



Municipal Securities Rulemaking Board

MSRB NOTICE 2013-18 (AUGUST 12, 2013)

MSRB MARKET TRANSPARENCY ADVISORY – SUGGESTED PRACTICES IN SUBMITTING OF FINANCIAL DISCLOSURES TO EMMA

Since July 1, 2009, the Municipal Securities Rulemaking Board (the “MSRB”) has been designated by the Securities and Exchange Commission (the “SEC”) as the recipient of continuing disclosures submitted by issuers of and other obligated persons with respect to municipal securities under continuing disclosure agreements entered into pursuant to the SEC’s Rule 15c2-12. The MSRB established the continuing disclosure service of its Electronic Municipal Market Access (“EMMA”[®]) system for the purpose of accepting the submission, in electronic form, of continuing disclosures submitted under Rule 15c2-12 and making these disclosures available to the public for free on the EMMA website at <http://emma.msrb.org>.^[1] The continuing disclosures provided under continuing disclosure agreements (“required continuing disclosures”)^[2] are broadly divided between disclosures of financial information or operating data relating to the issuer of, or obligated person with respect to, the municipal securities (“financial disclosures”) and disclosures of specific events relevant to the municipal securities (“event disclosures”). In addition to required continuing disclosures, EMMA accepts submission of various categories of continuing disclosures submitted on a voluntary basis.

While the MSRB has no regulatory authority with regard to the content, timing or other matters relating to continuing disclosures and the compliance by issuers and obligated persons with their commitments to provide such disclosure, the MSRB’s operation of EMMA has provided it with considerable experience and insight into the patterns of disclosures emerging from the submission practices of issuers and obligated persons. In addition, the recent SEC enforcement and investigation activities relating to disclosure practices in the municipal securities market have highlighted the key role that good disclosure practices are expected to play in promoting a fair and efficient market and in avoiding incomplete or misleading disclosure to the marketplace resulting in harm to investors and potential federal securities law violations.^[3] As described below, accurate, timely and complete public disclosures made through the EMMA continuing disclosure service represent the most direct and effective manner for issuers and obligated persons to address these recent findings of the SEC.

This market transparency advisory focuses specifically on providing guidance to submitters of financial disclosures pursuant to requirements of continuing disclosure agreements to assist them in achieving more efficient, accurate and timely posting on EMMA, and to assist EMMA users in accessing such documents more effectively. In particular, this market transparency advisory first outlines the types of financial disclosures called for under Rule 15c2-12 and the manner in which the Rule contemplates such financial disclosures to be provided, and then sets forth “suggested practice” guidance on how to make submissions of financial disclosures through EMMA most effectively.^[4] The market transparency advisory then maps the continuing disclosure obligations of Rule 15c2-12 to the various types of municipal securities offerings, including how to trace which obligations may apply to a particular offering.^[5] The MSRB expects to publish additional market transparency advisories and to produce related educational materials in the future on submissions of event disclosures and other voluntary continuing disclosures to EMMA, as well as with respect to other aspects of the MSRB’s market transparency systems.

BACKGROUND

The continuing disclosure provisions of Rule 15c2-12 first became effective in July 1995 and apply to most new issues of municipal securities since then.[6] For offerings of municipal securities subject to the Rule, underwriters have been required to determine that the issuer or other obligated person has undertaken in a continuing disclosure agreement to provide the required continuing disclosures applicable to such offering.[7] Among other things, the continuing disclosure agreement is required to specify the date by which one type of financial disclosure, referred to as “annual financial information” (as described below), is to be provided.[8] Until June 30, 2009, required continuing disclosures for most such offerings were expected to be provided to multiple private sector information vendors known as nationally recognized municipal securities information repositories (“NRMSIRs”).

Under amendments to Rule 15c2-12 that became effective on July 1, 2009, the MSRB was designated as the sole NRMSIR to which all required continuing disclosures are to be made, and the SEC’s designations of the private sector NRMSIRs were withdrawn.[9] Continuing disclosure agreements executed on or after July 1, 2009 should provide for required continuing disclosures to be submitted electronically to the MSRB. Required continuing disclosures made under continuing disclosure agreements executed prior to that date also are to be submitted electronically to the MSRB as the sole NRMSIR and successor to the prior NRMSIRs for purposes of such continuing disclosure agreements, even if such continuing disclosure agreements list the former NRMSIRs by name as the expected recipients of such disclosures.

RECENT SEC ENFORCEMENT ACTIONS

In its investigation of the City of Harrisburg, the SEC found that certain public documents and statements, including a speech by a public official, misrepresented and omitted to state material information regarding Harrisburg’s deteriorating financial condition and credit ratings downgrades at the same time that Harrisburg failed to provide annual financial information or notices in accordance with its continuing disclosure agreements under Rule 15c2-12. As a result, the SEC instituted cease-and-desist proceedings against Harrisburg, and Harrisburg consented to the issuance of the Harrisburg Order without admitting or denying the findings therein. In the Harrisburg Order, the SEC stated:

Municipal issuers have an obligation to make sure that information that is released to the public that is reasonably expected to reach investors and the trading markets, even if not specifically published for that purpose, does not violate the antifraud provisions.[10] In its 1994 Interpretive Guidance, the Commission reminds issuers that without a “mechanism for disseminating information about the municipal issuer to the market as a whole . . . investors purchasing municipal securities in the secondary market risk doing so on the basis of incomplete and outdated information. Since access by market participants to current and reliable information is uneven and inefficient, municipal issuers presently face a risk of misleading investors through public statements that may not be intended to be the basis of investment decisions, but nevertheless may be reasonably expected to reach the securities markets.”[11]

The SEC addressed the obligations of public officials in connection with disclosures made in the secondary market for their securities in the Harrisburg Report. In particular, the SEC discussed the “total mix” of public information available to investors in municipal securities in analyzing Harrisburg’s disclosure practices. The SEC observed:

Harrisburg failed to submit annual financial information, audited financial statements, notices of failure to provide required annual financial information and material event notices. Investors may be more likely to rely upon statements from public officials where written undertakings made pursuant to Rule 15c2-12 have not been fulfilled and required continuing disclosures are not available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system. [footnote omitted]

The statements by the Harrisburg public officials were part of, and could have altered, the total mix of information available to the market. There is a substantial likelihood that a reasonable investor would consider the financial condition of the City important in making an investment decision, and there were no other disclosures made by the City as part of the total mix of information available to enable investors to consider other information. These public officials' statements were the principal source of significant, current information about the issuer of the security and thus could reasonably be expected to influence investors and the secondary market. Because statements are evaluated for antifraud purposes in light of the circumstances in which they are made, the lack of other disclosures by the municipal entity may increase the risk that municipal officials' public statements may be misleading or may omit material information.[12]

In addition, the SEC instituted cease-and-desist proceedings against West Clark Community Schools, and West Clark consented to the issuance of the West Clark Order without admitting or denying the findings therein, relating to its failure to provide financial disclosures required under a continuing disclosure agreement and its statement in the official statement for a subsequent issue of municipal securities that it had not failed to comply with the agreement. The SEC observed, "There is a substantial likelihood that a reasonable investor determining whether to purchase the municipal securities would attach importance to the School District's failure to comply with its continuing disclosure undertaking." [13]

Significantly, the SEC's recent enforcement activities illustrate with clarity the importance of issuers and obligated persons providing all expected disclosures to EMMA on an accurate, timely and complete basis. Under Rule 15c2-12 and the continuing disclosure agreements executed by issuers and obligated persons for the benefit of investors, all investors in municipal securities subject to that Rule have the expectation of being able to access, through the EMMA website, the types of continuing disclosures enumerated in the Rule and such continuing disclosure agreements. These continuing disclosure documents are indexed to each security to which they relate and are displayed on the EMMA website accompanied by the original official statement, trade data and other available disclosures and data relating to each such security to create a venue for investors to access this range of disclosures and data for that security on a uniform basis.[14]

Thus, investors have a clear expectation of being able to access the key disclosures and related information regarding their investments in municipal securities through the EMMA website or its data feeds. Lacking expected disclosures from issuers or obligated persons through such venue, some investors likely will seek relevant information from other available public sources not designed as formal disclosures to the municipal securities market, including the types of sources described by the SEC in the Harrisburg Order and Report. While the availability of accurate, timely and complete disclosures through EMMA cannot foreclose the potential for investors to also seek additional information through other sources, comprehensive disclosure through EMMA has a substantial impact on the total mix of public information available to investors described by the SEC in the Harrisburg Report and should improve the ability of investors to differentiate information designed to provide disclosures relevant to their investments from information of a political or other nature on which they would have less basis to rely in making investment decisions.[15]

In addition to providing the types of continuing disclosures explicitly enumerated in the applicable continuing disclosure agreement, issuers and obligated persons should remain cognizant of their ability to provide additional voluntary continuing disclosures to the marketplace through EMMA. In particular, issuers and obligated persons should review the various sources through which information and other data of a financial or operational nature

may be made available to the public – for example, an issuer’s public website may include operating data for its various enterprise activities, or the minutes of meetings of the issuer’s governing body posted on the issuer’s public website may include interim financial data. This type of information, already made public and therefore part of the mix of information available to investors, can be submitted by issuers and obligated persons to EMMA as voluntary continuing disclosures, thereby providing a fuller set of information to investors through the venue where they expect to receive relevant investment-related disclosures.[16]

The remainder of this market transparency advisory focuses primarily on providing guidance to submitters of financial disclosures pursuant to requirements of continuing disclosure agreements to assist them in achieving more efficient, accurate and timely posting on EMMA. The MSRB expects to provide further guidance on submissions of voluntary financial disclosures and other types of disclosures in future market transparency advisories.

FINANCIAL DISCLOSURES UNDER RULE 15c2-12

Rule 15c2-12 provides for four categories of financial disclosures, depending on the type of primary offering: annual financial information, audited financial statements, customary financial information and failure to file notice. Each of these categories is described below.

Annual Financial Information

Rule 15c2-12 Definition – “***Annual financial information***” consists of financial information or operating data, provided at least annually, of the type included in the official statement with respect to an issuer or obligated person for whom financial information or operating data is presented in the official statement.[17]

Typical Form of Annual Financial Information – For most offerings subject to Rule 15c2-12, the annual financial information will reflect the core financial and operating data included in the official statement for the offering and will normally consist of two basic parts:

(i) audited financial statements, if audited financial statements were included in the official statement; and

(ii) additional information that updates any financial information and/or operating data that was included within text, tables, charts or other materials describing financial and/or operational matters relating to the issuer or obligated person (“quantitative information”) in the official statement.[18]

Variant Forms of Annual Financial Information – In some offerings where the official statement for the offering contained limited financial or operating data, only one of the two basic parts of annual financial information may be required under the following circumstances:

(i) only audited financial statements, if audited financial statements but no additional quantitative information was included in the official statement; or

(ii) only updated quantitative information, if no audited financial statements were included in the official statement.[19]

Submission by Contractual Deadline – By the date specified in the continuing disclosure agreement for providing annual financial information, the following items are to be submitted to EMMA:

(i) audited financial statements, if audited financial statements were included in the official statement; if, however, audited financial statements have not been prepared in time to meet the deadline, unaudited financial statements are to be submitted by the deadline as a provisional measure, with the audited financial statements submitted when they become available, as described below.[20]

(ii) updated quantitative information, if additional quantitative information was included in the official statement.

