

May 9, 2017

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street NE.  
Washington, DC 20549-1090

**Re: Comment Letter on Release No. 34-80130; File No. S7-01-17**

Dear Secretary Fields:

The Texas Association of School Business Officials (“TASBO”)<sup>1</sup> appreciates this opportunity to comment on proposed amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”) relating to municipal securities disclosure included in the Release noted above (the “Release”).<sup>2</sup>

TASBO is an independent, not-for-profit professional organization focused on enhancing the efficiency and effectiveness of public schools in the State of Texas through the development of highly qualified school finance and operations professionals. TASBO members represent 850 public school districts located throughout Texas. The school districts represented in TASBO include the entire spectrum of public school districts in Texas, ranging from those serving student populations of less than 100 students to some of the largest districts in the United States serving student populations in excess of 200,000 students. As is the case throughout the United States, school districts in Texas face numerous challenges in providing for the operation of high quality public schools with limited financial resources. Regulations that impose new obligations or additional costs on school districts are of a significant concern to our members, even more so when unaccompanied by reduced burdens. Dollars that are redirected to compliance with new regulations are dollars that are not being spent educating the children of Texas.

The proposed amendments would amend the list of events for which notice is to be provided to the Municipal Securities Rulemaking Board (MSRB) to include (i) 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 (ii) 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, as well as a newly defined term, “financial obligation.” (collectively, the “Proposed Events”).

---

<sup>1</sup> For more information, visit <http://www.tasbo.org>.

<sup>2</sup> SEC Release No. 34-80130; 82 Fed. Reg. 13928 (March 15, 2017).

Prior to addressing some of the specific questions posed in the Release, we offer the following general observations:

1. The Release proposes a major shift in the operation of the Rule. Since its inception, the Rule has focused on the particular securities offered in an offering and the accompanying continuing disclosure agreement. The Proposed Events shift the focus of the Rule to the general credit condition of the issuer. The scope and detail of the information contained in event notices filed pursuant to the Proposed Events would encompass information about the financial condition of the issuer that is far greater in scope and in detail than is required in a final official statement under the Rule.<sup>3</sup> The Release would appear to abandon the 1994 consensus final official statement “footprint” setting the scope of continuing disclosure without providing the opportunity to the market for discussion.<sup>4</sup>

2. The proposed event notices regarding the incurrence of and defaults and related events under financial obligations as defined in the Release effectively impose the broad reporting requirement of Form 8-K Items (i) 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant, (ii) 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement, and (iii) 3.03 Material Modifications to Rights of Securities Holders on issuers of municipal securities without the accompanying definitions and guidance provided by the associated regulations.

3. The municipal securities market is generally regulated through an after-the-fact application of materiality under the antifraud provisions. The transplant of selective line-item disclosure requirements out of the complex system of corporate integrated disclosure regulation into the municipal securities market is unlikely to produce the desired results. Because of the experience of issuers and underwriters with the overly-broad application of materiality in the 144 settled Municipalities Continuing Disclosure Cooperation (“MCDC”) initiative proceedings, “materiality” – at least in the context of Rule 15c2-12 – is unlikely serve as an effective filter for event notice filings. A lesson many took from MCDC is that safety resides in over-disclosure. In order to avoid or minimize the time and cost of assessing the necessity of an event notice, issuers will likely file complete documentation for a broad range of financial agreements, obligations, and judgments. This likely volume of disclosed information would require an investor’s extensive review and analysis to extract what significance, if any, the obligation has to issuer/obligated person’s creditworthiness or ability to pay its obligations as scheduled, making an investor’s review of the proposed disclosures the equivalent to the proverbial search for a

---

<sup>3</sup> The Commission expressly acknowledges in the Release that the Proposed Events will require periodic reporting more extensive than currently required annually. “[T]he Commission understands that to the extent information about financial obligations is disclosed and accessible to investors and other market participants, such information currently may not include certain details about the financial obligations. For example, disclosure about a financial obligation in an issuer’s or obligated person’s audited financial statements or in an official statement may be limited to the amount of the financial obligation and may not provide certain details, such as whether the financial obligation contains covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material.” 82 FR 13930.

