MSRB
Municipal Securities Rulemaking Board

SEC Rule 15c2-12 Webinar Transcript

Below is a transcript of a February 2019 webinar hosted by the Municipal Securities Rulemaking Board (MSRB) with the U.S. Securities and Exchange Commission (SEC) about frequently asked questions related to amendments to SEC Rule 15c2-12 as well as changes to the Electronic Municipal Market Access (EMMA®) website to accommodate these amendments. Amendments to SEC Rule 15c2-12, which were effective February 27, 2019, include two additional required event disclosures related to financial obligations of municipal securities issuers and obligated persons that submit disclosures on behalf of issuers to the EMMA website.

For an overview of the amendments to SEC Rule 15c2-12 and information about submitting additional events to the EMMA website, reference 10 Things to Know: New SEC Rule 15c2-12 Requirements.

Ritta McLaughlin: Good afternoon and thank you for attending today's webinar on amendments to SEC Rule 15c2-12c2-12 and the related changes to the MSRB's EMMA website. I'm Ritta McLaughlin, the MSRB's Chief Education Officer, and joining me today is my colleague Leah Szarek, senior manager of market transparency. And we also have special guests this afternoon from the U.S Securities and Exchange Commission, Office of Municipal Securities, Ahmed Abonamah, Senior Counsel to the Director, and Hillary Phelps, Senior Counsel. For many market participants, the amendments to SEC Rule 15c2-12 generate a lot of questions. The MSRB hosted a webinar on January 17th and we were delighted to have representatives from BDA, GFOA, NABL and SIFMA share their expertise, insights and discussed the two new amendment disclosure requirements. During that webinar we received a number of questions which we realized would require us to conduct a second webinar. Our intention is that at the end of the webinar today that you will be able to understand the amendments to SEC Rule 15c2-12 that you can navigate the EMMA website to submit and view required disclosures under the amended rules, and you can evaluate practical considerations for implementing policies and procedures to be in compliance with the amended rules.

So, before we begin our conversation this afternoon, please note that this webinar is a listen-only event, and throughout today's webinar please send us your questions and your comments. If you would like to ask a question, there is a Q&A box to the left of your screen, and we will answer as many questions as time permits this afternoon. I would like to also direct your attention to the resource's menu on your screen and this is where you can access the slides from today's webinar and some other useful materials. Also, you should be aware that an on-demand version of today's webinar will be made available on msrb.org at the completion of the webinar. In addition, we would appreciate your feedback by completing the questionnaire, that is found in the widget at the bottom of your screen, to give us feedback on how we can improve our webinars.

So, now let's start with a brief overview of the SEC Rule 15c2-12 and the new municipal securities event disclosure requirements. The SEC adopted the amendments to Rule 15c2-12 creating two new required event disclosures, and as you can see on your screen, there is event (15) and event (16). And under the amended rule, financial obligation includes debt obligations, derivative instrument entered into connection with or pledged as security or source of payment for existing and planned debt obligations or guarantees of debt obligations or derivative instruments. The term financial obligation excludes municipal securities, as to which a final official statement has been provided to the MSRB. Today, February 27, 2019, as the compliance date and amendments are effective for continuing disclosure agreements entered into for offerings occurring on or after today, February 27th. For the purposes of the amendments, offerings generally occur when a CDA is signed. If a preliminary official statement is distributed before

February 27th, that was before today, with the expectations that the offering will close, that the offering will occur on or after today, the POS should attach a form of the CDA including the new events.

So, the questions we have received related to the two new disclosure events generally fall within the following areas as listed on the slide. Ahmed and Hillary are going to do their best to address the frequently asked questions that have been provided by market participants from the most recent webinar and those that have also been provided to the SEC and the MSRB. To get started this afternoon, first, when does an issuer or an obligated person need to begin complying with the new amendments? Hillary?

Hillary Phelps: Thank you Ritta for that question. Before we start, I just want to give the standard SEC disclaimer: "The views that we express today are our own and do not necessarily reflect the views of the Commission, any of the commissioners, or any of our colleagues on the staff of the Commission."[1]

Now that that is out of the way, as you noted, the compliance date for the amendments is today, February 27, 2019, and as stated in the Adopting Release, the amendments will only impact those continuing disclosure agreements entered into on or after the compliance date. However, we encourage issuers to continue making voluntary disclosures to EMMA about financial obligations, and this can be accomplished by using the new submission functions for events (15) and (16).

Ritta McLaughlin: Do the amendments apply to financial obligations that an issuer or obligated person has incurred prior to the effective date of the amendments?

Hillary Phelps: We've gotten this question a lot. Let me break down (15) and (16). First, looking at event (15). Event (15) covers both any incurrence of a financial obligation, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material. Note that the emphasis is on the verbs incur and agree. New material financial obligations need to be disclosed only once the issuer has executed a CDA that includes event (15).

