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May 16, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Amendments to Exchange Act Rule 15c2-12 (File No. S7-01-17)

Dear Mr. Fields:

Digital Assurance Certification, LLC (“DAC”) is pleased to respond to the request by the U.S. Securities and Exchange Commission (the “SEC”) for comments on proposed amendments to its Rule 15c2-12 that would add two new event disclosures to be provided by issuers and obligated persons to the Electronic Municipal Market Access (“EMMA”) under their continuing disclosure agreements. The SEC states that the proposed amendments would enhance transparency in the municipal securities market and improve investor protection by facilitating timely access by investors and other market participants to disclosures about certain financial obligations incurred by issuers and obligated persons, including but not limited to bank loans and direct sales of municipal securities, that are not generally available to the marketplace.

DAC has over 15 years of experience as a leading provider of disclosure and information dissemination services to the municipal market based on the premise that the municipal market deserves accurate and timely disclosure at no cost to investors. As a reliable information bridge from issuers and obligated persons to the marketplace, DAC’s system provides a database of issuer and obligated person continuing disclosure materials that, for bond issues designated as DAC Bonds, has been recognized for assisting broker-dealers in fulfilling their regulatory obligations under Rule 15c2-12(c).¹ DAC serves as disclosure dissemination agent for thousands of issuer and obligated person filings, and in that capacity is one of the most active submitters of continuing disclosure documents to EMMA through numerous filings made every business day of the year. DAC also provides review services to issuers, obligated persons and underwriters in connection with issuer and obligated person compliance with their existing continuing disclosure undertakings.

DAC supports the SEC’s goal of improving public access to information about bank loans and direct sales that may materially impact the interests of bondholders. However, unless the SEC’s proposal is more sharply targeted, DAC is concerned that the proposal as currently structured would not effectively achieve its stated purpose, would create significant new burdens for issuers, obligated persons and underwriters, and would result in a flow of highly unstructured information into the marketplace that would make it extremely difficult for investors to

¹ Digital Assurance Certification, L.L.C., SEC No-Action Letter (pub. avail. Sept. 21, 2001).

efficiently identify and assess the items of information that would be relevant to such investors' specific interests in their bond holdings. The observations described below are being provided in the context of communications by DAC with its many issuer and obligated person clients about the potential effects of the proposal in light of their day-to-day activities.

Summary of Proposal

The SEC has proposed two new categories of information about "financial obligations" for which an event notice would be required under Rule 15c2-12:

- the incurrence of a financial obligation, if material, or an agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect bondholders, if material (an "incurrence notice")
- a default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a financial obligation, any of which reflects financial difficulties (an "adverse event notice")

Like existing event notices under Rule 15c2-12, issuers and obligated persons would be required to file an incurrence notice or adverse event notice with the EMMA system within ten business days of occurrence of any such event.

The scope of financial obligations covered by the proposed amendments is not limited to bank loans and direct sales about which market participants have expressed concerns. Rather, the amendments would define "financial obligation" more broadly to mean a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. Financial obligation would exclude any bond issues for which the official statement has been provided to the MSRB consistent with Rule 15c2-12.

Financial Obligations

DAC believes that the scope of financial obligations covered by the proposed amendments should be considerably more focused, in light of the discussion below regarding specific aspects of the proposed rule and the burden on issuers, obligated persons and underwriters. Thus, the SEC may wish to limit the definition to bank loans and direct sales as a first step to broadening disclosures in this area as the marketplace adjusts to a broader reach of disclosures. If the SEC continues to seek to have a broader scope than just bank loans and direct sales, DAC makes the following suggestions.

Objective Standards for Financial Obligations. The SEC should use the existing objective standards included in current Rule 15c2-12 for identifying bond offerings subject to the rule to also assist in identifying which financial obligations would be covered. Thus, just as bond offerings under \$1 million dollars are not subject to Rule 15c2-12, so to financial obligations under \$1 million dollars should not be subject to disclosure under the proposed amendments. Similarly, a financial obligation with a term of nine months or less should be excluded from the rule. By extending these existing standards to financial obligations, the proposed amendments

would sharply reduce, although not eliminate, the significant burden of making rapid materiality and “financial difficulties” determinations that would be required under the proposal in a manner wholly consistent with Rule 15c2-12.

Use of GAAP Standards in Identifying Financial Obligations. The SEC also should consider permitting issuers and obligated persons to use GAAP standards in determining what obligations would be required to be disclosed as financial obligations. This would allow for the application of consistent standards that are better understood by finance staff of issuers and obligated persons, and also would promote greater consistency between what is disclosed as a result of the proposed amendments and what ultimately is included in the entity’s audited financial statements.

