

Rule 15c2-12

SUPPORTING STATEMENT

A. Justification

(1) Necessity for Information Collection

At the time the securities laws first were enacted, the market for most municipal securities was largely confined to limited geographic regions. The localized nature of the market, arguably, allowed investors to be aware of factors affecting the issuer and its securities. Moreover, municipal securities investors were primarily institutions, which in other instances are accorded less structured protection under the federal securities laws. Since 1933, however, the municipal markets have become nationwide in scope and now include a broader range of investors.

At the same time that the investor base for municipal securities has become more diverse, the structure of municipal financing has become more complex. In the era preceding the adoption of the Securities Act of 1933, municipal offerings consisted largely of general obligation bonds. Today, however, municipal issuers include greater proportions of revenue bonds that are not backed by the full faith and credit of a governmental entity and which, in many cases, may pose greater credit risks to investors. In addition, more innovative forms of financing have focused increased attention on call provisions and redemption rights in weighing the merits of individual municipal bond investment opportunities.

The market for municipal securities is vital to the financial management of our nation's state and local governments, and the availability of accurate information concerning municipal offerings is integral to the efficient operation of the municipal securities market. In the Commission's view, a thorough, professional review of municipal offering documents by underwriters could encourage appropriate disclosure of foreseeable risks and accurate descriptions of complex put and call features, as well as novel financing structures now employed in many municipal offerings. In addition, with the increase in novel or complex financing, there may be greater value in having investors receive disclosure documents describing fundamental aspects of their investments. Yet, underwriters are unable to perform this function effectively when offering statements are not provided to them on a timely basis. Moreover, where sufficient quantities of offering statements are not available, underwriters are hindered in meeting present delivery obligations imposed on them by MSRB rules.

For these reasons, on June 28, 1989, pursuant to Sections 15(c) (1) and (2) of the Securities Exchange Act of 1934, the Commission adopted Rule 15c2-12, a limited rule designed to prevent fraud by enhancing the timely access of underwriters, public investors, and other interested persons to municipal offering statements. In the context of the assured access to offering statements provided by the rule, the Commission also reemphasized the existence and nature of an underwriter's obligation to have a reasonable basis for its implied recommendation of any municipal securities that it underwrites.

(2) Purposes of and Consequences of Not Requiring the Information Collection

Under Rule 15c2-12, the municipal securities underwriter is required: (1) to obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

This rule is designed to provide for the prompt distribution of disclosure documents, since underwriters have complained that, even when an issuer prepares an official statement, there is frequently not an adequate supply or sufficient time to permit distribution to each investor at settlement. As a result of the rule, investors have a reference document to guard against misrepresentations that might occur in the selling process. In addition, the rule enables dealers and investors in the secondary market to have access to static information concerning the securities, such as their term and call provisions.

(3) Role of Improved Information Technology and Obstacles to Reducing Burden

In September 1988, in addition to soliciting views on then proposed Rule 15c2-12 and the methods used to satisfy an underwriter's responsibility to have a reasonable basis for recommending the securities it underwrites, the Commission requested comment on a proposal advanced by the MSRB and members of the industry to create a repository of municipal securities disclosure documents. The Commission believes that the existence of a compulsory library provides significant informational advantage to the secondary market and assists the Commission greatly in its enforcement efforts. The rule leaves the development of repositories to market forces. Nevertheless, because a repository offers the potential for dramatically increasing the effectiveness of the secondary trading market, the rule builds in certain incentives for the use of any repository developed. Specifically, the rule as adopted reduces the obligation on underwriters to deliver final offering statements to purchasers from 90 to 25 days when the final statement is included in a nationally recognized repository.

(4) Efforts to Identify Duplication

The information collection requested from the underwriter is not duplicative, since this information would not otherwise be required by the Commission.

(5) Effect on Small Entities

The rule is one of general applicability that does not depend on the size of a broker-dealer. Since the rule is designed to apply to all registered broker-dealers, the rule must apply in the same manner to small, as well as large, broker-dealers. The Commission believes that many of the substantive requirements of the rule have been observed by underwriters and issuers as a matter of business practice or to fill their existing obligations under the MSRB rules and the general anti-fraud provisions of the federal securities laws. Moreover the rule focuses only on offerings of municipal securities of \$1 million or more, in which any additional costs imposed by the establishment of specific standards are balanced by the potential harm to the large number of investors that may purchase securities on the basis of inaccurate information. The Commission is sensitive to concerns that the rule not impose unnecessary costs on municipal issuers. When the rule was proposed, many commenters, including the MSRB and PSA, indicated that the rule would not impose unnecessary costs or force a majority of responsible issuers to depart from their current practices. The commenters suggested that the rule should, however, encourage more effective disclosure practices among those issuers that do not

currently provide adequate and timely information to the market. The rule also contains exemptions for underwriters participating in certain offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features.