Suggested Practice in Submitting Annual Financial Information to EMMA – Annual financial information is to be submitted to EMMA as follows:

(i) through the EMMA Dataport;[21]

(ii) in one or more electronic word-searchable portable document format files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means (“properly formatted pdf file”);[22] and

(iii) indexed by the submitter as “**Annual Financial Information and Operating Data**” – this EMMA indexing category should be used for all submissions consisting of one or both parts of an annual financial information submission. A submission should be indexed in EMMA by the submitter as “**Annual Financial Information and Operating Data**” if it consists of:

(a) complete annual financial information, including one of the following, depending on the type of offering and the provisions of the applicable continuing disclosure agreement:

(1) audited financial statements and updated quantitative information, if both audited financial statements and additional quantitative information were included in the official statement – since the annual financial information includes audited financial statements, the submitter should also index such submission as “**Audited Financial Statements or CAFR**”[23] in addition to (but not instead of) “**Annual Financial Information and Operating Data**”;[24] or

(2) audited financial statements without quantitative information, if audited financial statements but no additional quantitative information were included in the official statement – since the annual financial information consists of audited financial statements, the submitter should also index such submission as “**Audited Financial Statements or CAFR**” in addition to (but not instead of) “**Annual Financial Information and Operating Data**”; or

(3) updated quantitative information without audited financial statements, if quantitative information but no audited financial statements were included in the official statement;

(b) provisionally complete annual financial information, including updated quantitative information but with unaudited rather than audited financial statements, if both audited financial statements and additional quantitative information were included in the official statement but the audited financial statements have not been prepared in time to meet the deadline, with the understanding that the annual financial information submission requirement would not be viewed as fully met until the completed audited financial statements have been submitted – the submitter should accompany such unaudited

financial statements with a notice to the effect that the unaudited financial statements are being provided pending completion of audited financial statements and that the audited financial statements will be submitted to EMMA when they have been prepared;

(c) annual financial information provided by reference to other submitted documents,^[25] which under Rule 15c2-12 would consist of:

(1) a notice that includes specific reference to a document available on the EMMA website (such as, but not limited to, an official statement), to the extent that such document in fact includes the information required to be include in the annual financial information – the submitter should confirm that such document in fact is available from the EMMA website and should include in such notice (A) a textual description of the document that includes the required information, with sufficient detail for a reasonable person to determine the precise document being referenced, and (B) an active hyperlink to the pdf file of such document as then posted on the EMMA website; further, if such document includes audited financial statements, the submitter should also index such submission as “**Audited Financial Statements or CAFR**” in addition to (but not instead of) “**Annual Financial Information and Operating Data**” unless the submitter submits such audited financial statements separately to EMMA; or

(2) a notice that includes specific reference to a document filed with the SEC, to the extent that such document in fact includes the information required to be include in the annual financial information – the submitter should confirm that such document in fact has been filed with the SEC and should include in such notice (A) a textual description of the document that includes the required information, with sufficient detail for a reasonable person to determine the precise document being referenced, and (B) if such document is available to the public through the SEC’s EDGAR system, an active hyperlink to the uniform resource locator (url) of the hypertext markup language (html) version of such document as then posted on the EDGAR system;^[26] further, if such document includes audited financial statements, the submitter should also index such submission as “**Audited Financial Statements or CAFR**” in addition to (but not instead of) “**Annual Financial Information and Operating Data**” unless the submitter submits such audited financial statements separately to EMMA;

(d) partial annual financial information, which includes some but not all of the information to be provided in the annual financial information required under the applicable continuing disclosure agreement – unless the remaining portions of the annual financial information are submitted to EMMA by no later than the submission deadline in the applicable continuing disclosure agreement, a partial annual financial information submission normally will trigger a failure to file notice submission, as described below.

If a document contains information in addition to the items of information described above that constitute annual financial information for purposes of Rule 15c2-12, the submitter should, in addition to indexing such document as “**Annual Financial Information and Operating Data**,” also index such submission using one of the other voluntary categories of financial disclosures made available through EMMA, to the extent any such category is applicable.

Audited Financial Statements (Including CAFRs)

Rule 15c2-12 Treatment of Audited Financial Statements – For purposes of Rule 15c2-12, “**audited financial statements**” refer to the audited financial statements for the issuer and any obligated person for whom financial information or operating data is presented in the official statement.[27] While Rule 15c2-12 implicitly recognizes that not all issuers or obligated persons may prepare audited financial statements, such audited financial statements typically will be included in the official statement and therefore will be an important component of annual financial information, as described above. Rule 15c2-12 contemplates that audited financial statements might be submitted to EMMA as a distinct submission separate from the annual financial information submission under two circumstances:

(i) if audited financial statements were included in the official statement but have not been prepared in time to meet the deadline for submission of annual financial information, the audited financial statements would be submitted to EMMA when they become available;[28]

(ii) if audited financial statements were not included in the official statement, any audited financial statements would nonetheless be submitted to EMMA when and if they become available for the issuer or any other obligated person if any financial information or operating data for the issuer or such obligated person was presented in the official statement.[29]

Suggested Practice in Submitting Audited Financial Statements or CAFRs to EMMA – Audited financial statements are to be submitted to EMMA as follows:

(i) through the EMMA Dataport;

(ii) in one or more electronic word-searchable and properly formatted pdf files; and

(iii) indexed by the submitter as “**Audited Financial Statements or CAFR**” – this EMMA indexing category should be used for all submissions that include audited financial statements, provided that if audited financial statements are treated as part of the submitter’s annual financial information, the submitter should also index such submission as “**Annual Financial Information and Operating Data**” in addition to (but not instead of) “**Audited Financial Statements or CAFR**”.