However, if an issuer amends a financial obligation after the date on which it has entered into a CDA containing new event (15), such an amendment would be an agreement regardless of when the related financial obligation was incurred and subject to disclosure if it affects security holders and is material. An example to illustrate this second point, which I think is the one that may be most confusing: An issuer, for example, enters into a CDA tomorrow that includes events (15) and (16). The issuer has a bank loan that was incurred last year that has a balloon payment that comes due in the next few months. The issuer decides to amend their loan agreement and extend the repayment of the loan and gets together with their banker to amend the agreement. At this time, the issuer considers whether they agreed to covenants, events of default, remedies, priority rights, or other similar events, any of which affect security holders, if material, and if so, the issuer should make a disclosure under (15).

And finally, having covered (15), take a look at (16) with respect to this question. Event (16) covers any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of financial obligation, any of which reflect financial difficulties regardless of when the financial obligation was incurred. So therefore, once an issuer executes a CDA with the new amendments that include event (16), all of the issuer's

[1] The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner. These remarks express the speakers' views and do not necessarily reflect those of the Commission, the Commissioners, or other members of the staff.

outstanding financial obligations are subject to potential disclosure under event (16). So hopefully that breaks down the requirements of when financial obligations need to be disclosed.

Ritta McLaughlin: Great. Do the amendments apply to financial obligations incurred prior to entering a continuing disclosure agreement?

Hillary Phelps: The same answer applies that I just gave.

Ritta McLaughlin: Is there a required form of notice issuers or obligated persons should submit to EMMA pursuant to events (15) and (16)? Meaning, is there a term sheet or any other type of form document?

Hillary Phelps: This is a good question. We have heard it from a lot of issuers that they are confused about what the form of notice should look like. In the Adopting Release for the amendments the Commission declined to prescribe a specific form of notice that should be submitted to EMMA and concluded that market participants are best suited to develop best practices regarding the form of notices submitted to EMMA. The Commission believed this is appropriate due to the diversity of issuers and the structure of the Rule. However, the Commission did provide some guidance in the Adopting Release with respect to this matter. They stated that any notice filed with EMMA generally should include the material terms of the financial obligation. Some examples that were given of material terms include the date of inccurrence, the principal amount, maturity and amortization, and interest rate if fixed, or method of computation, is variable, and any default rates.

The Commission also noted that other terms may be appropriate as well to the extent they are material. The Commission also stated in the Adopting Release that depending on the facts and circumstances, it could be consistent with the requirements of the Rule to submit a description of the material terms of the financial obligation, or in the alternative or in addition to, submit related materials such as transaction documents, term sheets, continuing covenant or financial covenant reports to EMMA. So, you could do one or the other. You could do both. There is no prescription in the Adopting Release with respect to what direction you should take. However, note that no matter how notice is provided to EMMA, the consistent goal for any submission should be that it includes the material terms of the financial obligation, but we leave it up to you to determine what form those should be transmitted.

Ritta McLaughlin: Can certain proprietary information be redacted from the event notice filings?

Hillary Phelps: In the Adopting Release, we specifically address what can be redacted and the Release states that the amendments do not require the provision of confidential information such as contact information, account numbers, or other personally identifiable information. As noted, an event notice filing should include all material terms of the financial obligation and we provided some examples of those: date of occurrence; principal amount; interest rate, and other terms may be appropriate as well. Notably, when discussing these redactions, the Commission made clear that all necessary disclosures should be included in an event filing. In other words, issuers should not redact event notice filings such that the notice does not contain all information about the financial obligation. If you want to make redactions, do so, but recognize that there is an expectation that all material information needs to be included in your event filing when you do so.

Ritta McLaughlin: Ahmed, why don't you take this question. What is a lease that operates the vehicles to borrow money?

Ahmed Abonamah: Sure. So, this has been a very common question we have received from folks since the Commission adopted the amendments in August. Before I get to the specific answer to that question I think it's important to give a little bit of context and maybe go through a bit of how we got to what was contained in the Adopting Release. I think that'll help solidify in people's minds exactly what the Adopting Release intends to cover.

Let's start with the Proposing Release, and really highlight at the beginning one very key difference between the Proposing Release and the Adopting Release, which was the definition of the term financial obligation. In particular, in the Proposing Release, the term financial obligation was defined to include leases as a separate category on its own, and when discussing leases covered by that definition, the Proposing Release stated that the term lease is intended to capture a lease that is entered into by an issuer or obligated person. This definition covered all leases of an issuer or obligated person and relied on the materiality qualifier to distinguish what should be disclosed and what should not be disclosed under the Proposing Release. So, Proposing Release was very broad. In terms of its treatment of leases, it did not provide any line distinguishing those that were covered and those that were not except with respect to the materiality qualifier contained in event notice (15).

Now fast forward to the Adopting Release, and we had a couple things happen in between the Proposing Release and the Adopting Release. One, we received approximately 90 comment letters, many of which addressed leases in some fashion. And two, the Government Accounting Standards Board (GASB), announced its decision to eliminate, for financial reporting purposes, the distinction between capital and operating leases. So, looking first to the comment letters, I think, it is safe to say that commenters were critical of the inclusion of leases, without limitation, in the definition of the term financial obligation. Notably, these critiques took a variety of forms, but the common arguments were that the information about an issuer's non-debt related leases would not provide useful information to bond holders.

On the other hand commenters argued that the burden of complying with the rule as proposed would be overly burdensome given the sheer magnitude of municipal leasing arrangements. As stated in the Adopting Release, the Commission agreed with commenters on these points that the proposed treatment of leases was too broad and concluded that it was appropriate to limit the scope of the rule's coverage of leases. In addition to responding to commenter concerns, the Commission decided to discontinue its use of the terms capital and operating leases in the amendments, really to prevent the terminology of the amendments from being relics of a past era where the accounting standards are no longer going to continue using the capital and operating lease terminology. It made sense to similarly discontinue the use of those terms in these amendments as well.

The Commission was faced with the task now of narrowing the scope of leases covered under the definition of financial obligation and refraining from using the capital and operating lease terminology. The question is how did the Commission do that? The Commission looked to commenter suggestions. Specifically, the Commission chose to limit the types of leases covered by the amendments to those that operate as a vehicle to borrow money. The Commission then decided that because these types of leases represent obligations to repay borrowed money over time, that they should more appropriately be considered a variety of the term debt obligation. Thus, the Commission eliminated leases as a separate type of financial obligation and instead stated that they are simply a variety of a debt obligation.

I think what that means is when you look at the Adopting Release, especially as compared to the Proposing Release, it becomes clear that the Commission's intent was to narrow the scope of leases covered by the amendments. So, I think with that background, I'm better able to answer the question in a way that makes sense to everyone on the line here. The fundamental question that an issuer or obligated person needs to ask is, does the lease represent a borrowing, or as stated in the Adopting Release, is the issuer obligated to repay borrowed money under the terms of the lease? And so, I think with this fundamental question, there are a couple of examples we can go over that can highlight where there would be a borrowing and where there would not be a borrowing in our view.

So, we'll start with an example that would not be a borrowing. In this example, we have a local police department which leases a fleet of police cruisers from a local car dealership. The police department agrees to pay the dealership

a sum certain per month for the right to possess and use the vehicles and may or may not have the right to purchase the vehicles once the term of the lease expires. Those are the basic parameters of the transaction between the police department and the car dealership. Our reading of this example is that there is not a borrowing in the sort of way that we generally understand the term. It's really a current transaction between the police department and the local car dealership.

Second is an example of a lease that we believe "operates as a vehicle to borrow money." We have the same police department and the same car dealership, but instead we add a third party, a lease financing corporation. The police department in this case borrows money from the lease financing corporation. The lease financing corporation purchases the vehicles from the dealership with the money borrowed by the police department, and the police department leases the vehicles from the lease financing corporation and then makes periodic lease payments to extinguish its debt to the lease financing corporation. Upon the expiration of the lease, titles to the vehicles would be passed to the police department. I think contrasting these two examples, which are certainly not exhaustive of the types of examples that could come up, they highlight the fundamental difference between what we view as a lease arrangement that would not operate as a vehicle to borrow money and one that would. And it really comes down to was there a borrowing and is the lease just the evidence of an obligation to repay that borrowed money?

Ritta McLaughlin: What is the scope of diligence that an underwriter must undertake with respect to these new amendments? Hillary, do you want to take that?

Hillary Phelps: Sure. In the 1988 Proposing Release, the Commission emphasized the obligation of a municipal underwriter to have a reasonable basis for recommending any municipal securities and its responsibility, in fulfilling that obligation, to review in a professional manner, the accuracy of the offering statements with which it is associated. Since the Commission made that statement in 1988, there is nothing that has happened to indicate that the Commission's view has changed. An underwriter must have a reasonable basis for recommending a municipal security. Representations concerning commitments to provide secondary market disclosure, like other key representations by an issuer, are subject to specific verification such that the underwriter has a reasonable basis to believe that such representations are true. Investigations of an issuer's undertaking to provide secondary market disclosure would be an element of the underwriter's review of offering documents.

The Commission, as many of you are well aware, has provided a number of factors for determining the reasonableness of an underwriter's assessment that an issuer's disclosures are accurate and complete. This includes (i) the extent to which the underwriter relied upon municipal officials, employees, experts, and other persons whose duties have given them knowledge of specific facts; (ii) the type of underwriting arrangement; (iii) the role of the underwriter, for example, whether if itis a manager or a syndicate number or selected dealer; (iv) the type of bonds being offered; (v) past familiarity of the underwriter with the issuer; (vi) whether the bonds were competitively bid or distributed in a negotiated offering. Notably, sole reliance on an issuer through an issuer's certificate is not sufficient to meet those due diligence requirements. So, the answer is nothing has changed from how the Commission has approached underwriters' due diligence obligations in the past just because these new amendments now exist.

With respect to what specific steps an underwriter should take to form a reasonable belief that the issuer will comply with the new amendments, we have been advised of some of the methods that firms intend to take and it is not the SEC's practice to endorse any specific method because the approach taken depends on many factors including the ones I just reviewed. We encourage, as we always have, the development of robust policies and procedures that outline reasonable due diligence procedures that take into consideration amendments (15) and (16).

Ritta McLaughlin: Is there a difference in the diligence that's required in a competitive versus a negotiated offering? Whether you have a sole manager or a syndicate. Can you speak to that?

Hillary Phelps: Sure. As I mentioned earlier, the due diligence obligations of an underwriter remain the same in light of the new amendments. An underwriter must have a reasonable basis upon which to recommend the securities, and whether the issue is offered on a competitive or negotiated basis is a factor in determining whether an underwriter's due diligence is reasonable and complete. The Commission has said that in a normal competitively bid offering involving an established issuer, an underwriter would generally meet its obligation to have a reasonable basis for a belief in the key representations in the offering document where it reviewed the OS in a professional manner and received from the issuer a detailed and credible explanation concerning any aspect of the OS that appeared on its face, or on the basis of information available to the underwriter, inadequate.

With respect to syndicate members and the amount of diligence required, the Commission has stated that a syndicate member does not need to duplicate the efforts of the managing underwriter, but it must satisfy itself that the managing underwriter has reviewed the accuracy of the information and the official statement in a professional manner and therefore has a reasonable basis for its recommendation. That said, the syndicate member must at least familiarize itself with the information in the official statement and should notify the managing underwriter of any factors that suggest inaccuracies or signal the need for further investigation. So, this is nothing new. This is just a repetition of what the Commission has said in the past, and it stands true today.

Ritta McLaughlin: So, Ahmed, in the definition of financial obligation, what was meant in a phrase consistent with the rule regarding the requirement that a financial official statement must have been provided to the MSRB?

Ahmed Abonamah: The question is asking about the sort of exclusionary language in the definition of financial obligation, which says, the financial obligation shall not include municipal securities as to which a final official statement has been provided to the municipal securities rulemaking board consistent with this rule. We've gotten a few questions on this, and what was intended by this language was on one hand, to preserve the status quo with respect to those issuances of municipal securities that are already subject to the rule and not to create duplicative disclosure requirements. So, if an issuance of municipal securities is already subject to the rule, follow those requirements and such issuance will be excluded from the definition of financial obligation. This is for a variety of reasons, namely that the Commission already weighed in from a regulatory perspective on how the rule's official statement and continuing disclosure agreement requirements that should apply to various types of transactions.

This is the case, even when an issuance of municipal securities might benefit from a partial exemption from some of the requirements of Rule 15c2-12, which would include, for example, the small issuer exemption, the short-term debt exemption, or the VRDO exemption. If, however, an issuance of municipal securities is not subject to the rule, in other words, is entirely excluded from the treatment of the rule, then the Commission made clear in the Adopting Release that such issuance should be excluded from the definition of financial obligation only if the issuer chooses to voluntarily comply with the requirements of Rule 15c2-12. But I think the types of transactions that are picked up by this full exemption notion are those that are the types of transactions that we historically have thought of as private debt transactions, do not have a public disclosure requirement under the rules, and they may have issuers and obligated persons that may have provided disclosure voluntarily in the past. And if they want to do that in the new context of these amendments, they can still do that, just subject to the requirements laid out in the Adopting Release.

And those requirements are that the Commission made clear that voluntary compliance includes both the requirement to provide an official statement and enter into a continuing disclosure agreement. And the Commission said, for example, if such, final Official Statement is provided to the MSRB voluntarily, the Commission believes that

such voluntary submission would be made consistent with the Rule if it is provided to the MSRB consistent with the requirements set forth in Rule 15c2-12 Section (b), which includes all of the continuing disclosure requirements of the rule. It does not carve out any particular subsection of section (b), so the CDA would have to include everything. Now, we do recognize that this presents some issues for certain commercial paper programs that issuers might maintain, and we are continuing to think through whether there is any additional guidance that we can provide and how that might fit in with the amendments as they were adopted by the Commission.

Ritta McLaughlin: So, Hillary, would you discuss the phrase "reflecting financial difficulties?" It's used in event (16), and could you add some color as to whether an issuer or obligated person is required to give notice of the event that results in financial difficulties or an event that causes financial difficulties or both?

Hillary Phelps: To start, we note in the Adopting Release that the term "reflect financial difficulties" has been around for a long time. It has been part of Rule 15c2-12 since the 1994 Amendments. This term should not be new to people, so just keep that in mind as you are thinking about it. And importantly, to answer the second part of your question, the focus of event (16) is on events that were caused by financial difficulties. That is what you should be thinking about when you are thinking about (16). In the Proposing Release for the amendments, the Commission provides an example to highlight its view of the “reflects financial difficulties” qualifier. Specifically, the Commission stated that, for example, an issuer may covenant to provide the counterparty with notice of a change in its address and may not promptly comply with the covenant. A failure to comply with such a covenant may not reflect financial difficulties. For example, if the employee just forgot to do it, and therefore, absent other circumstances, this event likely does not raise the concerns that the amendments are intended to address.

On the other hand, an issuer could agree to replenish a debt service reserve fund if draws were made on such fund. If an issuer fails to comply with this covenant, then such an event may need to be disclosed to investors and other market participants if such a failure to replenish the debt service reserve fund was due to financial difficulties that the issuer was experiencing at the time. Given the diversity among issuers, the Commission concluded that it's difficult to provide additional guidance on the term’s meaning. Again, we want to remind you that this term has been around for a long time.

Ritta McLaughlin: Ahmed, in the Adopting Release, it addresses that when draw-down bonds are incurred, but when does an issuer or an obligated person incur a line of credit or commercial paper? And generally, is that on the issue date or when the BPA is signed?

Ahmed Abonamah: The Adopting Release states that a financial obligation generally should be considered to be incurred when it is enforceable against an issuer or obligated person. And so, with draw-down bonds, in the Adopting Release, the Commission noted that a draw-down bond would be incurred when the transaction is closed, not necessarily when there's an actual draw on the draw-down structure. In the draw-down context, the transaction might close tomorrow, but there might not be a draw for another three months. Tomorrow would be the incurrence date in that example. Similar to the draw-down context, a line of credit obtained by an issuer or a commercial paper program established by an issuer should be considered to be incurred when the terms of the obligation are legally enforceable against the issuer, instead of when each draw is made or when each tranche of CP is issued.

The day on which an obligation becomes enforceable against the issuer is the focal point of when the 10-business day clock starts for providing notice to EMMA. Using that sort of legal enforceability against the issuer concept, then similarly a bond is incurred when it is issued because the issue date is the day on which the issuer becomes obligated to fulfill its contractual obligations to bond holders. The date that the BPA is signed is certainly an important date in the life of a bond transaction, but the issuer has not obtained the obligation to pay principal and interest and provide continuing disclosures until the actual bonds are issued. And there are, as we all are familiar, a variety of outs in the

typical bond purchase agreement that though they do not happen frequently, are still possible and could happen. And it could create some dissonance if the disclosure obligation was triggered from the signing of the BPA as opposed to the actual issuance of the bonds themselves.

Ritta McLaughlin: Must the terms in an issuer or obligated person's CDA possess the same meaning as provided in the Adopting Release? Hillary?

Hillary Phelps: The very short and sweet answer to this is yes— they must. Again, going back in history, Commission staff provided guidance on a related topic in 1995, and stated that CDAs should list the event notices in the same language as is contained in the Rule without any qualifying words or phrases. So, as an initial matter, we would expect CDAs entered into after the compliance date to exactly restate the text of new events (15) and (16). As long as the exact rule text is used, an issuer can add additional text, but should be mindful that the staff or Commission may provide additional guidance in the future, and also that errors could be made when adding additional language. Finally, staff also expects issuers and underwriters to interpret terms in the CDA consistently with the rule as is evidence from the Adopting Release.

Ritta McLaughlin: Ahmed, how can an issuer or obligated person and an underwriter assess the materiality of a given financial obligation? It's always the big question. What's material? How do we define materiality?

Ahmed Abonamah: Yes. If there was a topic in the comment letters that we received that was more popular than leases, I would hazard a guess that it was the concept of materiality. So, as the Commission stated in the Adopting Release, materiality is a core principle of the Commission's approach to its regulation of the United States securities markets generally. The materiality qualifier has been part of Rule 15c2-12 specifically since 1994. Rather than establishing bright line standards for materiality, the Commission's historical framework for materiality has relied on issuers to assess their disclosure obligations in the context of their specific facts and circumstances. Nevertheless, in the Adopting Release, the Commission wasn't silent as to what sorts of things an issuer or obligated person can consider when assessing materiality, but instead of providing prescriptive guidance, gave some principles-based guideposts that issuers and obligated persons could consider when assessing materiality. And those include the source of security pledge for repayment of the financial obligation, the rights associated with the pledge, for example, whether it's a senior or a subordinate lien, the par amount or the notional amount of the obligation, covenants, events of default, remedies, and other similar terms that affects security holders to which the issuer agreed.

One aspect of the Commission's approach to materiality that I truly think is beneficial to issuers and obligated persons given how diverse the market is in terms of size, frequency in the market, etc. is it really gives the issuers and obligated persons the opportunity to take stock of their particular circumstances, what may or may not be material to their bond holders specifically, and craft policies and procedures that reflect that. This can be beneficial in terms of helping issuers and obligated persons identify what might be material to their bond holders. The Commission's principles-based approach gives the issuer the ability to craft its procedures accordingly.

Ritta McLaughlin: Great. Well, thank you, Ahmed and Hillary. We're going to give you a minute before we begin taking questions that have been submitted during the course of this webinar. In the meantime, my colleague, Leah Szarek is going to briefly highlight some of the enhancements that have been done to EMMA to support compliance with SEC Rule 15c2-12 and the new amendments. With that, let me have Leah talk a bit about what some of the changes that have happened to EMMA.

