



**Government Finance Officers Association**

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September 24, 2009

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington D.C. 20549-1090

**RE: SEC Release No. 34-60332 - File No. S7-15-09**

Dear Ms. Murphy:

The Government Finance Officers Association (GFOA) is the professional association of state, provincial and local finance officers in the United States and Canada. The GFOA has served the public finance profession since 1906 and continues to provide leadership to government finance professionals through research, education and the identification and promotion of best practices. Our more than 18,000 members are dedicated to the sound management of government financial resources. We appreciate the opportunity to comment on the proposed changes to SEC Rule 15c2-12 (the Rule).

The GFOA has a long history of encouraging transparency in the municipal marketplace and urging our members to disclose material events to investors. Accordingly, the GFOA supports the SEC's recent initiatives to ensure that municipal securities information is available to investors. However, the SEC should be aware of the considerable amount of time and costs associated with adopting multiple changes to Rule 15c2-12, as they would be burdensome to issuers and ultimately costly to taxpayers.

"Maintaining an Investor Relations Program" (attached) is one of many documents on disclosure issues that the GFOA has published for its members and the issuer community. This best practice encourages members to look beyond the requirements of Rule 15c2-12 and develop and coordinate a program to disseminate information that is valuable to investors and the public. Of note, the practice calls for governments to create a program that should:

*Identify and select information, both positive and negative, to be made available to investors, including material events, changes in financial or operating position, and changes in government policies. Documents that could be a source of such information include:*

- *Annual budgets, financial plans or comprehensive annual financial reports,*
- *Materials sent to governing bodies for council or board meetings, and*
- *Ordinances or resolutions adopted by a governing body.*

While we support proactive investor relation policies, we believe that a number of the proposed changes to Rule 15c2-12 would be both unnecessary and difficult for issuers to adopt. While each new event or trigger may not be onerous, the SEC has significantly underestimated the estimated time needed by issuers to prepare documents and comply with the requirements collectively. Numbers noted in the regulation are not accurate and do not reflect the amount of time and costs associated with 15c2-12 compliance. This is true for both small governments that do not have staff dedicated solely to debt

management issues and large governments that are in the market frequently and have extensive disclosure requirements. Furthermore, if the proposed changes are finalized, the additional obligations of Rule 15c2-12 will require governments to engage bond counsel more frequently to prepare documents.

One of the most important changes that the SEC could make to the Rule would be to require the rating agencies to provide rating information for all municipal securities directly to EMMA (Electronic Municipal Market Access system). Rating information is crucial to the decision making of most investors, and the fastest way to get that information to them is to send it to EMMA directly. As we will comment specifically below, unless the issuer's credit is downgraded due to factors directly related to the governmental entity, a bond downgrade may occur for reasons that an issuer may not be aware of, or certainly may not be aware of at the time it has occurred. Therefore, the easiest and best way for investors to be served without confusion is to have the rating agencies provide the information themselves.

As we identify below, we oppose the removal of a "materiality standard" for certain events to be reported. While we acknowledge that it is obvious for some information to be provided to the marketplace (e.g., a bankruptcy filing), some of the other proposed requirements are not as clear-cut and should have a materiality standard associated with them. Creating a "one size fits all" platform for events to be reported may not be as beneficial to the marketplace and instead could create greater confusion. Again, while GFOA and other state and local governments promote transparency in the market and ensure that investors have appropriate information about municipal securities, we believe that keeping the "materiality" threshold for some events within the Rule is extremely important.

Finally, we strongly suggest that the SEC thoroughly review the comments submitted by the National Association of Bond Lawyers (NABL). Their comments, especially on the technical details pertaining to changes in Rule 15c2-12, are comprehensive and are of great value to this discussion.

Below are GFOA's comments on specific proposals within SEC Release No. 34-60332:

#### Withdrawing the application of SEC Rule 15c2-12 to Variable Rate Demand Obligations (VRDO)

If the proposed rules were to impose Rule 15c2-12 continuing disclosure requirements on VRDOs, and if such requirements were limited to material event notices, we do not oppose such action. However, we do have serious concerns with the proposal if its intention is to include disclosure of information either in the official statement or on a continuing basis regarding the underlying obligor. We strongly suggest that the SEC review NABL's thorough comments on these points. If it is the SEC's intention to have issuers disclose information about the underlying obligor, the SEC should be very aware of the significant burdens on issuers, in both preparation of the Official Statement and the need to monitor and submit information of which issuers may not have first hand knowledge.

Finally, the SEC should recognize that the problems in the VRDO market over the past 18 months have been caused by the credit enhancement and liquidity provider communities, not state and local governments. While VRDO disclosure proposals may be appropriate, these changes would not address the problems that have occurred in this market.