Many state and local governmental issuers prepare a comprehensive annual financial report (“CAFR”) that includes basic audited financial statements as well as a substantial amount of other financial information regarding the issuer and management’s discussion and analysis. Such CAFRs typically are prepared according to standards established by the Governmental Accounting Standards Board (“GASB”). Issuers that prepare CAFRs often submit such CAFRs to EMMA in fulfillment of their obligation under the applicable continuing disclosure agreement to provide audited financial statements to EMMA, even if the official statement for an offering only included basic audited financial statements (rather than the complete CAFR). All issuers that prepare CAFRs are encouraged to follow that example and to submit their CAFRs to EMMA, indexed as “**Audited Financial Statements or CAFR**,” even if the basic audited financial statements alone would be sufficient to meet their contractual obligations.[30]

Customary Financial Information

Rule 15c2-12 Allows for Customary Financial Information for Small Issuer Offerings – Rule 15c2-12 provides that, for certain “small issuer offerings” in which no obligated person has more than \$10,000,000 of bonds outstanding that are subject to the Rule, as more fully described below, the continuing disclosure agreement may

provide for more limited financial disclosures than for most other offerings. This more limited disclosure may consist of financial information and operating data which is customarily prepared by, and is publicly available for, the issuer and any obligated person for whom financial information or operating data is presented in the final official statement (“**customary financial information**”), rather than the standard annual financial information based on the disclosures included in the official statement and audited financial statements normally required for other types of offerings subject to Rule 15c2-12.[31] However, an issuer or obligated person with respect to a small issuer offering is not required under the Rule to limit its financial disclosures to customary financial information but may instead elect in the continuing disclosure agreement to provide continuing disclosures for such offering as if it were fully subject to the provisions of Rule 15c2-12, including providing annual financial information and audited financial statements as described above.[32]

Suggested Practice in Submitting Customary Financial Information to EMMA – Customary financial information is to be submitted to EMMA as follows:

- (i) through the EMMA Dataport;
- (ii) in one or more electronic word-searchable and properly formatted pdf files; and
- (iii) indexed by the submitter as “**Annual Financial Information and Operating Data**” – this EMMA indexing category was designed to uniformly catalogue for public users of the EMMA website the expected annual financial and operating information to be received on all offerings subject to Rule 15c2-12 into a single category for both annual financial information and customary financial information, rather than creating two separate filing categories. If customary financial information includes audited financial statements, the submitter should also index such submission as “**Audited Financial Statements or CAFR**” in addition to (but not instead of) “**Annual Financial Information and Operating Data.**”

If a document contains information in addition to the items of information that such issuer or obligated person would view as customary financial information for purposes of Rule 15c2-12, the submitter should, in addition to indexing such document as “**Annual Financial Information and Operating Data,**” also index such submission using one of the other voluntary categories of financial disclosures made available through EMMA, to the extent any such category is applicable.

In addition, Rule 15c2-12 as in effect prior to July 1, 2009 provided for a different manner of disseminating customary financial information for small issuer offerings prior to July 1, 2009, as more fully described below (“old small issuer offerings”). For such old small issuer offerings, Rule 15c2-12 anticipated that the continuing disclosure agreement would require the issuer or obligated person to provide customary financial information to any person upon request, rather than to submit customary financial information to the former NRMSIRs. Nonetheless, all issuers and obligated persons with respect to old small issuer offerings are urged to submit their customary financial information to EMMA, indexed as “**Annual Financial Information and Operating Data,**” even if the applicable continuing disclosure agreement does not explicitly provide for such submission to the MSRB or the former NRMSIRs.

Failure to File Notice

Rule 15c2-12 Requires Failure to File Notice if Annual Financial Information Deadline Not Met – Rule 15c2-12 provides that, for offerings subject to the Rule’s provision relating to annual financial information, the continuing disclosure agreement is to require timely submission to EMMA of notice of failure to provide annual

financial information on or before the date specified in the continuing disclosure agreement (“**failure to file notice**”).[33]

The obligation to provide a failure to file notice is triggered if an issuer or obligated person does not submit the complete annual financial information, as described above, by the specified date. Thus, for most offerings, both the audited financial statements and updated quantitative information, as described above, would need to be submitted on a timely basis. However, if audited financial statements are to be included as part of the annual financial information but are not available by the deadline for submission of the annual financial information, the timely submission of provisionally complete annual financial information, as described above, consisting of unaudited financial statements for the applicable year (including a disclosure that the audited financial statements will be submitted when they become available) and any required updated quantitative information would not normally be viewed as triggering the obligation to submit a separate failure to file notice since such notice would be embedded within the provisionally complete annual financial information submitted to EMMA.[34] The submitter, of course, would be expected to in fact submit the audited financial statements to EMMA upon becoming available, with failure to promptly do so meriting a separate failure to file notice requirement.

Suggested Practice in Submitting Failure to File Notice to EMMA – Failure to file notices are to be submitted to EMMA as follows:

- (i) through the EMMA Dataport;
- (ii) as an electronic word-searchable and properly formatted pdf file; and
- (iii) indexed by the submitter as “***Failure to Provide Annual Financial Information.***”

In many cases, submitters of failure to file notices will include information describing the nature and/or cause of the failure to meet the contractual deadline for submitting annual financial information, and in some cases will indicate an approximate timeframe for when the complete annual financial information is expected to be submitted. Furthermore, since public users of the EMMA website anticipate having access to annual financial information by the contractual deadline, the most effective failure to file notices include the types of information described above and are submitted to EMMA by the contractual deadline, at latest, or at such earlier time as the issuer or obligated person determines that the deadline will not be met, to avoid ambiguity as to the status of required disclosures that could arise from their absence from EMMA when expected.

TYPES OF OFFERINGS AND THE APPLICABILITY OF RULE 15c2-12

Most primary offerings of municipal securities (including both debt obligations and municipal fund securities) since July 3, 1995 that have not fully matured or otherwise been redeemed are subject to the full complement of required continuing disclosures under Rule 15c2-12, including the financial disclosures described above as well as the event disclosures set out in the Rule. However, certain categories of primary offerings are subject to a more abbreviated set of continuing disclosure provisions under the Rule while other primary offerings are fully exempt from the Rule’s continuing disclosure provisions.

To assist issuers and obligated persons to better understand the applicability of Rule 15c2-12 to their new issue offerings, and to assist investors to better understand what types of continuing disclosures they should expect in connection with securities they are considering, the various categories of primary offerings and their status with respect to the continuing disclosure provisions of Rule 15c2-12 are outlined briefly below.

Suggested Practice Regarding Voluntary Continuing Disclosures for Offerings Fully or Partially Exempt From Rule 15c2-12 – Even though certain types of offerings qualify for a full or partial exemption from Rule 15c2-12, as described below, and no continuing disclosure agreement may have been executed, many issuers and obligated persons nonetheless voluntarily submit to EMMA some or all of the disclosures that would be considered required continuing disclosures, or other categories of voluntary disclosures, with respect to such offerings. This may be the case because the submitter has affirmatively decided to make such a submission with regard to such offering, or because required continuing disclosures for other offerings that are not exempt from Rule 15c2-12 also are relevant to the exempt offering and such submission is indexed to include both the non-exempt and exempt offerings. All issuers and obligated persons with respect to fully or partially exempt offerings may wish to consider nonetheless providing some or all of the continuing disclosures contemplated under Rule 15c2-12 or for which voluntary categories are available on EMMA.

Fully Exempt Offerings

The following types of offerings are fully exempt from all continuing disclosure provisions under Rule 15c2-12:

- offerings prior to July 3, 1995 (“**old offerings**”)[35]
- offerings with an aggregate original principal amount of less than \$1 million (“**small offerings**”)[36]
- offerings sold in \$100,000 minimum authorized denominations[37] to 35 or fewer sophisticated investors (“**limited offerings**”)[38]
- offerings sold in \$100,000 minimum authorized denominations that mature in nine months or less (“**short-term institutional note offerings**”)[39]
- offerings prior to December 1, 2010 in \$100,000 minimum authorized denominations that are subject to optional tender by the bondholder for purchase at par every nine months or more frequently, so long as the securities continuously qualify as such after any remarketings occurring since December 1, 2010 (“**old VRDO offerings**”)[40]
- offerings that have previously been subject to some or all of the continuing disclosure provisions but for which no obligated person with respect to the offering continues to exist, such as an offering that has been advance refunded, or legally “defeased,” to the extent so provided in the applicable continuing disclosure agreement (“**defeased offerings**”)[41]
- offerings sold by an issuer directly to investors without using a broker, dealer or municipal securities dealer as an underwriter or placement agent (“**direct offerings**”)[42]

Partially Exempt Offerings

The following types of offerings are partially exempt from the continuing disclosure provisions under Rule 15c2-12, as described below:

- offerings that mature in 18 months or less, which are subject to the event disclosure provisions but exempt from financial disclosure provisions (“**medium-term note offerings**”)[43]
- offerings prior to July 1, 2009 for which no obligated person has more than \$10,000,000 of outstanding bonds (excluding limited, short-term institutional note and old VRDO offerings), for which event disclosures would be submitted but only customary financial information would need to be provided to any person upon request (that is, not required to be filed with EMMA or the NRMSIRs), rather than the standard annual financial information and audited financial statement requirements described above (“**old small issuer offerings**”)[44]
- offerings on or after July 1, 2009 for which no obligated person has more than \$10,000,000 of outstanding bonds (excluding limited and short-term institutional note offerings), for which event disclosures would be submitted but only customary financial information would need to be submitted to EMMA, rather than the

standard annual financial information and audited financial statement requirements described above (“**new small issuer offerings**” which, together with old small issuer offerings, are collectively referred to herein as “**small issuer offerings**”)[45]

Fully Subject Offerings

The following types of offerings are fully subject to the continuing disclosure provisions under Rule 15c2-12:

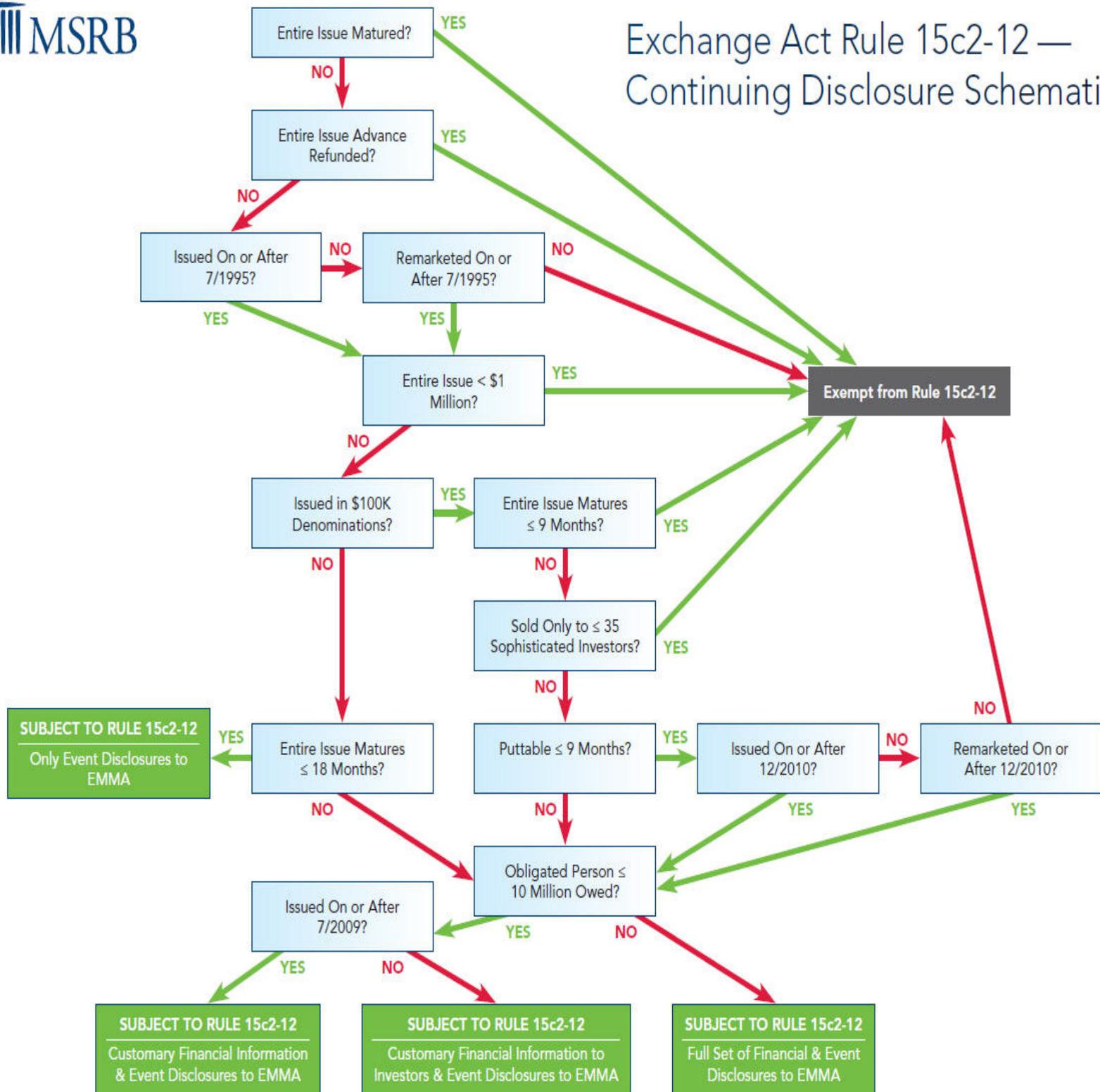
- offerings on or after December 1, 2010 in \$100,000 minimum authorized denominations that are subject to optional tender by the bondholder for purchase at par every nine months or more frequently (“**new VRDO offerings**”)[46]
- offerings prior to December 1, 2010 which, at such time, were in \$100,000 minimum authorized denominations and subject to optional tender by the bondholder for purchase at par every nine months or more frequently which, after a remarketing or conversion to a different mode on or after December 1, 2010, are no longer sold in \$100,000 minimum authorized denominations and/or no longer are subject to put by the bondholder at par in nine months or less (“**converted old VRDO offerings**”)[47]
- all offerings not otherwise described above, constituting the bulk of new issues offerings in the municipal securities market

Identifying Whether an Offering is Subject to Continuing Disclosure Requirements

There are several ways that public users of the EMMA website can identify the applicability of the continuing disclosure requirements of Rule 15c2-12 for particular offerings, as briefly described below:

- By reviewing the official statement for the offering available on EMMA – Rule 15c2-12 provides that the official statement for offerings subject to the Rule must describe the obligation to provide continuing disclosure, and such official statements typically include a copy of the continuing disclosure agreement or a summary of its key provisions.
- By noting whether, on EMMA’s continuing disclosure tab for any security in the offering, the underwriter has indicated that the issuer or obligated person has agreed to provide continuing disclosure information – For primary offerings on or after February 14, 2011 subject to Rule 15c2-12, underwriters have been required under MSRB Rule G-32 to provide to EMMA, for posting on the public website, such information, together with the deadline for submission of annual financial information.[48]
- By noting whether any continuing disclosure documents for the offering have been posted on EMMA – However, this method is the least reliable since issuers and obligated persons often may post continuing disclosures voluntarily for offerings exempt from the Rule 15c2-12 continuing disclosure provisions and may cease providing such voluntary disclosures in the future. In addition, the absence of disclosures might, in some cases, not be indicative of an issue that is exempt from the Rule but instead might result from the failure of an issuer or obligated person to comply with its continuing disclosure obligations.
- By reviewing the specific features of the offering, with the assistance of the following schematic – This schematic can also assist issuers and obligated persons to better understand their obligations with respect to their various outstanding and future offerings:

Exchange Act Rule 15c2-12 — Continuing Disclosure Schematic



For a printable version of the chart above please click [here](#).

ADDITIONAL RESOURCES FOR ISSUERS AND OBLIGATED PERSONS

The EMMA Dataport, at <http://emma.msrb.org/aboutdataport.aspx>, includes or links to instructional materials and technical specifications for the submission of continuing disclosures. In addition, the webpage of the SEC’s Office of Municipal Securities, at <http://www.sec.gov/info/municipal.shtml>, provides access to materials produced by the SEC to assist all municipal market participants in understanding and meeting their obligations under the federal securities laws, including assisting issuers and obligated persons in understanding the continuing disclosure provisions of Rule 15c2-12. The MSRB has also posted on the MSRB website links to documents produced by certain organizations active in the municipal securities market that provide their views of “best practices” or provide other non-mandatory guidance on what various market participants believe are appropriate practices in regard to certain aspects of the content of continuing disclosure. **BY INCLUDING LINKS TO SUCH MATERIALS ON THE MSRB WEBSITE, THE MSRB IS NOT ENDORSING, TAKING RESPONSIBILITY FOR OR**

CONFIRMING THE ACCURACY OR APPROPRIATENESS OF THE CONTENTS OF SUCH MATERIALS, BUT IS PROVIDING ACCESS TO THEM SOLELY AS A MATTER OF CONVENIENCE FOR ISSUERS, OBLIGATED PERSONS, MARKET PROFESSIONALS AND OTHER EMMA USERS.

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Questions about the process for submitting continuing disclosures to the EMMA continuing disclosure service may be directed to MSRB Support at 703-797-6668. Other questions about this market transparency advisory may be directed to Ernesto A. Lanza, Deputy Executive Director, at 703-797-6720.

[1] EMMA is a registered trademark of the MSRB.

[2] Because the types of disclosures to be included in continuing disclosure agreements for specific primary offerings may differ depending on the type of offering, as described below, the breadth of disclosures included within the term “required continuing disclosures” for a particular offering must be viewed in light of the category of such offering and the specific terms of the applicable continuing disclosure agreement.

