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# OASBO 2020 VIRTUAL CONFERENCE

## *DISCLOSURE UPDATES IN BOND ISSUES*

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# Topics for Discussion

**I. Rule 15c2-12 Amendments**

**II. Recent Disclosure Topics**

# **Rule 15c2-12 Amendments**

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## Continuing Disclosure Reminder

- **SEC Rule 15c2-12 deals with continuing disclosure**
- **Applies to publicly offered bonds**
  - **Investors need access to current financial and operating information**
- **Three areas of compliance:**
  - **Audited Financial Statements**
  - **Annual Operating Data**
  - **Notice of Specified Events**

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## Event Notices

- **14 required events for deals closed prior to February 27, 2019:**

|   |  |
|---|--|
| <b>Principal and interest payment delinquencies</b>                           | <b>Substitution of credit or liquidity providers or their failure to perform</b> |
| <b>Unscheduled draws on debt service reserves</b>                             | <b>Unscheduled draws on credit enhancement</b>                                   |
| <b>Non-payment related defaults</b>   | <b>Change in tax status</b>  |
| <b>Modifications to rights of Bondholders</b>                                 | <b>Rating changes</b>  |
| <b>Defeasances</b>  | <b>Bond calls and tender offers</b>  |
| <b>Release, substitution or sale of property securing Bonds</b>               | <b>Bankruptcy, insolvency, receivership or similar event</b>                     |
| <b>Merger, consolidation, acquisition or sale of substantially all assets</b> | <b>Appointment of successor or additional trustee or trustee name change</b>     |

- **Must file in “timely” manner or within 10 business days of occurrence**

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## Amendments to the Rule

- **Compliance date February 27, 2019**
- **SEC added two events to the list:**
  - **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**
  - **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.**

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## Simpler Terms

- **Let's try this in English:**
  - If your district borrows money outside of the public market (like a bank loan or capital lease), bondholders of your outstanding bonds would like to know
  - If your district triggers an event of default or change the terms of any debt agreement that is material to bondholders or caused by financial difficulties, bondholders of your outstanding bonds would like to know
- **Clear as mud??**

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## Who, What, When??

- Municipalities issuing bonds on or after Feb. 27, 2019 are required to sign a new CDA which includes new events
  - **DOES NOT CHANGE EXISTING AGREEMENTS**
- File within 10 business days of incurrence
- For new issues, underwriters will need to have a reasonable belief that the issuer is likely to comply with the amendments
  - Once an issuer has debt subject to the amendments, the underwriter will have to determine compliance prior to a new debt issuance
- Discussion during due diligence call
- Implement a broader CD policy and develop a method to track new events



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# Why Did This Happen??

- Was encouraged but voluntary to make these filings
  - Compliance was not widespread
- Investors and rating agencies want this information
- Example
  - Enter into new FFC with acceleration
  - Change debt priority in default situation
  - Loan closed in December but investors don't find out until they see the audit, a year later
  - Major terms usually not included



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## The Details

- **What is a financial obligation?**
  - Vehicle to borrow money
  - Debt, debt-like and debt-related obligations
  - Does not include ordinary financial and operating liabilities incurred in the normal cause of business
- **What is material?**
  - Substantial likelihood a reasonable investor would consider the information in making an investment decision
- **What reflects financial difficulties?**
  - Nonpayment or revising terms because the issuer is having trouble complying
- **Will vary by issuer, depending on circumstances**
- **Consult your bond counsel**

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## What to File

- No set form for disclosure
- For a new financial obligation, material terms may include:
  - Closing date
  - Borrowing amount and payment schedule
  - Interest rate and default rates
  - Covenants, events of default and remedies
- Can upload a narrative description or redacted documents
  - Do not disclose confidential or proprietary information
  - Ask bank/lender to redact a version they are comfortable with you filing
- Recent example: <https://emma.msrb.org/P21405352-P21092511-P21501230.pdf>

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## Tracking & Organization

- **Track new debt issuance**
  - **Reminder system for filing event notification?**
- **Track requirements for existing and future debt**
  - **Events of default**
  - **Remedies (acceleration)**
  - **Covenants**
  - **Change in terms**
- **GFOA has templates for internal record of financial obligations available**
  - **Going to have to customize for your situation**

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## How do I Ensure Compliance??

- ✓ **Communicate.** Make sure person responsible for compliance knows when new debt is entered into.
- ✓ **Document.** Consider revising continuing disclosure policy or adopting one. Amend procedures.
- ✓ **Identify.** Identify existing financial obligations, their terms, and any events reflecting financial difficulties.
- ✓ **Consult.** Consult with your issuer's bond counsel for guidance.
- ✓ **Stay tuned.** Ambiguity may be clarified by practice or further SEC guidance over time.

