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September 11, 2009

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: Release No. 34-60332 (the “Release”); File Number S7-15-09  
Proposed Amendment to Municipal Securities Disclosure**

Dear Ms. Murphy:

Fidelity Investments<sup>1</sup> (“Fidelity”) manages over \$90 billion in municipal bond and municipal money market mutual fund assets and has a strong interest in efforts to improve disclosure in the municipal market. We appreciate the opportunity to comment on proposed amendments to Rule 15c2-12 (the “Rule”) under the Securities Exchange Act of 1934 as set forth in the Release issued by the Securities and Exchange Commission.<sup>2</sup> Fidelity recognizes the significant effort by the SEC staff in preparing the Release and we applaud the Commission for addressing the need to improve municipal disclosure.

The current disclosure regime for municipal issuers often results in inadequate, inconsistent and late disclosure to the market. This, in turn, not only compromises the ability of investors to assess, monitor and compare credit quality of securities and issuers, but also increases the possibility of fraudulent, deceptive or manipulative acts or practices.

The municipal securities market has experienced dramatic transformation in the past few years. The decline of the “monoline” insurers, the troubles experienced by many municipal issuers with financial products (such as adjustable rate debt and interest rate swaps) and the expanding investor base for municipal securities, all point to the need for more complete disclosure by municipal issuers. Moreover, municipal issuers are in the midst of an unprecedented credit environment characterized by a variety of financial challenges. In consideration of these challenges facing the municipal securities market, we believe that the need for timely and robust dissemination of information by municipal issuers is as important as ever.

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<sup>1</sup> Fidelity Investments, the largest mutual fund company in the United States, is also a diversified financial services company that includes several registered investment advisers, registered broker-dealers, including a retail broker-dealer and a clearing firm, registered transfer agents, and a retirement plan services administrator.

<sup>2</sup> Proposed Amendment to Municipal Securities Disclosure, 74 Fed. Reg. 36832 (July 24, 2009).

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Fidelity supports the Commission's proposals in the Release. In particular, we agree with the comments supporting the Release made by the Investment Company Institute in their comment letter dated September 8, 2009 (the "ICI Comment Letter"). In addition, we agree with the recommendations made in the ICI Comment Letter to further improve the proposed changes to the Rule. In this letter, we also suggest several additional changes to the Rule.

## **I. Comments on the Release**

### ***A. Endorsement of ICI Comment Letter***

Fidelity supports the comments to the Release offered by the ICI. We participated in the preparation of the ICI Comment Letter, which we believe correctly states the need for improved disclosure, the merits of the proposed changes, as well as useful suggestions for additional improvements, including urging the Commission to seek repeal of the Tower Amendment.<sup>3</sup>

### ***B. Revision to Description of Certain Trigger Events***

We recommend revising the description of several material event notices as follows:

#### **1. Delete "reflecting financial difficulties" from unscheduled draws on debt service reserves and credit enhancement**

An unscheduled draw on debt service reserves or credit enhancements should be considered a presumptive indication that a borrower is experiencing financial difficulties. By the very nature of the draw as "unscheduled," the event should be flagged for investors whether or not the issuer considers itself in financial distress. Investors should be made aware of any such occurrences as soon as possible to re-evaluate the investment. Therefore, Fidelity recommends that the phrase "reflecting financial difficulties" be deleted from paragraphs (b)(5)(i)(C)(3) and (4).

#### **2. Delete "ordinary course" and "material" qualifiers for the proposed new event notice on mergers, consolidation and sale of assets**

Fidelity supports the Commission's proposed addition of a reporting event relating to the merger, consolidation, acquisition or sale of an entity or all (or substantially all) of its assets.<sup>4</sup> However, these types of transactions are rarely, if ever, in the "ordinary course of business" or immaterial. Therefore, Fidelity recommends that the new language be restated to omit the "ordinary course" and materiality qualifiers.

<sup>3</sup> See 15 U.S.C. 78o-4(d)(1) and (2).

<sup>4</sup> Proposed Amendment to Municipal Securities Disclosure, 74 Fed. Reg. at 36842.

3. Delete “material” qualifier from proposed new event notice on appointment of successor or additional trustee

Fidelity supports the inclusion of a reporting event if there is a change to or addition of a trustee, or a trustee name change.<sup>5</sup> We do not think the words “if material” should be included in the new language, however, as we believe such a change is always material. It is critical that investors are informed of such changes since their rights are generally exercised through the actions of the trustee. Moreover, the accurate identification of the trustee is necessary for investors to contact the trustee in connection with their rights as security holders.