<sup>4</sup> “Under the amendments as adopted, the financial information and operational data to be provided on an annual basis pursuant to the undertaking *will mirror the financial information and operating data contained in the final official statement* with respect to both the issuers and obligated persons that will be the subject of the ongoing disclosure, and the type of information provided (*emphasis added*).” 59 FR 59590, 59593 (Nov. 17, 1994).

needle in the haystack. If the goal of the proposed regulations is to provide quality, useful disclosure to the market, then the proposed regulations are likely to fall short by incentivizing the posting of large volumes of information of limited value to investors.

4. The Proposed Events described in the Release will place substantial burdens on school districts that are issuers of public securities, regardless of their size, and impose significant new costs. The scope of the financial obligation definition will reach numerous operating leases and other operating transactions entered into by public school districts that under state law are made payable from current revenues or made subject to annual appropriations and have little or no impact on a school district's ability to pay debt service on public securities secured by a separate unlimited ad valorem debt service tax. Additionally, items such as operating leases or energy savings performance contracts are frequently amended or modified, and each amendment would have to be reviewed under the proposed regulations. In the end, the Proposed Events may require greater disclosure by school districts than by public companies.<sup>5</sup>

In response to the proposed regulations, school districts will be required to restructure their organizations and establish review processes in order to vet the types of "financial obligations" captured under the broad definition included in the proposed regulations. Currently, it is uncommon for bond counsel, disclosure counsel or a municipal advisor to be involved in routine operational transactions such as operating leases and energy performance savings contracts. The adoption of the proposed regulations will require that school districts enter into new engagements with subject matter experts to assist them in making determinations as to (i) whether agreements constitute "financial obligations," (ii) which financial obligations are "material," (iii) which covenants, events of default, remedies, priority rights, or other similar terms affect securities holders, and (iv) what constitutes "financial difficulties" before determining whether an event notice is required and what it should report.

To be clear, the analysis of agreements and instruments captured under the definition of "financial obligations" under the proposed regulations will require subject matter experts to review the financial obligations – which they otherwise would not be engaged to review – in detail and make nuanced determinations as to materiality.<sup>6</sup> In the post-MCDC world, determinations as to whether a financial obligation and its terms are material and properly reported is difficult and time consuming. The fees paid to the subject matter experts will be new costs that are directly attributable to the proposed regulations. Additionally, such costs will likely be paid out of operating and maintenance funds of the public school district. As a result, fewer dollars will be available for the direct education of students. Every dollar spent on compliance with the proposed regulations will be a dollar that is not spent educating children.

5. Accurate measurement of the burdens imposed under the Proposed Events is essential, and the Commission should be aware of the considerable amount of time and costs that will be associated with the implementation of the proposed regulations. We call to the Commission's

---

<sup>5</sup> For example, Item 2.03(c)(4) of Form 8-K defines financial obligation as excluding short-term obligations arising in the ordinary course of business, while the Release states: "[a]s proposed, the term debt obligation is intended to capture short-term and long-term debt obligations of an issuer or obligated person." 82 FR 13937.

<sup>6</sup> The extent of this analysis is made clear by the Commission's repeated use of the phrases "could affect," "could result," and "could potentially impact" in *Overview of Proposed Amendments* under the caption III. Description of the Proposed Amendment to Rule 15c2-12 in the Release. 82 FR 1395-13937.

attention the comments of the National Association of Bond Lawyers on the Collection of Information Requirements (the “NABL OMB Letter”), in particular the belief, based upon a survey of NABL membership, that “the actual burdens are more than 100 times those estimated by the Commission.”<sup>7</sup>

6. Texas public school districts are already subject to extensive state-law-based financial transparency requirements. Section 44.008 of the Texas Education Code requires that each Texas public school district obtain an annual audit performed by a certified or public accountant holding a permit from the Texas State Board of Public Accountancy. These audits must be filed by the school district with the Texas Education Agency within 150 days of the end of the fiscal year. Annual audits provide information on the significant financial obligations of a school district along with notes to inform readers of the financial statements in accordance with generally accepted accounting principles, and they are made available to the public through an electronic library maintained on the Texas Education Agency website.<sup>8</sup> TASBO believes that the existing and well-developed process of filing annual audited financial statements provides the public with sufficient information regarding many of the district financial obligations of the type described in the Release. The imposition of separate event-based disclosure requirement for financial obligations other than the issued public securities that are the subject of a continuing disclosure agreement and the accompanying ten-business-day time period for filing such notices impose substantial burdens on issuers without corresponding benefits to market participants.

