LEGAL NEWS! : HEAR ALL ABOUT IT!
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Continuing Disclosure requirements are imposed by the SEC (Rule 15c2-12)

Relates to disclosures made after bond is sold in the primary market

SEC does not directly regulate government issuers

Rule 15c2-12 - applies to underwriters of public bond offerings over $1M
Continuing Disclosure – Rule 15c2-12

Underwriter shall not purchase or sell municipal securities . . . unless . . . [the] issuer . . . has undertaken . . . in a written agreement or contract for the benefit of holders of such securities, to provide, either directly or indirectly through . . . a designated agent:

• Annual Reports, which includes financial statements or CAFR and update to financial/statistical information and operating data in OS (usually 2/1)

• Listed Event Notices within 10 business days from event
Continuing Disclosure – Listed Events

• Principal and interest payment delinquencies;

• Non-payment related defaults, if material;

• 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;
Continuing Disclosure – Listed Events

• Adverse tax opinions, IRS notices or events affecting the tax status of the security;

• Modifications to rights of securities holders, if material;

• Bond calls, if material;

• Defeasances;

• Release, substitution, or sale of property securing repayment of the securities, if material;
Continuing Disclosure – Listed Events

- Rating changes;
- Tender offers;
- Bankruptcy, insolvency, receivership or similar event of the obligated person;
- Merger, consolidation, or acquisition of the obligated person, if material;
- Appointment of a successor or additional trustee, or the change of name of a trustee, if material;
Continuing Disclosure – Listed Events

- New Event #1; and
- New Event #2
Continuing Disclosure – Timeline

- 1989 – Rule 15c2-12 adopted
- 1994 – Continuing disclosure requirements added
- 2010 – 3 significant amendments
  - Timeliness
  - Materiality
  - New “listed events”
- 2018 – 2 new “listed events”
Continuing Disclosure – 2010 Amendment

Timing of Filing

• From “in a timely manner” to “within 10 business days”
Materiality

- Materiality no longer a requirement for all events
- Materiality remains for:
  - Non-payment related defaults
  - Modifications of rights to bond holders
  - Redemptions
  - Release, substitution or sale of property securing bonds
New “listed events”

- Materiality relevant
  - Merger, consolidation, or acquisition of the obligated person
  - Appointment of a successor or additional trustee, or the change of name of a trustee

- Materiality not relevant
  - Tender offers
  - Bankruptcy, insolvency, receivership or similar event of the obligated person
Continuing Disclosure – 2018 Amendments

- March 1, 2017 – Proposed
- August 20, 2018 – Adopted
- February 27, 2019 – Compliance Date
  - Only relates to continuing disclosure agreements executed on or after February 27, 2019
Continuing Disclosure – 2018 Amendments

New Event #1

“Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material.”
Continuing Disclosure – 2018 Amendments

New Event #1

“Financial Obligation” means:

• Debt obligations
• Derivative instruments
• Guarantees
“Financial Obligation” means:

• Debt obligations
  • Both short-term and long-term
  • Capital leases included – “vehicles intended to borrow money”

• But not ordinary financial and operating liabilities incurred in the normal course of business
  • Operating leases
“Financial Obligation” means:

• Derivative instruments –
  • Not just swaps and options
  • Forward contracts
  • “Existing or planned”

• Guarantees
  • May relate to another liability or own liability
“Financial Obligation” does not include:

- Securities for which a final OS has been issued
- Monetary obligations resulting from a judicial, administrative or arbitration proceeding

“Debt, debt-like or debt related”
Continuing Disclosure – 2018 Amendments

New Event #1

What is material?

• Facts and circumstances
• Size of the loan vs. issuer
• Source of security pledged (e.g. senior vs. subordinate)
• Inconsistent covenants, defaults and remedies
• Effect on credit worthiness
Continuing Disclosure – 2018 Amendments

New Event #1

Contents of Filing?

• Date of loan

• Principal amount

• Maturity and amortization

• Interest rate (variable? default rate or other adjustments?)

