

# CLIENT NEWS BRIEF

## SEC: Bank Loans and Other Private Placements to Trigger 10-Day Continuing Disclosure Reporting

The Securities Exchange Commission's (SEC) Rule 15c2-12 requires that an issuer of publicly offered municipal securities, such as bonds or certificates of participation, commit to disclosing certain material events that occur while those securities are outstanding. Now, the SEC has added two new items to the list of events requiring disclosure. They are: (1) an incurrence of a material financial obligation, or an agreement to events of default, remedies, priority rights, or other similar terms of a financial obligation, if material; and (2) events occurring in connection with a separate financial obligation that reflect financial difficulties of the issuer (e.g., default, event of acceleration, termination event, modification of terms, etc.). All such material events must be disclosed within 10 days.

In other words, the existence of a private financing unrelated to the securities, such as a vehicle lease financing, or solar panel lease purchase agreement, or any event resulting from those unrelated financings that suggests "financial difficulties," must be reported.

What is a "financial obligation"?

The term "financial obligation" is defined as (i) a debt obligation; (ii) a 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 either of the foregoing. Esoteric jargon aside, the term "financial obligation" is commonly read to include private bank loans and other private and direct purchases, municipal leases, capital lease financings, and other types of financial obligations of the issuer. Municipal securities for which a final official statement has already been provided to the Municipal Securities Rulemaking Board (MSRB) are not included in the definition of "financial obligations." Thus, going forward, issuers must now disclose any new, non-publicly offered loans and equipment financings to the owners of their outstanding publicly-available municipal securities.

The new requirements take effect on February 27, 2019, and are meant to increase disclosure of an issuer's potential or actual financial difficulties.

Although issuers who adhere to standards of the Governmental Accounting Standards Board and its generally accepted accounting principles likely already include such financial obligations in preparing audited annual financial statements, now such items must be disclosed contemporaneously. All such "material events," under the Rule, must be disclosed within 10 days of occurrence, by filing notice with the MSRB's Electronic Municipal Market Access (EMMA).

The absence of meaningful guidance from the SEC regarding which financial obligations are considered "material" under the amendments and, thus, trigger a disclosure requirement, will pose a challenge for issuers.

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Agencies who have issued publicly available securities, such as bonds or certificates of participation that remain outstanding, and plan to incur a new financial obligation, such as a capital lease or private bank loan, should consult with counsel to determine whether such event must be disclosed.

Lozano Smith serves as bond and disclosure counsel to school districts, community colleges, and other public agencies throughout California and would be happy to provide guidance regarding these developments. If you have any questions regarding initial or continuing disclosure compliance, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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