7. As the Release points out, the Commission’s authority to adopt and amend Rule 15c2-12 is based upon “the Commission’s mandate to adopt rules reasonably designed to prevent fraud in Exchange Act Sections 15B(d)(2) and 15(c)(2)”<sup>9</sup> and the Commission adopted the 1994 continuing disclosure amendments to the Rule “to deter fraud and manipulation in the municipal securities market by prohibiting the underwriting and subsequent recommendation of securities for which adequate information is not available.”<sup>10</sup> Yet while citing the five largest municipal bankruptcies to date and the current financial distress of the Commonwealth of Puerto Rico, the Release does not identify one instance of fraud in the municipal securities market precipitated by an undisclosed financial obligation.

8. As an alternative, TASBO supports voluntary disclosure of direct purchases and bank loans in furtherance of the interests of market transparency and avoidance of excessive burdens hindering fair and efficient markets.

The Release proposes addition of two events that would gather detailed financial information about the issuer having little or no direct relation to the securities being offered other than that it relates to the issuer. In other words, the focus of the events would shift to the financial condition of the issuer or obligor, and not the features of the securities being offered, a radical change from the original rule, and more akin to the requirements of corporate registrants under Form 8-K. Texas public school districts are committed to financial transparency. However, the proposed regulations offer little in the way of additional transparency while imposing significant costs on

---

<sup>7</sup> Letter of Clifford M. Gerber, President, National Association of Bond Lawyers of April 11, 2017, available at: <https://www.sec.gov/comments/s7-01-17/s70117-1698938-149892.pdf>

<sup>8</sup> For more information, visit <http://tea4avwaylon.tea.state.tx.us/audit/PDFviewer.asp>.

<sup>9</sup> 82 FR 13931.

<sup>10</sup> Id.

school districts at the expense of the children being educated. We appreciate the opportunity to comment on the proposed regulations, and we encourage the Commission to give careful consideration to our comments.

In the Release, the SEC request comments on the proposed amendments. We provide below a selection of questions posed in the order presented in the Release, followed by our response.

\* \* \* \*

*The Commission requests comment regarding all aspects of the proposed addition of subparagraph (b)(5)(i)(C)(15) concerning the event notice for the 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. When responding to the requests for comment, please explain your reasoning.*

*The Commission requests comment relating to the frequency of such event and the utility of this information by investors and other market participants in the secondary market.*

- *Is the triggering of the obligation to provide the event notice clear?*
- *Should the rule or guidance explicitly address where an issuer or obligated person incurs a series of related financial obligations, where a single incurrence may not be material but in the aggregate the incurrences would be material?*
- *In such a scenario, when should the trigger of the obligation to provide the event notice occur?*

***Response:***

No, the term “material” is not a helpful triggering event in the context of Rule 15c2-12. Given the experience of issuers and underwriters with the overly-broad application of materiality in 144 settled MCDC proceedings, the “materiality” trigger is unlikely to serve as an effective filter. A lesson that many have taken from MCDC is that safety resides in over-disclosure. With the results of MCDC fresh on the minds of issuers and underwriters and as a result of the significant new costs and time-constraints imposed by the Proposed Events, that issuers will likely result to filing complete sets of documentation related to financial obligations rather than incur attendant costs and risk associated with undertaking the review, analysis and summary of the financial obligations. Without substantial and meaningful guidance to issuers regarding determinations of materiality, the proposed regulations will not result in useful disclosure.

*Are there other events that should be included in subparagraph (b)(5)(i)(C)(15) of the Rule?*

***Response:***

No. The current definition of financial obligations is overbroad as proposed in the Release. TASBO has significant concerns regarding the inclusion of operating obligations and monetary obligations resulting from judicial, administrative or arbitration proceedings in the definition of financial obligations as well as the expansion of the Rule to the general credit condition of the issuer.

*Should any of the events proposed to be included be eliminated or modified?*

***Response:***

Yes. Subparagraph (b)(5)(i)(C)(15) is unnecessary and should be abandoned. School districts already disclose the information proposed in this amendment as part of their annual audits to the extent required by accounting standards and state law. The proposed regulations impose significant burdens on issuers, without corresponding benefits to market participants. If meaningful disclosure is the goal, then perhaps the focus should be on enhancing access to available information through improvements to EMMA and other publicly available sources.

*The Commission further requests comment as to whether the materiality conditions are appropriate conditions for subparagraph (b)(5)(i)(C)(15) of the Rule.*

***Response:***

As noted above, given recent experience with the overly-broad application of materiality in the 144 settled MCDC proceedings, “materiality” is unlikely to serve as an effective filter.

*Should any or all of the items included in the proposed rule text not be subject to the proposed materiality condition?*

***Response:***

The proposed subparagraph (b)(5)(i)(c)(15) should be eliminated or significantly narrowed. As drafted, the proposed rule text would likely result in the filing of enormous amounts of information that is of limited value to market participants. In other words, the current concept would impose significant new costs on issuers without corresponding benefits to market participants.

*Are there any events that should be added to subparagraph (b)(5)(i)(C)(15) of the Rule, but should not be subject to a materiality condition?*

***Response:***

No.

*Should the Commission provide additional guidance on the types of information issuers and obligated persons should consider in drafting event notices?*

***Response:***

Yes. As noted above, we believe substantial guidance would be required in order to produce meaningful filings. The Commission last provided disclosure guidance to issuers of municipal securities in March 1994 through its Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, 59 FR 12748 (March 17, 1994), eight months prior to adding the continuing disclosure provisions to the Rule.

*The Commission also requests comment regarding the benefits and costs of adding this proposed event.*

***Response:***

The Proposed Events described in the Release will place substantial burdens on school districts that are issuers of public securities, regardless of their size, and impose significant new costs. Accurate measurement of the burdens imposed under the Proposed Events is essential, and the Commission should be aware of the sizable amount of time and costs that will be associated with the implementation of the proposed regulations. The estimates included in the Release understate the significant amount of time and costs associated with compliance.

The scope of the financial obligation definition will reach numerous operating leases and other operating transactions entered into by public school districts. School districts will be required to restructure their organizations and establish review processes in order to vet these types of financial obligations under the proposed regulations. Currently, it is uncommon for bond counsel, disclosure counsel or a municipal advisor to be involved in these routine operational transactions. The adoption of the proposed regulations will require that school districts enter into new engagements with subject matter experts to assist them in consideration as to (i) whether agreements constitute “financial obligations,” (ii) which financial obligations are “material,” and (iii) which covenants, events of default, remedies, priority rights, or other similar terms affect securities holders before determining whether an event notice is required and what it should report.

The analysis of financial obligations under the proposed regulations will require the subject matter experts to review the financial obligations – which they would not otherwise be engaged to review – in detail and make nuanced determinations as to materiality. The fees paid to these subject matter experts will be new costs that are directly attributable to the proposed regulations. Additionally, such costs will likely be paid out of operating and maintenance funds of the school district. As a result, fewer dollars will be available for the direct education of students.

TASBO believes that the Commission has substantially underestimated the costs associated with the implementation of the proposed regulations and that the costs of compliance will far outweigh the benefits conferred to market participants.

