

Muni Bond Newsletter

PERIODIC CHECKUPS OF CONTINUING DISCLOSURE FILINGS

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As we learned from the SEC's 2014 MCDC Initiative, there are consequences to not filing, as well as not disclosing failures to file, continuing disclosure information with the MSRB's electronic information repository, EMMA. Issuers of bonds are generally required to file their audits and updates of certain official statement information, often referred to as operating data, with EMMA no less than annually. Usually the deadline for filing this information is within a certain number of days after the end of the issuer's fiscal year.

In addition, issuers must file material Event notices with EMMA within 10 business days after the occurrence of such Event. There are 14 material Events typically listed in an official statement, including:

1. Principal and interest payment delinquencies
2. Non-payment related defaults, if material
3. Unscheduled draws on debt service reserves reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security
7. Modifications to the rights of security holders, if material
8. Bond calls, if material, and tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities, if material
11. Rating changes
12. Bankruptcy, insolvency, receivership or similar event of the Issuer
13. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.



The SEC has noted that antifraud provisions go beyond this list of Events and cover anything that could materially affect the issuer's debt or the issuer's repayment thereof.

The most frequently occurring material Events for many issuers are: (1) rating changes on the issuer's outstanding debt, either up or down, (2) notices of debt refundings, and (3) issuer failures to file their audits and operating data within the prescribed time.

Issuers should periodically check the EMMA website (www.emma.msrb.org), or have one of their bond professionals do so, to be sure that continuing disclosure filings are being properly posted. Regardless of who does the filing, it is the issuer's responsibility that it be done. Should an issuer have any questions about its continuing disclosure obligations or filings, it should contact its municipal advisor, bond counsel or local counsel.