• Covenants, defaults and remedies, if different

• Related materials
What led to the 2018 Amendments

• Surge in private placements (starting 2008)
  • Perception of lower borrowing cost/execution costs
  • Smaller deals as economy recovered

• SEC’s focus on continuing disclosure
  • $3.8 tt municipal bonds outstanding/65% individually owned
  • 2017 - $2.9 tt traded (9.8 mm trades)
  • 6/7 largest municipal/public bankruptcies since 2011
  • 2012 Report
  • Municipalities Continuing Disclosure Cooperation Initiative (MCDC)
Continuing Disclosure – 2018 Amendments

What led to the 2018 Amendments

- Perceived lag in reporting private transactions in audits
  - Reporting for public companies vs. state and local issuers
- GASB 88 (April 2018) – disclosure of direct borrowing and direct placements
- Third party surveillance (rating agencies/bond insurers)
New Event #2

- “Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.”
Continuing Disclosure – 2018 Amendments

New Event #2

• “financial difficulties” v. “materiality”

• applies to all financial obligations, not just those issued after first CDU executed on or after February 27, 2019

• contents of event filing? MSRB/GFOA
Impacts (Near and Lasting)

- Additional drain on continuing disclosure staff/resources
  - Education
  - Update CD policy/templates/form of event notice

- During bond transactions – 5 year look back/noncompliance

- Minor burden?
  - 9.25 additional hours/issuance (dealer)
  - 2200 additional filings (4.0 hrs)
  - Issuer’s costs - $4.9 mm/$800k (disclosure agents)
Continuing Disclosure – 2018 Amendments

Scenario #1

- Event – $100,000,000 private placement
- Closing date – February 1, 2019
Continuing Disclosure – 2018 Amendments

Scenerio #2

• Event – $100,000,000 private placement

• Closing date – August 1, 2019
Continuing Disclosure – 2018 Amendments

Scenerio #3

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – $100,000,000 private placement

• Closing date – August 1, 2019
Continuing Disclosure – 2018 Amendments

Scenerio #4

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – $2,000,000 private placement

• Closing date – August 1, 2019
Continuing Disclosure – 2018 Amendments

Scenerio #5

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – $2,000,000 in publicly issued debt with a Final Official Statement

• Closing date – August 1, 2019
Continuing Disclosure – 2018 Amendments

Scenerio #6

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – $4,000,000 lease purchase relating to technology upgrades

• Closing date – August 1, 2019
Continuing Disclosure – 2018 Amendments

Scenerio #7

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – $100,000 lease purchase relating to copiers

• Closing date – August 1, 2019
Continuing Disclosure – 2018 Amendments

Scenario #8

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – Failure to notify a counterparty with notice of a change of address
Continuing Disclosure – 2018 Amendments

Scenerio #9

• Background – Issuer previously issued debt subject to Rule 15c2-12 on April 1, 2019

• Event – Failure to comply with covenant to replenish a debt service reserve fund if draws have been made on such fund
Err on the side of disclosure?

- Issuers may lose potential underwriters if the underwriters believe the Issuers failed to make a notice filing of a Listed Event

- When in doubt, contact Bond Counsel
2018 Bond Referenda

**Won:** 😊

One Billion, One Hundred Seventy-eight Million, Seventy-six Thousand dollars ($1,178,076,000) in six school districts (85.2%)

**Lost:** 😞

Two Hundred Four Million Dollars ($204,000,000) in three school districts (14.8%)
2018 Bond Referenda

Tuesday, 11/6/18 – School District of Edgefield County

- $54,670,000

6,308 votes for (71.33%); 2,535 votes against (28.67%)

- Millage Impact
  - Current Levy – 25
  - Projected Levy – 57; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Question:

Shall the Board of Trustees of the School District of Edgefield County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a principal amount of not exceeding $54,670,000, the proceeds of which shall be used to finance the costs (including architectural, engineering, legal and related fees) of acquiring, constructing, improving, equipping, expanding, renovating, and repairing school facilities, within the School District, as follows:

Security Upgrades and Renovations
   Douglas Elementary School
   Johnston Elementary School
   W. E. Parker Elementary School
   JET Middle School
   Strom Thurmond High School

Security Upgrades, Renovations and Expansion
   Merriwether Elementary School
   Merriwether Middle School
   Strom Thurmond Career and Technology Center

New Construction
   Auditorium, Gymnasium, and Practice Track at Strom Thurmond High School
2018 Bond Referenda