Leah Szarek: Great. Thanks, Ritta. So, we have updated the EMMA system to be able to, as of today, begin accepting and displaying these two new required event disclosure types. Our EMMA system accepts continuing disclosures

through two submission methods. You can come into our EMMA Dataport user interface and manually make a submission, or you can use our computer to computer submission service. And both of those submission channels are now ready to accept disclosures of these two new event types. So, what you're going to do is you're going to basically follow the same path that you use today to make a continuing disclosure. And when those disclosures are made, they're going to be accessible to the public on the EMMA website everywhere that disclosures are currently available. And that includes on the issuers and the homepage and on the detailed view and with our advanced search filters.

I'll just take you through a couple of the steps in this process of submitting the new event disclosure types through EMMA data port, and you can start doing that anytime today onward. This process should look very familiar because it's virtually identical to making a submission for any of the (14) event types that were required to be disclosed prior to today. So, when you're submitting that new event, you first must select the type of disclosure you're here to make. And the two new disclosures are considered events under SEC Rule 15c2-12, you'd come in and make an event filing type just as you would today for one of the existing events, like a bond call. You're coming into our event disclosure area, and the next step is where you select the type of event that you're here to disclose. You'll see these new events number (15) and (16) added to the bottom of the list of the previously required events, and you'll see them using labels that we developed in close coordination with the SEC. Event (15) is going to appear to you as financial obligation incurrence or agreement. And then event (16) is noted as financial obligation event reflecting financial difficulties.

Let's zoom in on each of those in term. Say you select event number (15), financial obligation incurrence or agreements. The form will expand and require the submitter to provide some additional information about that event. The first field you'll see is a free text description area. You'll also see a field requiring a date, and then you'll select the type of the financial obligation, and whether it's a debt obligation, derivative instrument or guarantee. Note that if you'd like guarantee, that's the only option that has any sub categories required. And here's where you would indicate whether it's a guarantee of a debt obligation or a derivative instrument. And that's all consistent with the Adopting Release of the rule. Now, very similarly looking at event number (16), the submission form expands in much the same way, offering a description field and as of dates, and then a section to select the type of event that reflects financial difficulties. And in this case, we're looking at a select all that apply option, so you'll be able to choose any number or combination of defensive default event of acceleration, termination event, modification of terms or other as is necessary. From there you'll proceed through the submission process just as you would today. Associate the securities to the disclosure and provide your contact information. You're able to preview and make sure that all the information was provided correctly, and then when you hit publish, that information is disseminated on the EMMA website and accessible to the public.

Ritta McLaughlin: Thank you for that Leah. EMMA is ready today. We've had lots of questions coming in. So, we're going to take some time to address as many of the questions as time permits going forward. Let me just start. If an issuer issues bonds on March 1st and on April 1st of 2019, there is an event of default on the loan that was dated from December 2018, does that event need to be reported?

Hillary Phelps: If this occurs youwould look to (16) which says that you need to report a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation, any of which reflect financial difficulties. So if this default came about because it was a result of financial difficulties, then, yes, it should be reported to EMMA.

Ritta McLaughlin: Does a CDA for a new issue that includes the new amendments to the rule apply going forward to other CDAs, meaning that it's not the same issue but the same issuer or obligor?

Hillary Phelps: CDAs are tied to their bond issues. If an issuer enters a new CDA with new amendments, they will have to follow all of their CDAs for those bonds. If they have older bonds with CDAs that do not include these amendments, that's fine. There will be different CDAs for different bond issues depending on when those bonds were issued.

Ritta McLaughlin: We've got a couple of questions specific to event (16). The first being, is event (16) subject to the materiality standard?

Hillary Phelps: It is not.

Ritta McLaughlin: Okay. And does event (16) apply to all outstanding financial obligations or only those financial obligations identified to be material?

Hillary Phelps: It applies to all financial obligations.

Ritta McLaughlin: So, another question to just clarify, did I hear correctly that filing via EMMA is voluntary?

Ahmed Abonamah: I'd be happy to clarify that. It would only continue to be voluntary after today if the issuer has not executed a continuing disclosure agreement that includes the new event notices.

Ritta McLaughlin: There's a follow up question that came in regarding lease financing. In the example that you provided were if the police department leases the cars and makes a periodic payment. If the police department does not take ownership of the cars at the end of the lease, will they still qualify as a financial obligation and require disclosure?

Ahmed Abonamah: Assuming we're talking about the second example where there was the upfront borrowing from the lease financing corporation, the answer would be yes. And I think this question highlights the key point that has been brought to our attention by several commenters since August, that ownership is not the key consideration or eventual ownership is not the key consideration for determining whether there's a disclosure obligation under the amendments. Rather it's the act of borrowing money that triggers the potential disclosure obligation for the issuer or obligated person.

Ritta McLaughlin: There was some thought that the rule modification may create a disclosure requirement for a new bank placed bond even if that issuer has no existing bonds reported to EMMA. Does this rule change the disclosure requirement on a bank placed bond if that is the only debt the issuer has or would be held by the bank?

Hillary Phelps: No. An issuer needs to have an executed CDA in place for these amendments to apply. This issuer, which has no publicly outstanding debt and is not issuing any new public debt and enters into a bank loan or a direct placement, does not need to disclose these obligations to EMMA.

Ritta McLaughlin: There's a couple other questions regarding items (15) and (16). If an CDA is executed on or after today and for a particular issue, would that issuer have an obligation to publish disclosures under 15c2-12 item (15) and/or item (16) for other issues issued prior to the 26th?

Ahmed Abonamah: The answer to that is it depends. As Hillary noted at the outset, there are different sorts of timelines that apply to the various provisions of events (15) and (16). Once a CDA is in place that includes new event notices, there could be a disclosure obligation for an agreement that maybe changes in terms of a financial obligation that pre-existed the CDA if those are material and affect security holders. And then similarly, under event notice (16), if one of the enumerated events occurs and it reflects financial difficulties, even though that obligation predated the compliance date and the date on which the issuer executed to a CDA that contains the new event notices, there could still be a disclosure obligation under event notice (16).

Ritta McLaughlin: Does the second half of (15) require adding disclosure to pre-existing issues even if they had not entered into a new undertaking?

Hillary Phelps: No. You do not have to amend your CDA. These amendments only apply when you enter into a new issue of bonds. That is when you enter into the CDA on or after today. Except under limited circumstances, you should not go back and amend your prior CDAs. They stand as they are. These amendments apply going forward.

Ritta McLaughlin: For an CDA that's in a POS or an OS, is anything more than (16) events required specifically the definition of financial obligation and/or any reference to the Adopting Release?

Hillary Phelps: As I said before, you should have the exact text of the events restated in your CDA. If you choose to make reference to the Adopting Release that is your prerogative, but you should, no matter what, recite the exact text of the new events in your CDA.

Ritta McLaughlin: How does an issuer assess whether the terms of financial obligation affect security holders with respect to the bonds that are secured by full faith and credit of a state? And similarly, for a double barrel bond, how does that work in terms of the full faith and credit? Does that alleviate any of the concerns?

Ahmed Abonamah: I think this is a good question to ask. When you're thinking about what might affect a security holder, I think you need to think about it through the lens of the bond holders benefiting from each CDA that includes the new event notices. Those bond holders, whether their bonds are general obligation, double barrel, special revenue, whatever the case might be, their bonds have a particular structure and their right to get repaid will be affected by different things. And so, I think it's through the lens of the particular bond holders that an issuer would need to make the assessment of whether something affects them.

Ritta McLaughlin: If an issuer sells bonds under the one-million-dollar level and uses an OS to do so, is it then required to have a continuing disclosure undertaking, and do the material events filings and the financial information updates, are they in effect irrespective of the fact that it's exempted given the size of the transaction?

Ahmed Abonamah: Nothing in the Adopting Release regarding the amendments changes the way the small issuer exemption operates and has operated for years. If an issuer is taking advantage of the limited exemption for small issuers or the short-term debt or VRDOs, then that issuer should continue to follow the disclosure requirements of the rule that are already in place. These amendments do not change that.

Ritta McLaughlin: There's another question that came in asking for some clarification on your comment related to commercial paper. Is every draw on a commercial paper a reportable event?

Ahmed Abonamah: No. Using the Commission's treatment of draw-down bonds in the Adopting Release as a guide, a commercial paper program would be incurred whenever the legal terms of the program become enforceable against the issuer or obligated person, not necessarily when there's a particular draw. Now, that's not to say that an issuer or obligated person couldn't disclose whenever there's a draw, but it wouldn't be required as under the Adopting Release.

Ritta McLaughlin: Is there a threshold amount for determining whether or not an issuer has entered into a financial obligation?

Ahmed Abonamah: There is not a threshold set by the Commission. Like we discussed earlier, the Commission leaves it to the issuers to decide for themselves what is or is not material. But that's not to mean that the issuer could not come up with a threshold that that issuer reasonably believes represents a line separating what is material and what is not material to its bond holders. That's a decision that can only be made by the issuer and based on its reasonable judgment.

Ritta McLaughlin: There's another question that came in and I'm going to ask Leah to address this because it's an EMMA question. Is there a way to link an original agreement to an amendment that's provided to EMMA?

Leah Szarek: The way disclosures work in EMMA is they're really connected at the security level. So, when you're making your disclosure, you're associating that disclosure with the securities that it relates to. if you make an initial disclosure under event (15) and then you make a follow-on disclosure under event (15), it's going to be connected by the fact that you're associating it to the same set of securities and that's really where the link would be. The two disclosures themselves are not connected, it's really being connected based on which securities that's associated with.

Ritta McLaughlin: why would event (16) apply to all an issuer's financial obligations rather than just to those that are related to the sources of repayment of bonds?

Hillary Phelps: The way (16) was drafted was so that if an issuer is experiencing financial difficulties and one of the enumerated events occurs, bondholders would be put on notice of not only the occurrence of the event, but also that the issuer is facing financial difficulties serious enough that such an event is triggered under the transaction documents. It serves as an early warning sign to bondholders that an issuer may be facing financial challenges. This event notice operates to get to bondholders information earlier than they may have otherwise.