[3] See, e.g., In the Matter of the City of Harrisburg, Pennsylvania, Exchange Act Release No. 34-69515 (May 6, 2013) (the “Harrisburg Order”); Report of Investigation in the Matter of the City of Harrisburg, Pennsylvania Concerning the Potential Liability of Public Officials with Regard to Disclosure Obligations in the Secondary Market, Exchange Act Release No. 34-69516 (May 6, 2013) (the “Harrisburg Report”); In the Matter of West Clark Community Schools, Exchange Act Release No. 34-70057 (July 29, 2013) (the “West Clark Order”).

[4] Any suggested practices set forth in this market transparency advisory are designed to enhance the effectiveness of continuing disclosure postings on EMMA for submitters and users of such information and are not enforceable standards to which submitters must comply. The MSRB welcomes suggestions from issuers, obligated persons and other market participants on further non-mandatory guidance to make the continuing disclosures available through EMMA more effective for all interested parties.

[5] While this market transparency advisory provides information that can assist issuers and obligated persons in understanding the types of disclosures they should be providing for a particular category of offering, they are advised to review the specific language of Rule 15c2-12 and interpretive materials published by the SEC in connection with the Rule, as well as to consult with their attorneys on the specific continuing disclosure obligations expected to be included in the continuing disclosure agreement for a particular offering.

[6] See Municipal Securities Disclosure, Exchange Act Release No. 34-34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) (the “Adopting Release”); Rule 15c2-12(b)(5). Rule 15c2-12 creates a number of categories of primary offerings to which the Rule either does not apply or for which a more limited set of disclosures are expected to be included within the required continuing disclosures, as described below.

[7] The obligations with respect to continuing disclosures under Rule 15c2-12 explicitly apply to obligated persons, which include the issuer to the extent it meets the definition of obligated person.

[8] See Rule 15c2-12(b)(5)(ii)(C).

[9] See Amendment to Municipal Securities Disclosure, Exchange Act Release No. 34-59062 (December 5, 2008), 73 FR76104 (December 15, 2008), at footnote 198 and accompanying text. In December 2010, further amendments to Rule 15c2-12 became operative that, among other things, expanded the types of primary offerings subject to amended Rule 15c2-12, as described below. See Amendment to Municipal Securities Disclosure, Exchange Act Release No. 34-62184A (May 26, 2010), 75 FR33100 (June 10, 2010).

[10] See Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Exchange Act Release No. 34-33741 (March 9, 1994) (“1994 Interpretive Guidance”). [footnote renumbered]

[11] See 1994 Interpretive Guidance, page 13. [footnote renumbered]

[12] See Harrisburg Report. Among other things, the SEC recommended that issuers consider a series of steps designed to reduce the risk that public statements made by public officials could mislead investors, including, at a minimum, adopting policies and procedures that are reasonably designed to result in accurate, timely, and complete public disclosures; identifying those persons involved in the disclosure process; evaluating other public disclosures that the municipal securities issuer has made, including financial information and other statements, prior to public dissemination; and assuring that responsible individuals receive adequate training about their obligations under the federal securities laws.

[13] See West Clark Order. The SEC also instituted cease-and-desist proceedings against City Securities Corporation and Randy G. Ruhl, and both parties consented to the issuance of a cease-and-desist order without admitting or denying the findings therein, in connection with related due diligence, procedural and supervisory failures and certain MSRB rule violations.

[14] These various types of disclosures and data submitted to the MSRB and displayed for free on the EMMA website are also made available to market participants, data vendors and others through fee-based automated subscription feeds, thereby assuring that such disclosures and data become available through a broad variety of venues used throughout the municipal securities market in addition to the EMMA website, subject to the terms, conditions and charges, if any, established by any such third parties. Information regarding subscriptions to such automated feeds is available at <http://www.msrb.org/Market-Disclosures-and-Data/Subscription-Services-and-Products.aspx>.

[15] Accurate, timely and complete disclosures through EMMA should not minimize the importance of issuers and obligated persons also taking the steps outlined by the SEC in the Harrisburg Report, or other appropriate steps tailored to the particular issuer or obligated person, designed to reduce the risk that public statements made by public officials could mislead investors.

[16] In addition or as an alternative, issuers and obligated persons could aggregate such additional investment-related disclosures onto an investor relation section of their own websites. Many issuers currently provide a hyperlink from their websites to the EMMA website, and EMMA provides issuers and obligated persons with the ability to post a hyperlink from the EMMA website to their own websites.

[17] See Rule 15c2-12(b)(5)(i)(A) and (f)(9).

[18] Additional quantitative information to be updated annually as part of the annual financial information submission often will be included in the body of the official statement in sections relating to the issuer, obligated person and/or facilities or enterprise activity supporting repayment of the securities, among others, or in an appendix to the official statement. The SEC noted in section (II)(A)(1)(c)(3) of the Adopting Release that “nothing in the undertaking will prevent a party from providing additional information, particularly where such disclosure may be necessary to avoid liability under the antifraud provisions of the federal securities laws.”

[19] However, annual submission of audited financial statements, if they are prepared, often will still be required separately from the annual financial information as described below.

[20] Letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, to Securities Law and Disclosure Committee, National Association of Bond Lawyers, dated June 23, 1995 (the “NABL I Letter”), Response to Question 6.

[21] The EMMA Dataport is accessible at <http://emma.msrb.org/aboutdataport.aspx>. Instructional materials and

technical specifications for the submission of continuing disclosures are available through the EMMA Dataport.

[22] A pdf file is considered to be word-searchable if it allows the user to search for specific terms used within the document through a search or find function available in most standard software packages, provided that diagrams, images and other non-textual elements are not required to be word-searchable. See Exchange Act Release No. 34-59061 (December 5, 2008), 74 FR15190 (December 12, 2008), at text accompanying footnote 15; Rule 15c2-12(b)(5)(i) and (d)(2)(ii).

[23] “CAFR” refers to a comprehensive annual financial report prepared by many state and local governmental issuers that includes basic audited financial statements and other financial information regarding the issuer, as described below.

[24] EMMA allows submitters to select multiple categories for a single submission for indexing purposes.

[25] See Rule 15c2-12(f)(9).