Tuesday, 11/6/18 – School District No. 1 of Lexington County

• $365,000,000

😊 26,702 votes for (56.43%); 20,616 votes against (43.57%)

• Millage Impact
  • Current Levy – 85.3
  • Projected Levy – 99.0; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Purposes:

Update safety and security systems at all District schools and facilities; three new schools and two elementary schools; renovations, additions and/or other upgrades to 14 elementary schools; renovations and additions and/or other upgrades to five middle schools and five high schools; renovations, additions and/or other upgrades to two other schools and one building; a new District transportation facility; and information technology equipment and miscellaneous furniture to create “Future Ready Classrooms” at all schools and to meet needs at other District facilities
2018 Bond Referenda

Tuesday, 11/6/18 – School District No. 3 of Lexington County

• $90,000,000

 perspectives

1,521 votes for (37.85%); 2,498 votes against (62.15%)

• Millage Impact

  • Current Levy – 32

  • Projected Levy – 97; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Question:

Shall the Board of Trustees of School District No. 3 of Lexington County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a principal amount of not exceeding $90,000,000, the proceeds of which shall be used to finance the costs (including architectural, engineering, legal and related fees) of constructing and equipping on the existing high school property a new high school including athletic facility upgrades, additions and renovations and funding renovations, upgrades, additions to and equipment for the Batesburg-Leesville Primary School?
2018 Bond Referenda

Tuesday, 11/6/18 – School District of Marlboro County

• $10,000,000

  5,354 votes for (70.33%); 2,259 votes against (29.67%)

• Millage Impact
  
  • Current Levy – 33
  
  • Projected Levy – 33; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Question:

Shall the Board of Education of the School District of Marlboro County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a principal amount of not exceeding $10,000,000, the proceeds of which shall be used to finance the costs (including architectural, engineering, legal and related fees) of the following:

• Renovations and/or construction at Bennettsville Intermediate School

• Safety and security improvements at all schools and certain other facilities in the School District

• Renovations at other schools in the School District?
2018 Bond Referenda

Tuesday, 11/6/18 – School District No. 2 of Richland County

- $381,952,000
  - 31,152 votes for (64.90%); 16,850 votes against (35.10%)

- $86,454,000
  - 30,900 votes for (59.66%); 20,890 votes against (40.34%)
2018 Bond Referenda

- Millage Impact
  - Current Levy – 108
  - Projected Levy – 117; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Questions:

**Question 1**

Shall the Board of Trustees of School District No. 2 of Richland County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a principal amount of not exceeding $381,952,000, the proceeds of which shall be used for the following purposes:

- Constructing, equipping and furnishing safety and security improvements at all existing School District facilities

- Acquiring new school buses and acquiring and installing safety and security improvements in all new and existing buses

- Constructing, equipping and furnishing replacement schools for Bethel-Hanberry Elementary, Forest Lake Elementary and Center for Knowledge North
2018 Bond Referenda

Referendum Questions:

- Constructing, equipping and furnishing a replacement school for E.L. Wright Middle, except the three-story existing building that will be improved and renovated.

- Constructing, equipping and furnishing renovations, additions and other improvements to academic learning spaces at schools and facilities all across the School District.

- Constructing, equipping and furnishing renovations, additions and other improvements to other facilities across the School District.

- Acquisition and installation of technology infrastructure improvements.

- Costs related to the foregoing, including architectural and engineering fees, costs of removal of existing facilities, cost of land acquisition, if necessary, legal fees, and costs of issuance of the bonds?
Question 2

If and only if Question 1 above is approved, shall the Board of Trustees of School District No. 2 of Richland County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a principal amount of not exceeding $86,454,000, the proceeds of which shall be used for the following purposes:

- Constructing, equipping and furnishing renovations and additions to athletic facilities at Richland Northeast High and Ridge View High including additions, major renovations, and expansions of football stadiums
Referendum Questions:

• Constructing, equipping and furnishing renovations and additions to other athletic facilities across the School District

• Constructing, equipping and furnishing a new School District Fine Arts Center

• Costs related to the foregoing, including architectural and engineering fees, costs of removal of existing facilities, cost of land acquisition, if necessary, legal fees and costs of issuance of the bonds?
2018 Bond Referenda

Tuesday, 5/1/18 – The Consolidated School District of Aiken County

- $90,000,000

- 8,740 votes for (54.10%); 7,420 votes against (45.90%)