Bond Offerings Exempt from Rule 15c2-12. The SEC should limit the extent to which financial obligations would include municipal bond offerings that are otherwise exempt from Rule 15c2-12. As currently drafted, the proposed amendments would in effect partially revoke the current exemptions in Rule 15c2-12, making offerings not now subject to the official statement provisions of the rule instead subject to the proposed incurrence notice requirement and offerings not now subject to the continuing disclosure provisions of the rule instead subject to the proposed adverse event notice requirement. Thus, consistent with the modifications suggested above to extend the rule’s existing objective standards for covered municipal bond offerings to also apply to financial obligations, the rule also should explicitly exempt from the definition, at a minimum, offerings of municipal securities currently exempted under section (a) and section (d)(1)(ii) of Rule 15c2-12.²

Bond Offerings With Official Statements Filed on EMMA. The proposed definition of financial obligation excludes municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12. As drafted, this exclusion raises two concerns that the SEC should address. Under Rule 15c2-12 and MSRB Rule G-32, filings of official statements to EMMA are done by underwriters, not issuers or obligated persons. This exclusion should not penalize the issuer or obligated person if an underwriter fails to meet its regulatory obligation to file an official statement with EMMA. Thus, the SEC should explicitly provide that a municipal bond offering for which an official statement is required under Rule 15c2-12 is excluded from the definition of financial obligation, regardless of whether the underwriter has met its obligation to file the official statement with EMMA. Further, the proposal should recognize that official statements are filed with EMMA by underwriters under MSRB Rule G-32 for many issues exempt from Rule 15c2-12, generally consisting of offerings where the issuer or obligated person has prepared an official statement notwithstanding an exemption from Rule 15c2-12. At a minimum, such filing of an official statement for an exempt bond offering should exempt an issuer or obligated person from having to provide an incurrence notice under the proposed amendments. Furthermore, to the extent the SEC retains a requirement for adverse event notices with respect to such exempt bond offerings, the rule should permit an issuer or obligated person to fulfill such requirement by filing adverse event notices on EMMA

² The SEC also should consider whether it intends to include in the definition of financial obligation offerings of municipal securities currently exempted under section (d)(1)(i) or sections (d)(2) through (d)(5) of Rule 15c2-12. If so, the SEC should make such applicability explicit and should provide an explicit statement of its reasons for doing so in order to promote more effective compliance with such requirement.

as continuing disclosures for such exempt bond offerings, rather than as continuing disclosures to other non-exempt bond offerings of the issuer or obligated person. This would retain the current construct for continuing disclosures.

Judicial/Administrative/Arbitration Monetary Obligations. The SEC should exclude monetary obligations resulting from judicial, administrative or arbitration proceedings from the definition of financial obligation. Such monetary obligations are of a fundamentally different character than the other categories included within this definition and therefore are ill-suited to being subject to the same set of regulatory language and materiality/financial difficulties determinations. To the extent the SEC believes that such monetary obligations should be subject to disclosure requirements under Rule 15c2-12, the SEC should pursue such requirements under a separate rulemaking process that focuses specifically on the appropriate thresholds and related provisions that make sense for such obligations. As currently proposed, for example, payments owed by an issuer or obligated person under a non-financial contract (that is, not falling within one of the other categories of financial obligations) would not be considered a financial obligation. However, if a dispute arises under the contract resulting in a judicial, administrative or arbitration judgment, decision or settlement that includes a payment obligation (even if in a lesser amount than the contract payment amount), such monetary obligation would be transformed into a financial obligation under the proposal. DAC believes that this aspect is best omitted from the current proposal and be considered further before becoming a required disclosure under the rule.

Incurrence Notice

The proposed amendments to Rule 15c2-12 would require the submission of an incurrence notice within 10 business days after incurrence of financial obligations. The incurrence notice would be expected to include a description of the material terms of the financial obligation, such as the date of incurrence, principal amount, maturity and amortization, interest rate, if fixed, or method of computation, if variable (and any default rates). The SEC states that other terms may be appropriate as well, depending on the circumstances. The incurrence notice also would be expected to include specific key terms identified in the proposal, such as covenants, events of default, remedies, priority rights or other similar terms of a financial obligation (such as provisions creating liquidity, credit or refinancing risks that could affect the liquidity and creditworthiness of an issuer or obligated person or the terms of the securities they issue), if any of these terms affect bondholders and if they are material. Examples provided by the SEC in its proposal suggest that the types of terms the SEC is seeking to have disclosed are those that effectively provide superior rights to parties to financial obligations as compared to holders of the issuer's or obligated person's bond offerings subject to Rule 15c2-12.