#### Ten Days for Issuer to Report Material Events to EMMA

We disagree with the SEC that there is systemic abuse with material events not being filed in a timely manner and call upon the SEC to not mandate a specific time frame for submissions. We would caution the SEC from trying to create a uniform standard for various events that for many reasons are very different from each other. Issuers submit material event notices upon learning of the event and completing the internal processes for submission. Depending on the government, the party responsible

for working with counsel and determining the need for more technical submissions could be out of the office for a period of time, and that could cause a violation of the terms proposed by the SEC. Furthermore, issuers may not be aware within the set timeframe that an event has occurred, as some events are outside of the issuer's control. We strongly encourage the SEC to revisit their proposal and withdraw the requirement for material events to be disclosed within 10 business days.

We do not support having the current timing language changed from "in a timely manner" to "10 business days" and strongly suggest in the alternative that the SEC consider modifying the language in three ways:

1. Change the wording to "issuers should disclose material events in a timely manner which in a normal course of business would be 10 business days."
2. Allow the 10 business days to be from the time the issuer learned of the event, not the event itself. If that change is not made, then 30 calendar days would be necessary in order to achieve compliance with this provision.
3. Ensure that in areas where the issuer does not control the information (e.g., rating change due to rating change of credit enhancer), the issuer should not be responsible for submitting the information.

We also strongly suggest a fourth recommendation that the SEC have rating agencies directly submit rating changes to EMMA.

#### Reporting of Rating Changes

As we commented above, the most significant issue to investors looking at municipal securities is the bond's rating. We think the best way to ensure an investor's awareness of a rating and the fastest way to have rating changes posted at EMMA would be to have the rating agencies and the MSRB create a portal for the agencies to submit ratings and rating changes directly into EMMA. Although monitoring this system would be necessary to ensure that the rating change is associated with the correct CUSIP number, it would be far more efficient for issuers and investors alike.

While submitting rating changes appears to be a straightforward process, it is not. This is one area where a 10-day submission timeframe should be recommended but not mandated. As Frank Hoadley, Chairman of the GFOA's Governmental Debt Management Committee, pointed out in his Feb. 20, 2008 letter to the SEC, if a bond issue is downgraded due solely to a downgrade of an insurer or other credit enhancer that itself has been downgraded, there is a question as to whether or not the government is responsible for providing that information as the rating of the underlying issue has not changed. Additionally, the rating agencies did not provide issuers with letters telling them that their issue had been downgraded, particularly in the cases of mass downgrades due to the downgrades of credit enhancers or liquidity providers. Without such official notice, some issuers were – and are – reluctant to file this information with a NRMSIR, now EMMA. Furthermore, even if it is an issuer's responsibility to submit such a filing, an issuer may not be aware of the credit enhancer's downgrade, and without an official notice, would certainly be unable to submit this information within 10 days of the event.

There is another area where the responsible party for the downgrade – the credit enhancer – should be the party responsible for submitting information to EMMA. As Mr. Hoadley pointed out, the SEC also should consider that some bond issues are insured in the secondary market – not by the issuer, but by the underwriter – and therefore the issuer may have no knowledge that the bond issue is susceptible to a downgrade because of a downgrade in the credit enhancer. Under the proposed rule, the issuer would still be the party responsible for submitting the notice, and the issuer would not be unable to do so, especially within a 10-day time frame. This is also true when an underwriter "packages" a municipal security in the secondary market, which is not known to the issuer, but where the issuer's six-digit base CUSIP number is associated with the security. Again, the issuer is likely unaware that the underwriter has a new nine-digit CUSIP number for a product created in the secondary market, yet due to the same

six-digit CUSIP number base, it – in reference to the proposed rules – is still responsible for the monitoring of this security.

All of this is to illustrate that in the example of rating changes, there are many reasons why a security's rating may change, with many different parties responsible for the rating change. It is not as straightforward as presented in the proposed rule, or as anyone would like. To reiterate, we therefore suggest that the simplest and quickest way for the market to know of rating and rating changes is to have that information provided directly from the rating agencies to EMMA. If that is not feasible or would take time to create, then we ask that the SEC consider the many facets associated with rating downgrades and adopt a schedule so that the time frame is from the day the issuer becomes aware of the event and/or have the party responsible for the downgrade provide the information to EMMA.

#### Withdrawing the Need for 'Materiality Determination' for Certain Events

We disagree with the SEC's proposal to withdraw the need for a materiality determination for disclosure for some of the events as proposed and again ask that the SEC carefully review the comments submitted by NABL. Establishing materiality is important in order to ensure that relevant information is passed along to investors. That decision is best made by an issuer on a case by case basis, along with advice of counsel.

This is true especially true when a non-material problem may arise that is quickly resolved but technically would be defined as needing to be reported as an event. For example, while we understand the need for investors to know if there is a failure to pay principle and interest, there could be a delay caused by technology glitches in electronic payments or seemingly inadvertent and simple delays (by hours) on the part of trustees. In these cases, the "failure to pay" is not because the underlying entities did not or cannot pay, or that there is even a failure to pay, but instead is due to factors outside of an issuer's control that are usually fixed within hours of the scheduled payment time. Such an occurrence is not "material" for sake of investors, and almost no one would be aware that such a short-term delay has occurred. It is due to instances such as these that the SEC should keep the materiality standard to ensure that only those events that truly are of interest to investors are reported.

Similarly, the problems with both eliminating materiality and asking for a submission within 10 days of the event with regard to the substitution of credit or liquidity providers is problematic. As we have seen over the past 18 months, this is in area where significant turmoil has occurred, and the general statement is not as straightforward today as it was in 1994. While we do not disagree that such information should be provided to the marketplace, determining if it is material remains important.

We especially oppose withdrawing the required materiality determination for adverse tax opinions. There are rarely any cases where a bond has become taxable, certainly compared to the number of bonds outstanding, and this is especially true for governmental bonds. A requirement to file IRS audit information that the bonds could become taxable would confuse investors who may not be well versed in the IRS audit process as it pertains to municipal bonds. The issuer, along with bond counsel, should be able to determine if an IRS audit notice is material, and if so, make a filing only in those cases.

#### Disclosure of New Events

It is important for the SEC to clarify when tender offer events must be disclosed. We strongly suggest that the SEC require the tender agent, not the issuer, to submit this event to EMMA. We do not object to requirements that an issuer report if it has filed for bankruptcy, insolvency or receivership; if the entity has been involved in mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated person or their termination; and the appointment of a successor or additional trustee or change in name of trustee. Although we do not oppose these additional events, especially for mergers and trustee events, it is important for the SEC to allow issuers to make a filing from when the issuer became

aware of event, not the event itself. Finally, we support having the materiality determination applied to the new events.

### Effective Date

Again, in its totality the SEC's proposals are significant and will take time for issuers and bond counsel to incorporate into continuing disclosure agreements, and debt management practices. Therefore, we ask that the SEC make any proposed changes effective six months after they are adopted.

### Estimated Time and Costs Associated with Rule Implementation

The SEC's estimated time needed and costs associated with implementing the proposals are a fraction of what issuers will likely incur. This is true for both small and large issuers, as compliance costs and monitoring will increase, as will an issuer's need to retain bond counsel.

### Conclusion

The GFOA has supported the SEC's efforts to create a single repository and allow information to be available to investors free of charge. From 1994 until July of this year, issuers have had to work with the cumbersome multiple NRMSIR system, and, under the Rule, investors have not been able to easily access, at no charge, information about municipal securities. With the July 1 launch of EMMA, the SEC, investors, and underwriters soon will be able to determine who is not compliant with Rule 15c2-12. Allowing investors and underwriters a more straight-forward presentation of data to determine compliance will help all parties, including issuers, to ensure that timely and appropriate disclosures are made.

We also support efforts to enable more information to be available to investors. The proposal within MSRB Rule 2009-10, where a link to a government's web site can be provided, will go a long way to helping investors quickly access financial information, including current budget information, to help with their investment decisions. The SEC could further this assistance by having the credit rating agencies directly provide EMMA with all rating information, including rating changes. There is likely no other single variable as important to an investor as a rating, and anything that the SEC can do to provide that information as quickly as possible to the marketplace, by the party who has an all encompassing availability to the data, should be encouraged.

We strongly suggest that the SEC review these comments, as well as those from NABL and other issuer groups and governments to better understand the problems with mandating a 10 day material event submission deadline, withdrawing the materiality standard for certain events, and allowing for parties with first hand knowledge of an event (e.g., rating agency, and tender agent) to be the party responsible for making the material event filing.

As the SEC reviews comments on the proposed rule, and looks at ways to enable better disclosure practices in the municipal bond market, we welcome the opportunity to discuss these issues with you.

Sincerely,

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Susan Gaffney  
Director, Federal Liaison Center



## **Maintaining an Investor Relations Program (1996 and 2003)**

**Background.** Investors are a primary source of capital for state and local governments. When a governmental entity sells debt, it enters into a long-term contract to make timely debt service payments to investors. Other stakeholders, such as bond insurers, liquidity providers, rating analysts, trustees, credit enhancers, counterparties, and constituents are interested in obtaining financial and operation information on issuers. An effective investor relations program that responds to the informational needs of these diverse groups **may** lower borrowing costs for issuers.

**Recommendation.** The Government Finance Officers Association (GFOA) recommends that governmental issuers consider developing an investor relations program. The centerpiece of such a program is a commitment to provide full and comprehensive disclosure of annual financial, operating, and other significant information in a timely manner consistent with federal, state and local laws. Issuers may consider providing additional information to investors beyond that provided for in their contractual commitments. An investor relations program should address the following:

1. Identify the individual(s) who is (are) responsible for speaking on behalf of the issuer. Establish steps to ensure that all external communication regarding disclosure is approved by this (these) person(s).
2. After giving consideration to the size and organizational structure of the entity, consider creating a “Disclosure Board” or other appropriate group, to establish the events to be disclosed and periodicity of disclosure items. Positions on the Disclosure Board may include: the debt manager, the chief financial officer, a representative of the legislative body, an administrative officer, the financial advisor, and bond counsel or issuer’s counsel.
3. The Disclosure Board, or other appropriate group, should establish policies and procedures for the Investor Relations Program. Policies and procedures should be simple and clear, and should address:
  - a) Identification and selection of information, both positive and negative, to be made available to investors, including material events, changes in financial or operating position, and changes in government policies. Documents that could be a source of such information include:
    - Annual budgets, financial plans or comprehensive annual financial reports,
    - Materials sent to governing bodies for council or board meetings, and
    - Ordinances or resolutions adopted by a governing body.
  - b) Identification of ways to stay abreast of issues that are likely to be of concern to investors, such as issuer policies and practices pertaining to investments, fund balance and accounting practices.
  - c) Identification and maintenance of a database of investors and analysts who review the purchase of the issuer’s debt instruments.
  - d) Use of CUSIP (Committee on Uniform Securities Identification Procedures) numbers.
  - e) Identification of means of disseminating information. Consideration should be given to: NRMSIRs (Nationally Recognized Municipal Securities Information Repository), e-mail, websites, postal distribution, and investor meetings.
  - f) Format of the document (e.g., .html or .pdf if electronically disseminated).

- g) Timing of a release of information with any sale of debt instruments, if necessary.
  - h) Responding to investor questions. Consideration should be given to means of communication to all investors when a single investor poses a question.
  - i) Ensuring the majority of investors has access to the information.
  - j) Ensuring that preliminary official statements are received one week in advance of a bond sale.
  - k) Maintaining a good relationship with the rating agencies and fund analysts including distribution of disclosure information and keeping them informed of any changes that could affect credit quality and actions to address financial problems.
  - l) Ensuring that financial statements or other information needed for disclosure purposes are completed on a consistent schedule from year-to-year and prior to the date established in any contractual commitments.
  - m) Engaging in marketing activities to alert investors of a pending bond sale, especially if the debt instruments are sold competitively. Such activities may include preparation of special reports for investors, the scheduling of investor meetings, conference calls, and webcasting of issuer conference calls and on-site visits.
4. Consideration should be given to the fact that any record created as a result of the Investor Relations Program may be subject to internal policies and/or federal, state and local laws concerning document retention and freedom of information.

The municipal marketplace is changing, and the need to provide additional information with greater frequency is significant. Issuers should maintain an awareness of changes in current practice in the area of investor relations. Investor Relations Programs that go beyond the legally mandated requirements of Securities and Exchange Commission (SEC) Rule 15c2-12 promote the efficient sale of debt instruments in both the primary and secondary markets and improve the reception of debt offerings. Expansive disclosure is encouraged, but consideration should be given to the ongoing commitment for such disclosure.

## References

- GFOA Recommended Practice: *Using a Web Site for Disclosure*, GFOA, 2002.
- *Making Good Disclosure*, Robert Dean Pope, GFOA, 2001.
- *Disclosure Handbook for Municipal Securities*, National Federation of Municipal Analysts, 1992 Update.
- “Securities and Exchange Commission Enforcement Actions in the Municipal Securities Markets,” *Government Finance Review*, August 1996.

Approved by GFOA’s Executive Board, February 28, 2003.



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February 20, 2008

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Dear Mr. Sirri and Ms. Haines:

The GFOA Committee on Governmental Debt Management (the “Committee”) is writing on behalf of its 17,000 members, many of whom are bond issuers and have responsibilities to provide ongoing secondary market disclosure pursuant to SEC Rule 15c2-12. Recent downgrades of the monoline municipal bond insurance companies have caused concern among our members about how to proceed in meeting their obligations under their continuing disclosure agreements.

There has been public discussion of two communications from the SEC on this matter. The first of these communications, titled “SEC Staff Issues Guidance on Fitch Downgrades of AMBAC”, was first publicized by the National Association of Bond Lawyers to its members via a NABLNET Alert on January 18, 2008. A second communication titled “SEC Staff Provides Guidance on Downgrades of Insured Bonds” was sent again by NABL through a NABLNET Alert to its members on February 8, 2008. The Committee is writing to express its concern about these communications. While we believe these communications were intended to provide some welcome procedural guidance, we have found that they have instead raised more questions than they have answered. The Committee is writing to seek clear and formal direction from the SEC that will help our members meet their continuing disclosure obligations.

Our primary concerns are two-fold:

1. Members of the Committee are concerned with the SEC reversing its position and backing away from the announcement that the information about the monoline downgrades are “so widespread and extensive in the press” that an individual issuer does not need to file a material event notice on a bond issue that has been downgraded solely due to the bond insurer downgrade. We believe that the SEC should formally announce that individual material event notices do not need to be filed under these conditions for three reasons.
  - When SEC Rule 15c2-12 was adopted, a rating change was specified as an explicit material event that needs to be announced to the marketplace through a filing with the NRMSIRs (or today with the CPO). The purpose of alerting the market was to let investors know that a rating agency had determined that a governmental entity’s revenues, policies or economic outlook had changed since the original rating was given. In this current climate, a bond issue may be downgraded not because of any structural change in the governmental entity, but because of a downgrade of an issue’s



bond insurer, not the underlying security. Thus, the intent of SEC Rule 15c2-12 to alert investors to a change of an issuer's financial standing is not met under these conditions.

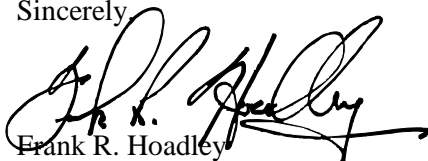
- The rating agencies are not sending letters to issuers notifying them that an issue has been downgraded. Instead, issuers are forced to “look themselves up” on various rating agency web sites to see if their bonds have been downgraded. The issuer is expected to know to do this because it is “so widespread and extensive in the press”. The SEC’s policy that the issuer must know to go to a web site to see if they have been downgraded because it is “so widespread and extensive in the press”, is contrary to the SEC’s position that the “so widespread and extensive in the press” argument does not suffice for investors, and thus issuers must file a material event notice.
  - Without a letter from the rating agency an issuer may not know of the downgrade and cannot cite any document evidencing the downgrade. In order to file a material event notice, an issuer needs such evidence.
2. The second concern is that the announcements referenced above were apparently made in private email exchanges between SEC staff members and individual bond counsel. To the extent that the announcements were intended to direct or guide bond issuers toward properly meeting their disclosure responsibilities, it seems that such announcements should be made formally in the form of a public press release or other written communication and posted on a web site that can be referenced by interested parties. Such a public announcement should also provide the name and contact information of the appropriate SEC staff to address questions that will inevitably arise.

If the SEC determines that issuers must provide material event notices relating to bond insurer downgrades, then other matters need to be clarified, as noted below.

1. Many issuers have had ratings assigned to their insured bonds without their knowledge and without such insurance being cited in the Final Official Statements for the bonds. Is it the issuer’s responsibility to file a material event notice if they were not the party who purchased insurance in either the primary or secondary market? We believe that issuers should only be responsible for filing material event notices relating to rating downgrades of insurers whose credit enhancement was part of the original marketing of the bonds as demonstrated by the insurer’s inclusion in the Final Official Statement. If the bond insurance was provided without the issuer’s knowledge or consent, was not referenced in the Final Official Statement, or was obtained by investors in the secondary market, the issuer should not be responsible for filing material event notices for rating downgrades for such bond insurer.
2. Is it the issuer’s responsibility to file a material event notice if they are not the party that secured the original credit rating? We believe that if a rating was secured by a party other than the issuer, and that rating has subsequently been downgraded, it is the responsibility of the party who secured the rating to file the material event notice.

We would greatly appreciate clarification on the matters listed above so the country’s 50,000 issuers can have clear direction of their responsibilities. We would also like the opportunity to further discuss these matters with you, in addition to obtaining formal guidance for our members.

Sincerely

A handwritten signature in black ink, appearing to read "F. R. Hoadley", written over a printed name.

Frank R. Hoadley  
Chairman, Governmental Debt Management Committee