*The Commission requests comment regarding all aspects of the proposed definition of financial obligation.*

- *Are there any more appropriate alternative definitions? For example, would it be more appropriate to include a definition that does not identify each type of financial obligation?*
- *Should each type of financial obligation included in the proposed definition be defined? Or is there an existing definition of financial obligation that the Commission could instead use?*
- *Are there any financial obligations that would not be covered in the proposed definition that should be?*
- *Should other contracts that create future payment obligations (e.g., a contract for waste disposal services) be included in the proposed definition?*
- *Should any of the terms included in the definition be modified? Should any terms be added to the definition to achieve the stated goal?*

***Response:***

The concepts expressed in subparagraph (b)(5)(i)(C)(15) should be abandoned. As an alternative, TASBO supports voluntary disclosure of direct purchases and bank loans in furtherance of the interests of market transparency and avoidance of excessive burdens hindering fair and efficient markets.

*Comment is also requested on whether including a definition in the Rule is necessary.*

***Response:***

To the extent the concepts expressed in subparagraph (b)(5)(i)(C)(15) are retained as part of the final rule, a definition of financial obligations would be helpful in establishing parameters for the information that would have to be disclosed.

*The Commission requests comment regarding all aspects of the proposed addition of subparagraph (b)(5)(i)(C)(16) concerning the event notice for an occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.*

- *Are there additional events that should be specified in the rule text?*
- *Is “other similar event” broad enough to capture all events that upon their occurrence may reflect that an issuer or obligated person is in financial difficulty?*
- *Are there events included in the proposed rule text that should be omitted?*

***Response:***

Given the overly broad definition of financial obligations in the proposed regulations, proposed subparagraph (b)(5)(i)(C)(16) has the potential to impose significant costs on school districts. School districts frequently amend the types of operating agreements and leases that are captured by the proposed definition of financial obligation.

TASBO is concerned about shift the in the focus of the Rule away from public securities issued by issuers to issues related to general credit quality. The scope and detail of the information contained in event notices filed pursuant to the Proposed Events would encompass information about the financial condition of the issuer that is far greater in scope and in detail that is required in a final official statement under the Rule. The concepts expressed in subparagraph (b)(5)(i)(C)(16) should be abandoned as they would provide minimal – if any – benefit to municipal market participants while imposing significant costs on issuers.

*In addition, commenters should address the benefits and costs of this aspect of the proposed amendments.*

***Response:***

As stated above, the proposed event would impose significant new costs on Texas public school districts. The scope of the financial obligation definition will reach numerous operating leases and other operating transactions entered into by public school districts. School districts will be required to restructure their organizations and establish review processes in order to vet these types of operating transactions under the proposed regulations. Currently, it is uncommon for bond counsel, disclosure counsel or a municipal advisor to be involved in these routine financial obligations. The adoption of the proposed regulations will require that school districts enter into new engagements with subject matter experts to assist them in consideration as to (i) whether agreements constitute “financial obligations,” (ii) which financial obligations are “material,” (iii) which covenants, events of default, remedies, priority rights, or other similar terms affect securities holders, and (iv) what constitutes a “financial difficulty” before determining whether an event notice is required and what it should report.

The analysis of financial obligations under the proposed regulations will require the subject matter experts to review the financial obligations – which they would not otherwise be engaged to review – in detail and make nuanced determinations as to materiality. The fees paid to these subject matter experts will be new costs that are directly attributable to the proposed regulations. Additionally, such costs will likely be paid out of operating and maintenance funds of the school district. As a result, fewer dollars will be available for the direct education of students.

TASBO believe that the Commission has substantially underestimated the costs associated with the implementation of the proposed regulations, and that the costs of compliance will far outweigh the benefits conferred to market participants. In addition, we call to the Commission’s attention the NABL OMB Letter, in particular the belief, based upon a survey of NABL membership, that “the actual burdens are more than 100 times those estimated by the Commission.”

\* \* \* \*

TASBO sincerely appreciates the opportunity to provide comments and your consideration of these views. We stand ready to provide any additional information or assistance that the SEC might find useful. Please do not hesitate to contact me at [REDACTED] with any questions.

Sincerely,

A handwritten signature in black ink that reads "Tracy Ginsburg". The signature is written in a cursive, flowing style.

Tracy Ginsburg, Ed.D.  
Executive Director  
Texas Association of School Business Officials

Cc: Representative Jeb Hensarling  
6510 Abrams Road  
Suite 243  
Dallas, TX 75231