DAC notes that the terms that are expected to be disclosed with respect to the incurrence of a financial obligation appear to be more prescriptive than the terms that are required to be included in an official statement pursuant to the existing definition of final official statement in Rule 15c2-12(f)(3). In some cases, the effect of this imbalance may be that the SEC would be requiring more exacting information regarding the relative impact of a financial obligation on the holders of a particular issue of municipal securities than is currently available with respect to the

relative impact of other municipal bond offerings subject to Rule 15c2-12 on those same bondholders.

Adverse Event Notice

The proposed amendments to Rule 15c2-12 also would require the submission of an adverse event notice whenever a default, event of acceleration, termination event, modification of terms or other similar event under the terms of a financial obligation occurs, if such event reflects financial difficulties. The SEC states that such notice generally should include a description of the event and the consequences of the event, if any. While this provision does not have a materiality standard, the event must reflect financial difficulties; thus, it is conceivable that an event that itself is not material could nonetheless reflect financial difficulties and therefore be required to be disclosed. Further, the SEC's illustration of this provision in its proposal indicates that the triggering of contractual terms other than those enumerated in the rule language could give rise to an adverse event notice if the occurrence of such trigger reflects financial difficulties, even if the parties continue to operate under the terms of the contract as anticipated therein.

DAC believes that the SEC should limit the reach of adverse event notices. First, modification of terms should be limited to modifications of material terms. Second, defaults should be limited to declared events of default, as defaults that are cured during contractually permitted cure periods should not require an adverse event notification. Third, the SEC should remove the catch-all phrase "or other similar event," or should clarify that such other similar events must be effectively the same as the other events listed in this provision, rather than serving as an open-ended set of potential triggering events.

Burden on Issuers and Obligated Persons

By defining the scope of financial obligations to cover obligations well beyond bank loans and direct sales, and by requiring disclosure of a broad array of events relating to such financial obligations, the proposal would potentially require issuers and obligated persons to identify, summarize, disclose, track and analyze, within tight timeframes, the incurrence and performance of a far broader range of activities of a financial nature than they are currently organized to do within the construct of Rule 15c2-12. Some categories of financial obligations may be handled by a diverse set of personnel in operational areas of the issuer or obligated person that are far removed from their typical bond program personnel, such as with respect to many leases, some non-financial derivatives and many monetary obligations arising from judicial, administrative or arbitration proceedings. Whether a particular financial obligation becomes subject to disclosure requirements is dependent on an obligation-by-obligation judgment call as to materiality at the time of incurrence, and an event-by-event judgment call as to whether an event related to a financial obligation reflects financial difficulties at the time of such event. In addition to covering a potentially far larger number of obligations and events than under the current requirements of Rule 15c2-12, the proposal makes identifying such obligations and events far more difficult than the offerings and events currently required to be disclosed under the rule. Because these disclosures are event notices, disclosable information must be identified on an on-going "as it happens" basis, rather than as a periodic activity, and the

information must be routed, assessed, summarized and filed with EMMA within ten business days of occurrence. The added compliance burden for issuers and obligated persons may be considerable, and may vary considerably from entity to entity given their vast diversity as to size, sophistication, breadth of activities, and organizational structure, much of which is dictated by state or local law.

Even with the changes outlined herein, the burden for issuers and obligated persons resulting from the proposed amendments should not be underestimated.

Burden on Underwriters

Underwriters also would be challenged by the new disclosure requirements. In connection with their review of statements made in official statements regarding issuers' and obligated persons' past compliance with their continuing disclosure undertakings, the breadth of the definition of financial obligation and the nature of and trigger for adverse event notices would raise the bar on what underwriters would need to consider in establishing their reasonable basis for believing that any instances of material non-compliance with these new obligations have been properly disclosed. While the obligation to identify financial obligations, to assess the materiality of such financial obligations, to identify relevant contract terms of financial obligations that materially affect security holders, to become aware of the occurrence of potential adverse events, and to assess whether such events reflect financial difficulties all lie with the issuer or obligated person in the first instance, the differing nature of financial obligations from traditional municipal bond offerings may result in new external sources of information serving to raise "red flags" suggesting further inquiry of the issuer or obligated person.³

We appreciate the opportunity the SEC has provided us to share our thoughts on these important issues.

Very truly yours,



Paula Stuart,
Chief Executive Officer
Digital Assurance Certification, LLC

³ In addition, underwriters seeking to confirm official statement disclosures regarding continuing disclosure compliance, as well as other users of continuing disclosure, would be confronted with accessing and assessing an increasingly complex set of continue disclosure filings that would now include interrelated incurrence and adverse event notices not linked to each other but instead indexed to prior bond issues.