# Recent Disclosure Topics

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# Primary Offering Responsibilities

- **Primary Offering Documents: POS, OS**
  - **Rule 10b-5: “unlawful for any person . . . to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading . . .”**
- **Material to investors if substantial likelihood that a reasonable investor would consider it important in making an investment decision**
- **Omitted information material if substantial likelihood that the disclosure of omitted information would have been viewed by reasonable investor as having significantly altered total mix of information available**

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# COVID-19

- **Impact of COVID-19**
  - **Fluid Situation**
  - **Timing**
  - **Diffuse and Uncertain Impacts**
- **Continuing Disclosure**
  - **Rule 15c2-12 Continuing Disclosure Certificates**
  - **Annual Financial Information**
  - **16 Events**



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# COVID-19

## ■ Voluntary Disclosure

- **May 4, 2020 Statement from Chairman of SEC and Director of OMS**
  - Encourage issuers to voluntarily disclose current financial and operating condition as is reasonably practicable and forward-looking information regarding the potential future impact of COVID-19 on their financial and operating conditions
  - Does not alter or amend applicable law and has no legal force or effect
  - Include meaningful cautionary language
  - Would not expect good faith attempts to provide appropriately framed current and/or forward-looking information to be second guessed by the SEC

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# COVID-19

- **Voluntary Disclosure continued**
  - **Information:**
    - **Issuer's assessment regarding current and future impact of COVID-19 on operations and financial conditions**
    - **Sources of liquidity**
    - **Availability of federal, state, or local aid, including timing and terms of such aid**
    - **Reports prepared for other government purposes**
- **Bank Loan and Private Placements:**
  - **Review financial, loan, credit facility agreements for continuing disclosure responsibilities to bank or lender**

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# Cybersecurity

- **2018 SEC Interpretive Guidance for Public Companies**
  - “companies should avoid generic cybersecurity-related disclosure and provide specific information that is useful to investors.”
- **Increase in cybersecurity incidents for municipalities**
- **Disclosure of cybersecurity risks:**
  - Risk matters/investment considerations, and
  - Mitigation strategies
- **Credit rating implications**
  - Rating analysts usually ask about procedures, incidents
  - Recent S&P Report: “Cyber Risk In A New Era: Disruptions And Distractions Increase Challenges For U.S. Public Finance Issuers”
- **Balance between transparency and roadmap**

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# Natural Disasters and Climate Change

- **Climate change risks clear for municipal issuers; market participants are counting on more disclosure**
- **Disclosure that fails to provide more than generic discussion of climate change awareness likely falls short of properly disclosing relevant information to allow investors to assess risks and mitigation strategies; what level of disclosure is appropriate? Depends on facts and circumstances:**
  - **Coastal issuer? Prone to wildfires? Earthquake risk?**
- **Rating agencies starting to include environmental risks in their review**
  - **Recent Moody's excerpt:**

## Environmental

Environmental considerations are a factor in the rating, though not a significant driver at this time. Most of Oregon is in a drought as of July 2020, and the Eugene area is in a severe drought. Little improvement is expected in the short-term. During a severe drought, impacts to the region include brown pasture land and increased fire risk. Continued drought conditions could lead to increased wildfire activity, reduced economic activity and less water available for agriculture and human consumption. On the other hand, extreme rainfall remains a medium risk for the area during the wet seasons. More extreme weather conditions in general will be a long-term risk in the credit profile, similar to other school districts nationally. Positively, sea level rise and heat stress are low risks in the area.

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# Natural Disasters

## Standard OS language:

*Natural Forces.* Natural forces can affect the assessed value of taxable property in the District and the District's collection of revenues. The District is located in the Pacific Northwest, a region subject to periodic significant earthquakes. Such an earthquake and/or tsunami could cause extensive damage to structures and infrastructure along the Pacific coast and could disrupt transportation, communications, water and sewer systems, power and gas delivery and fuel supplies along the Pacific coast and within the District. The District cannot predict how such seismic activity could impact its revenue sources, including property taxes. Other natural or man-made disasters, such as flood, fire, toxic dumping or acts of terrorism, could also cause a reduction in the assessed value of taxable property within the District or adversely affect the District's revenues.

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## Wildfires, Specifically

### Tailored OS example for fires:

2020 Wildfires. On September 8, 2020, Governor Kate Brown invoked the Emergency Conflagration Act and on September 10, 2020 President Trump declared a Federal emergency in Oregon related to the wildfires. As of October 6, 2020, 9 wildfires are active and more than 971,500 acres have burned across the State of Oregon (the “State”) and numerous structures have been lost according to the State’s Office of Emergency Management. The Holiday Farm fire burned closest to the District, burning over 174,400 acres and destroying 768 structures (including 431 residences). As of October 6, 2020 the fire is 78 percent contained. Six District facilities were located within areas issued evacuation warnings but there has been no damage to District facilities. One District facility being used as a command center for firefighting operations and other facilities being used to support various response and recovery efforts. The District is participating in FEMA claim with Lane County and could be eligible for approximately \$400,000 in funds.

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