(6) Consequences of Less Frequent Collection

Providing underwriters with a more flexible standard may jeopardize the protection that Rule 15c2-12 provides. The Commission understands that the rule imposes an additional burden on underwriters; however, the Commission seeks to accomplish this goal in the least intrusive manner, by imposing minimal additional costs on broker-dealers while enhancing investor protection. Moreover, the Commission has already limited application of the rule to primary municipal offerings of \$1 million or more and has incorporated a limited placement exemption into the rule.

(7) Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The requirements of the rule are not inconsistent with the Guidelines of 5 CFR 1320.5(d)(2)

(8) Consultation Outside the Agency

When the Commission published for comment proposed Rule 15c2-12 in 1988, the Commission received almost seventy comment letters, representing the views of the major segments of the municipal finance industry, including issuers, underwriters, bond counsel, financial advisers, analysts, institutional investors, insurance providers, disclosure services, and the MSRB. Most underwriters supported the basic provisions of the rule, while issuers' comments were divided. Large issuers generally supported the rule, while smaller issuers generally suggested that the rule should only apply to conduit bonds or not be adopted at all. Virtually all commenters supported the basic thrust of the interpretation. Similarly, most commenters supported the concept of a central repository for final official statements, although there was substantial diversity of views on issues associated with its creation.

(9) Payment of Gift to Respondents

Not Applicable.

(10) Assurances of Confidentiality

No assurances of confidentiality have been provided.

(11) Sensitive Questions

Not Applicable.

(12) Estimate of Respondent Reporting Burden

a. Brokers, Dealers, and Municipal Securities Dealers

The cost of compliance under the rule should not be burdensome, since the substantive requirements of the rule were already observed by underwriters and issuers as a matter of business practice or in order to fill their existing obligations under the MSRB rules and general anti-fraud provisions of the federal securities laws. In addition, the rule applies only to primary offerings of municipal securities in excess of \$1 million. Thus, the number of broker-dealers affected by the rule is substantially reduced. Also, there is an exemption to the rule for underwriters participating in certain offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately five hundred broker-dealers will continue to incur an estimated average burden of one hour per year to comply with this rule. Therefore, the total burden on these respondents will be 500 hours. (500 X 1 hour = 500 hours).

b. Issuers

Issuers prepare annual financial information and notices of material events as a usual and customary practice in the municipal securities market. Often, annual financial information is required to be prepared by issuers pursuant to state law. The submission of annual financial information and material events to a nationally recognized municipal securities information repository ("NRMSIR") will, however, impose a burden on issuers of municipal securities. It is estimated that Rule 15c2-12 applies to approximately 10,000 issuers in any given year. Each issuer would only have to submit one package per year of annual financial information describing its finances and operations, though it may have more than one issuance of municipal securities outstanding that comes within the application of the rule. The information is issuer, rather than issuance, specific.

It is estimated that, on an annual basis, approximately 10,000 issuers will submit one package of annual financial information to a

NRMSIR. Preparation for sending the information to a NRMSIR will require approximately 30 minutes. Therefore the total burden on issuers will be 5,000 hours. (10,000 X 30 minutes = 5,000 hours).

It is estimated that, on an annual basis, 1,500 issuers will submit at least 1 notice of the occurrence of a material event to a NRMSIR. The preparation of such a notice for sending to a NRMSIR will require approximately 30 minutes. Therefore, the total burden on issuers will require 750 hours. (1,500 X 30 minutes = 750 hours).

The total burden on issuers will therefore be 5,750 hours. (5,000 + 750 = 5,750).

c. NRMSIRs

Four NRMSIRs currently are operating pursuant to no-action letters from the Commission. NRMSIRs are involved in the dissemination of official statements to the public. It is estimated that the total burden on each NRMSIR of collecting, indexing, storing, retrieving, and disseminating information requested by the public is 29,400 hours. The total burden for all NRMSIRs is 117,600 hours. (4 X 29,400 = 117,600).

d. Estimated Total

The estimated aggregate total burden for Rule 15c2-12 is 123,850 hours. (500 + 5,000 + 750 + 117,600 = 123,850).

(13) Estimate of Total Annualized Cost Burden

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in item no. 12) to comply with the rule.

(14) Estimate of Cost to the Federal Government

Cost to the federal government results from appropriate regulatory agency staff time and related overhead costs for inspection and examination for compliance with requirements of the rule. Since the Commission inspects broker-dealers regularly, inspection for compliance with the requirements of this rule is a part of the overall broker-dealer inspection. Thus, the Commission uses little additional resources to ensure compliance with the rule. Commission staff estimates that approximately 100 hours of staff time per year are

devoted to ensuring compliance with the requirements of the rule at a cost of \$3,500 per year.

(15) Explanation of Changes in Burden

Not applicable.

(16) Information Collection Planned for Statistical Purposes

Not applicable.

(17) Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable.

(18) Exceptions to Certification

Not applicable.

B. Collections of Information Using Statistical Methods

No statistical methods are employed in connection with the collections of information.