- Millage Impact
  - Current Levy – 26
  - Projected Levy – 30; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Question:

Shall the Board of Education of The Consolidated School District of Aiken County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a principal amount of not exceeding $90,000,000, the proceeds of which shall be used to finance the costs (including architectural, engineering, legal and related fees) of acquiring, constructing, improving, equipping, expanding, renovating, and repairing school facilities, including land acquisition, if necessary, within the School District, as follows:

Renovation and Expansion of existing facilities:
Midland Valley High School
Hammond Hill Elementary School
Belvedere Elementary School
Millbrook Elementary School

Constructing and equipping new facilities:
A new elementary school and a new middle school sharing a common campus site location and sharing the utilization of certain common facilities as may be practicable, to be located between Graniteville and North Augusta?
2018 Bond Referenda

Saturday, 4/21/18 – School District of Beaufort County

- $76,000,000

- 4,038 votes for (27.7%); 10,519 votes against (72.3%)

- Millage Impact
  - Current Levy – 31.71
  - Projected Levy – 34.00; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Question:

Shall the Board of Education of the School District of Beaufort County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in a total principal amount of not to exceed $76,000,000, the proceeds of which shall be used to finance the costs (including architectural, engineering, legal and related fees) of acquiring, constructing, improving, equipping, and expanding school facilities within the School District, as follows:

**Classroom Additions to existing facilities:**
- River Ridge Academy
- May River High School

**Constructing and equipping of new facilities:**
- A new school in Bluffton
- New career and technical education building at Beaufort High School
- New career and technical education building at Bluffton High School
- New career and technical education building at Hilton Head High School
2018 Bond Referenda

Tuesday, 3/20/18 – Fort Mill School District No. 4 of York County

- $190,000,000

- 4,840 votes for (71.03%); 1,974 votes against (28.97%)

- Millage Impact
  - Current Levy – 115
  - Projected Levy – 124; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Purposes:

Build two elementary schools and one middle school, technology devices and upgrades, HVAC replacement, kitchen equipment replacement, land purchase for future school sites, and purchase additional school buses
2018 Bond Referenda

Tuesday, 2/13/18 – School District of Chester County

- $38,000,000

863 votes for (46.50%); 993 votes against (53.50%)

- Millage Impact
  - Current Levy – 48
  - Projected Levy – 48; Highpoint associated with issuance of referendum bonds.
2018 Bond Referenda

Referendum Question:

Shall the Board of Trustees of the School District of Chester County, South Carolina (the “School District”) be empowered to issue, at one time or from time to time, general obligation bonds of the School District, in the principal amount of not exceeding $38,000,000, the proceeds of which shall be used to finance the costs (including architectural, engineering, legal and related fees) of purchasing land and constructing and equipping a new career workforce readiness center and district-wide deferred maintenance?
2018 Bond Referenda

Lessons Learned:

• General elections can be a good time
• Raising debt service millage one or two years prior to a referendum may be a good idea
• Specific questions work well
• Safety sells
• For larger districts, larger amounts approximately every ten years seems to work
• For smaller districts, more frequent referenda with smaller amounts may be a good idea
• Side issues can kill a referendum
2018 Bond Referenda

Do’s and Don’ts Updates – Some Things to Avoid

Based on published reports:

• Following an unsuccessful referendum in 2017, SLED began an investigation based on allegations of electoral impropriety.

• The advocacy campaign gave away coupons for free fish sandwiches to voters. The campaign claimed anyone who voted could have gotten a coupon, not just supporters of the referendum.

• The advocacy campaign spent more than $64,000 on the vote “yes” campaign. About $62,000 came from one vendor.
2018 Bond Referenda

Do’s and Don’ts Updates – Some Things to Avoid

• Two businesses that campaigned against the referendum said they were told they would lose the district’s business if they didn’t stop pushing a “no” vote.

• There were reports that district employees received indirect threats verbally and written through e-mails.

• The SLED investigation was confirmed in October 2017. We have not been able to identify any information as to the outcome of the investigation.
2018 Bond Referenda

Published Reports:

• WBTW News 13 Story dated October 12, 2017
• WSPA News 7 Story dated September 6, 2017
• Index-Journal Article dated October 14, 2017