's negotiated municipal underwriting and fixed income institutional sales and research. He was previously the senior research analyst in the firm's Capital Markets Department. Alan serves on the board of the Regional Bond Dealers Association. He was the 2001 Chairman of the National Federation of Municipal Analysts and past co-chair of the NFMA's Education Committee. He also served as president of the Minnesota Society of Municipal Analysts. Before joining Dougherty as a municipal trader in 1985, Alan was the controller at the University of Minnesota Foundation and held a senior accounting position with KPMG-Peat Marwick.

Presenter Biographies

TODD MEIERHENRY is an attorney with Meierhenry Sargent LLP. In addition to advising South Dakota public bodies, banks, and other financial institutions for more than 20 years on public finance and economic development matters, Todd serves as bond counsel and underwriter's counsel in connection with every type of bonds issued in South Dakota. Todd is also general counsel for the South Dakota Building Authority and South Dakota Educational Enhancement Funding Corporation and is the drafter of the legislation which created the County Improvement Districts (Dakota Dunes) and Ellsworth Devolvment Authority – South Dakota's newest governmental subdivision.

Presenter Biographies

ANDREA SPECHT is an attorney with Dorsey & Whitney LLP, focusing on public finance transactions in South Dakota, North Dakota, and Minnesota. Before joining the Dorsey firm, Andrea clerked for Justice Paul H. Anderson of the Minnesota Supreme Court during its 2006-2007 term. Andrea worked for eight years in nonprofit management prior to law school and has served as an adjunct professor at the University of St. Thomas School of Law. A dedicated community volunteer, she serves as vice chair of the board of trustees for the College of Visual Arts in St. Paul, Minnesota, and is also on the board of Girl Scouts of Minnesota and Wisconsin River Valleys.

Presenter Biographies

THOMAS GRIMMOND is a senior vice president at Dougherty & Company based in Sioux Falls. As an investment banker, Tom handles the financial modeling of issuers' capital requirements. Since joining Dougherty in 1992, Tom has structured financings for colleges, school districts, municipalities, and counties using certificates of participation, general obligation bonds, revenue bonds, and other obligations and revenue sources. His notable projects include financings for the Sioux Falls Convention Center and Sioux Falls' Lewis & Clark Project. Tom is a past council member for the City of Tea and served on the Revenue and Taxation Policy Committee of the South Dakota Municipal league. He is also a member of the South Dakota Army National Guard and served an 11-month activation in support of Operation Enduring Freedom in 2003.