***C. Inclusion of Additional Reporting Event -- Restatement of Audits***

Fidelity recommends including an additional reporting event to the Rule for the restatement of an audit by an issuer or obligated person. We believe that restatement of an audit by a borrower is often a sign of financial stress and is always a piece of information of consequence to investors. This information ought to be provided to the market in all cases.

***D. Demand Securities***

We agree with the elimination of the reporting exemptions of paragraph (b)(5)(i) and (c) of the Rule for certain demand securities.<sup>6</sup> However, as drafted in the Release,<sup>7</sup> the exemption would still apply to an issuer of demand securities with respect to paragraphs (a) and (b)(1) through (b)(4) of the Rule. This would allow underwriters to forego receipt of a final official statement in connection with an offering of demand securities, thereby hampering dissemination of relevant information to the municipal securities market. Fidelity recommends that no exemption should be available to issuers of demand securities.

***E. Time Period for Submitting Event Notices and Required Disclosure***

Fidelity concurs with the ICI in support of the Commission’s adoption of a definitive time period within which event notices must be filed, and recommends that the time frame be shortened to five business days.<sup>8</sup>

We urge the Commission to establish a similar definitive time period within which the delivery of required ongoing financial information must be provided. The Rule currently provides that the required ongoing financial information must be disclosed in a “timely manner” by issuers. This imprecise timeframe allows issuers to file annual financial statements nine months or longer after the end of their fiscal year end, in some cases. For the same reasons the SEC has proposed number of days within which event notices must be filed, we think it also

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<sup>5</sup> Id.

<sup>6</sup> Id. at 36835.

<sup>7</sup> Id. at 36868.

<sup>8</sup> Id. at 36837.

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makes sense to specify the number of months within which annual financial statements must be disclosed. Fidelity suggests that these concerns would be appropriately addressed by including the following language at the end of subparagraph (b)(5)(i)(B) of the Rule:

“, which audited financial statements shall be delivered no later than six months after the most recent fiscal year end of such person.”

We note that subparagraphs (b)(5)(i)(D) and (b)(5)(ii)(C) should incorporate the above changes by cross-reference.

## **II. Additional Recommendations**

### ***A. Conduit Issuers and Non-Municipal Obligors***

It is common in the municipal securities market for corporate or non-profit obligors to issue bonds through conduit municipal agencies to obtain the benefits of tax-exempt financing. As currently drafted, paragraph (b)(5)(i) requires an underwriter to obtain a continuing disclosure agreement from “an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement.” (Emphasis added.) The use of the word “or” has led to confusion about whether an underwriter has satisfied its obligations under the Rule if it procures a continuing disclosure agreement from a conduit issuer. In conduit transactions, investors base investment decisions on the credit analysis of the underlying obligor, not the conduit issuer. Therefore, we encourage the Commission to revise the Rule by deleting the phrase “an issuer of municipal securities, or.” This change would reflect that the reporting requirements of a continuing disclosure agreement are intended to apply to persons that are ultimately responsible for payment obligations (in accordance with the definition of “obligated person”) and for whom financial or operating data has been presented in the final official statement, and are not intended to encompass conduit issuers. Fidelity believes that including this change will clarify the ongoing disclosure expectations for obligors, conduit issuers and investors alike.

### ***B. Binding upon Successors***

Fidelity recommends that the Rule provide for every continuing disclosure agreement to include language that expressly states that if the obligations of a borrower are transferred, assigned or otherwise assumed by another party, that such successor party shall be bound by the terms of the continuing disclosure agreement. This change would prevent the unintended consequence of an informational vacuum for a municipal security in the event a borrower is succeeded in interest.

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**C. Implementation of Changes**

To ensure that the municipal securities market enjoys the benefit of the proposed changes as quickly and consistently as practicable, Fidelity recommends that the Rule require that each continuing disclosure agreement entered into after the effective date amends, by its terms, all prior continuing disclosure agreements of that issuer to incorporate the new requirements of the revised Rule.

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We would like to thank the Commission for considering our comments. Please contact me should you have any questions regarding this letter.

Sincerely yours,



Scott C. Goebel

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner