KRIEG DEVAULT

Insights

Reminder - Additional Reporting Requirements Under Continuing Disclosure Agreements Effective February 27, 2019

February 27, 2019

Beginning February 27, 2019, two new "events" requiring notice under the continuing disclosure provisions of Rule 15c2-12 of the Securities and Exchange Act ("Rule") will take effect. On August 20, 2018, the Securities and Exchange Commission ("SEC") adopted amendments to the Rule ("Amendments) adding two new event notices ("Event Notices") to the existing list of fourteen (14) required Event Notices in an effort to increase transparency in the municipal bond market.

If a municipality issues bonds on or after February 27, 2019 requiring a written agreement or contract to disclose certain financial information under the Rule ("Continuing Disclosure Agreement"), the Continuing Disclosure Agreement must now provide for the following Event Notices within ten (10) business days of the occurrence of such event:

(1) 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

(2) 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.

What is a "financial obligation?" The Rule defines "financial obligation" as:

(A) Debt obligation;
(B) Derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or
(C) Guarantee of (A) or (B).

The term "debt obligation" is not defined. However, the SEC stated in its Adopting Release that a debt obligation "includes short-term and long-term debt obligations… under the terms of an indenture, loan agreement, lease, or similar contract."[1]

While the Amendments apply to those Continuing Disclosure Agreements entered into on or after February 27, 2019, any financial obligation which existed prior to February 27, 2019 will be subject to an Event Notice if one or both of the Amendments apply.

Generally, a municipality will need to evaluate what procedures and policies it has in place to routinely monitor

debt obligations such as direct bank loans, capital leases, and guarantees for the purpose of determining if Event Notices related to the Amendments are required. The Amendments will undoubtedly place additional strain on the limited resources of municipalities. However, failure to comply could subject the municipality to an SEC enforcement action or compromise future issuance of debt.

If you would like additional information, please contact **Catherine Fanello** at **cfanello@kdlegal.com** or (317) 238-6459 or a member of our **Municipal** team.

1 Release No. 34-83885