Ritta McLaughlin: This is a multipart question. It's going to take me a second to parse through this, but one of the questions is assuming the party considered the guarantee to be material to investors in the bonds and the OS is timely filed to EMMA, must the beneficiary of the guarantee, that is the issuer, file a separate notice to EMMA under event (15) relating to the guarantee within 10 business days of closing the bond? And then the follow on, it says, by its terms, the exclusion from the definition of financial obligation only applies to municipal securities for which a final OS is submitted to EMMA.

If, however, the guarantee is described in the final OS and the terms of the guarantee are posted on EMMA by virtue of filing the final OS, no additional benefit is accomplished by a separate filing relating to the guarantees so long as all effected CUSIPs are properly linked. So, can you share with us, in terms of this analyses, whether the filings related to the guarantee must be made, must the notice be done separately, including all the material terms of the guarantee, or may the issuer cross reference the OS for the bond?

Ahmed Abonamah: With respect to this particular question and these specific facts, that if the guarantee is fully described, all the material terms are described in the official statement that has been floated to EMMA, that the issuer who is the beneficiary of the guarantee would not need to file an event notice under event (15) in addition to the official statement.

Ritta McLaughlin: Must accounting guarantor also file a notice under event (15)? And if so, must that notice include all the material terms as a guarantee or may accounting also cross reference the OS in the bonds? And does the filing, does it have to be made associating it to which CUSIPs the accounting guaranteed? Does that have to be attached to the notice?

Ahmed Abonamah: For the guarantor, the analysis is a little different. The guarantor would really need to just go through the materiality analysis to assess whether the guarantee is material to its investors. And if the guaranteeing entity concludes that the guarantee is material, then they would need to provide notice on EMMA, and it would need to provide all material terms. I think assuming that the official statement provided by the issuing entity included all the material terms of the guarantee, that the guarantor would be able to also post the official statement as it to satisfy its obligations.

Ritta McLaughlin: As an underwriter, what steps are required to make sure that the municipal advisor has done their job in making sure that the issuer has complied with all the regulations?

Ahmed Abonamah: I think this really goes back to the question that Hillary answered earlier about underwriter due diligence obligations. There are no specific steps that the Commission has laid out for underwriters. Really, it's a fundamental obligation of an underwriter to have a reasonable basis for concluding that the issuer will comply with its continuing disclosure obligations moving forward. Earlier, Hillary noted the non-exhaustive factors identified by the Commission, which include a consideration of how familiar the underwriter is with the issuer.

Ritta McLaughlin: If their line of credit is at SIFMA, as a percent of SIFMA say 40 basis points, can the 40 basis points be redacted?

Hillary Phelps: One of the points I made when I was talking about redactions earlier was that you need to include all material information in your notice about the financial obligation and how the interest rate is calculated, seem to me to be, in most cases, to be a material term. So, I would say no, this type of information should not be redacted in most instances.

Ahmed Abonamah: And in fact, the Commission in the Adopting Release noted that the interest rate, if fixed or method of computation, if variable is one of the terms that would likely be material.

Ritta McLaughlin: Do we need to file the agreements for all our past obligations?

Ahmed Abonamah: No - once an issuer executes a CDA that contains the new event notices, there is no obligation to then go back and post all preceding agreements related to financial obligations. It's only when one of the verbs of (15) and (16) happens is when a disclosure obligation is triggered. So, incurrence, agreement or event reflecting financial difficulties.

Hillary Phelps: And there must be a CDA in place that includes the new amendment. That's the starting point when thinking about this.

Ritta McLaughlin: I want to thank everybody for their time and their attention this afternoon. You should be aware that this webinar has been recorded and will be made available on msrb.org. Also, for those of you that might have also been interested in seeing the webinar broadcast from January 17th is available on msrb.org/events. You should also be aware that on the Education Center on msrb.org we've created several documents dedicated to providing information about disclosure and using EMMA to make sure that you're in compliance with the requirements, and also to be able to effectively communicate with investors. We've added a new fact sheet recently that speak to the new events disclosure requirements, you can also find those documents within the resource widget. You should also be aware that we have updated the manual to the EMMA system for submitting your disclosures. We are delighted to have everyone participate today. If you have any questions or you need support in terms of your submission process, please feel free to contact us here at the MSRB. You can reach the support line at (202) 813-1300

Ahmed Abonamah: And you can also contact us at the Office of Municipal Securities. We have a general phone line, it's area code (202) 551-5680 and we have an email account, munis@sec.gov that you feel free to call or email with any questions and the staff of the Office of Municipal Securities is happy to help.

Hillary Phelps: Also, we have our web page that we update consistently with any new information or events that are going on, so be sure to check that out as well.

Ritta McLaughlin: We want to offer many thanks and great appreciation to the SEC, to Hillary and Ahmed for their participation today, as well as to all of you that have dialled in and stayed on the line to hear the answers to the frequently asked questions related to the two new disclosure events. With that, we want to thank you again. We

would also request that you complete the questionnaire that's found in the widget at the bottom of your screen. We welcome your feedback, your calls, your emails, and your input. Thank you for your time and your attention. This concludes today's webinar. Good afternoon.

[END OF TRANSCRIPT]