



BOUSQUET HOLSTEIN PLLC

# Alert

## Public Finance Practice Group

### SEC Expands Reporting Obligations of Tax-Exempt Bond Issuers and 501(c)(3)s and Other Tax-Exempt Bond Borrowers

Syracuse, New York

August 2018

The Securities and Exchange Commission ("SEC") announced on August 20, 2018, the adoption of amendments to Rule 15c2-12 of the Securities Exchange Act of 1934 (the "Rule") relating to debt and other financial obligations undertaken in a direct placement. Compliance with the changes will be required 180 days after publication of the amendments in the *Federal Register*. The changes require obligated persons to file with the Electronic Municipal Market Access ("EMMA") system maintained by the Municipal Securities Rulemaking Board ("MSRB") notices of the incurrence of, or default under, certain financial obligations.

The Rule defines an "obligated person" as "any person, including an issuer of municipal securities, who is ... committed by contract or other arrangements to support payment of all, or part of the obligations of the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)." The Rule currently requires obligated persons on municipal securities with an aggregate principal amount of \$1,000,000 or more to file with EMMA (a) certain annual financial and operating information and audited financial statements, if available; (b) notices of the occurrence of certain specified events ("event notices"); and (c) notices of the failure to provide required annual financial information.

Specifically, the amendments require an obligated person to file an event notice within 10 business days of:

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 an 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 the financial obligation of the obligated person, any of which reflect financial difficulties.

Under the Rule, the term "financial obligation" will mean a "(i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii)" and will not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

The SEC stated in the announcement that it "believes that the amendments will facilitate investors' and other market participants' access to important information in a timely manner, enhance transparency in the municipal securities market, and improve investor protection." Link to the SEC press release and amendment:

<https://www.sec.gov/news/press-release/2018-158>.

### Bousquet Holstein Public Finance Practice Group

The team of professionals in the Bousquet Holstein Public Finance Group has broad and deep experience assisting our clients in delivering and taking advantage of tax incentives offered by the Internal Revenue Code and New York State law to encourage and support projects that serve the public, promote economic development and advance charitable and public purposes. These incentives include tax-exempt bonds, tax credits and the abatement of real property, sales and use and mortgage recording taxes. If we can provide you with additional insight and information regarding changes to the law please contact:

Susan Katzoff ♦ 315.701.6303 ♦ skatzoff@bhlawpllc.com

Jean Everett ♦ 212.381.4870 ♦ jeverett@bhlawpllc.com

Natalie Hempson-Elliott ♦ 315.701.6435 ♦ nhempsonelliott@bhlawpllc.com