[26] In addition to but not in substitution for the html version of the document, a submitter also could include an active hyperlink to an extensible business reporting language (xbrl) version of the document if available on the EDGAR system.

[27] See Rule 15c2-12(b)(5)(i)(B).

[28] In such circumstances, unaudited financial statements are to be included with the timely submission of any quantitative information as part of a provisionally complete annual financial information submission, as described above. See NABL I Letter, Response to Question 6.

[29] Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Securities Law and Disclosure Committee, National Association of Bond Lawyers, dated September 19, 1995 (the “NABL II Letter”), Response to Question 11.

[30] Issuers should note, however, that they should not delay submitting their basic audited financial statements past the contractual deadline if they are completed but the full CAFR itself is not yet completed. Instead, the basic audited financial statements should be submitted in a timely manner and the full CAFR should be submitted as a separate submission to EMMA once it becomes available.

[31] See Rule 15c2-12(d)(2)(ii)(A).

[32] NABL I Letter, Response to Question 17. As noted above, the SEC stated in the Approving Release that issuers and obligated persons may provide additional information, beyond the minimum information contemplated under Rule 15c2-12. Therefore, they may choose to provide the standard annual financial information and audited financial statements with respect to small issuer offerings even if no such election was made in the continuing disclosure agreement, so long as such standard information would not provide less information than would be included in customary financial information.

[33] See Rule 15c2-12(b)(5)(i)(D).

[34] See NABL I Letter, Response to Question 6.

[35] See Rule 15c2-12(g).

[36] See Rule 15c2-12(a).

[37] See Rule 15c2-12(f)(1).

[38] See Rule 15c2-12(d)(1)(i). Specifically, a limited offering qualifies for this exemption only if it consists of municipal securities in authorized denominations of \$100,000 or more and such securities are sold to no more than thirty-five persons each of whom the underwriter reasonably believes (A) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment and (B) is not purchasing for more than one account or with a view to distributing the securities. Unlike most other types of offerings, qualification as a limited offering is dependent on some factors other than those that are inherent in the structure of the securities themselves and must rely on additional information regarding the number, characteristics and intent of investors to which the securities were sold. Thus, identification as a limited offering cannot be reliably undertaken based solely on information about the securities, and an offering that otherwise may appear to be fully or partially subject to the continuing disclosure provisions of Rule 15c2-12 may nonetheless be fully exempt because it qualifies as a limited offering. Furthermore, the fact that securities were initially sold in lot sizes of \$100,000 or larger is not sufficient to qualify for this exemption if the securities are permitted to be resold in denominations smaller than \$100,000.

[39] See Rule 15c2-12(d)(1)(ii). The fact that securities were initially sold in lot sizes of \$100,000 or larger is not sufficient to qualify for this exemption if the securities are permitted to be resold in denominations smaller than \$100,000.

[40] See Rule 15c2-12(d)(5). The fact that securities were initially sold in lot sizes of \$100,000 or larger is not sufficient to qualify for this exemption if the securities are permitted to be resold in denominations smaller than \$100,000. Prior to the most recent amendments to Rule 15c2-12, the exemption for old VRDO offerings was set forth in former section (d)(1)(iii). Subsequent amendments to Rule 15c2-12 did not create any continuing disclosure obligations on these old VRDO offerings unless, after a remarketing or conversion to a different mode on or after December 1, 2010, the securities are no longer sold in \$100,000 minimum denominations and/or no longer are subject to put by the bondholder at par in nine months or less, as described below for converted old VRDO offerings.

[41] See Rule 15c2-12(b)(5)(iii), which states that the continuing disclosure agreement may provide that the obligation to provide continuing disclosures may be terminated with respect to any obligated person that no longer remains an obligated person with respect to the securities. See *a/so* NABL I Letter, Response to Question 16, which provides that “there also should be explicit disclosure to [EMMA] and in the refunding documents, if any, that the bonds have been escrowed to maturity or escrowed to call, as well as appropriate disclosure of the timing of maturity or call.”

[42] Since Rule 15c2-12 applies only to brokers, dealers and municipal securities dealers, not to issuers or obligated persons, the continuing disclosure provisions of the Rule do not apply to direct offerings.

[43] See Rule 15c2-12(d)(3). Medium-term note offerings also include note offerings maturing in nine months or less that would have qualified for the full exemption from Rule 15c2-12 as short-term institutional note offerings but for the fact that they are sold in minimum denominations of less than \$100,000.

[44] See former section (d)(2)(ii) of Rule 15c2-12 as in effect prior to July 1, 2009. Unlike most other types of offerings, qualification as an old small issuer offering is dependent on some factors other than those that are inherent in the structure of the securities themselves and must rely on additional information regarding other municipal securities offerings for such obligated person. Thus, identification as an old small issuer offering cannot be reliably undertaken based solely on information about the securities.

[45] See current section (d)(2)(ii) of Rule 15c2-12. For new small issuer offerings sold between July 1, 2009 and November 30, 2010, old VRDO offerings also were excluded from the \$10,000,000 outstanding bond limitation for obligated persons as was the case for old small issuer offerings. Unlike most other types of offerings, qualification as a new small issuer offering is dependent on some factors other than those that are inherent in the structure of the securities themselves and must rely on additional information regarding other municipal securities offerings

for such obligated person. In addition, as noted above, the universe of such other offerings that must be considered is dependent on when the new small issuer offering was undertaken since the exempt offerings for such calculation changed on December 1, 2010. Thus, identification as a new small issuer offering cannot be reliably undertaken based solely on information about the securities.

[46] See Rule 15c2-12(d)(5).

[47] See Rule 15c2-12(d)(5).

[48] See Rule 15c2-12(b)(5)(ii)(C) and MSRB Rule G-32(a)(vi)(C)(1)(a). Note, however, that Rule 15c2-12 does not explicitly provide for the continuing disclosure agreement to specify a submission deadline for small issuer offerings for which customary financial information, rather than annual financial information, may be provided.