

## 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](http://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.

# MUNICIPAL ADVISOR TESTING

As part of its expanded mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Municipal Securities Rulemaking Board (the “MSRB”) is implementing the first qualifying examination for municipal advisors. MSRB Rule G-3, effective April 27, 2015, creates two classifications of municipal advisor professionals, representative and principal, with firms required to designate at least one principal to oversee the municipal advisory activities of the firm. All municipal advisor representatives and principals are required to take and pass the forthcoming Municipal Advisor Representative Exam (Series 50) to demonstrate the level of knowledge needed to be sufficiently qualified to perform municipal advisory activities.

The MSRB plans to implement the new exam in 2016. To facilitate the transition to the new exam requirement, the MSRB’s rule provides for a one-year grace period during which individuals will be able to take the municipal advisor representative exam while still engaging in municipal advisory activities.



Clients can expect that after 2016 all professionals at Speer with whom you have contact will have passed the Series 50 exam demonstrating a continuation of our expertise and qualifications to act as your municipal advisor.

## WHAT IS AN IRMA LETTER AND WHY AM I BEING ASKED TO DELIVER ONE?

Under the new Municipal Advisor (“MA”) Rules, firms wishing to serve as municipal securities dealer/underwriter do not have a fiduciary duty to a municipal entity and thus must operate within certain defined MA exemptions. Generally, underwriters are restricted to providing only general information unless (one of the following):

1. They are specifically engaged on a transaction as a securities dealer/underwriter
2. They are asked for information in a qualified request for proposal (RFP),
3. The municipal entity has represented in writing that it will rely on the opinion of an Independent Registered Municipal Advisor (IRMA) (the “IRMA Exemption”).

The IRMA Exemption provides underwriters with the most freedom with the type of information they can present to a municipal issuer. This makes it the most sought after exemption by underwriters.

As underwriters have been adapting to the new MA Rules, they have increasingly been approaching municipal issuers to provide them with an “IRMA Letter” allowing them to operate freely under the IRMA Exemption, even at times when the municipal issuer is not offering or

contemplating a bond offering. While allowing the IRMA Exemption in certain situation can be beneficial, there are several items worth the municipal issuers consideration before delivering an IRMA Letter:

1. Does the IRMA Letter require the municipal securities dealer/underwriter to provide information and analysis only to the municipal entity or both the municipal entity and the IRMA? Under the rules, once operating under the IRMA Exemption, underwriters do not have to provide information to the IRMA. Municipal issuers should understand that the information they are receiving may not have been sent to and reviewed by their IRMA. As such, a municipal issuer may want to specify in its IRMA Letter that all analysis and information also be sent to the IRMA.
2. Is there a timeframe or ending period to the IRMA Exemption? Underwriters may be asking for a blanket exemption, while the municipal issuer may only want to allow the IRMA Exemption for a specific period of time.

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## **WHAT IS AN IRMA LETTER... Continued**

3. Is the IRMA Exemption in relation to a specific transaction? While it has been more typical that an IRMA Exemption is granted for a specific transaction or project, the IRMA Letter can be drafted to be more or less restrictive than the municipal issuer desires.

IRMA letters are typically either drafted by an underwriter specifically naming their firm or are drafted by an issuer as a generic exemption applicable to all underwriters and posted on their web site to notify all underwriters of the available exemption.

Specific IRMA exemptions should tend to be more limited in scope and time while generic exemptions may tend to be more open ended while both should incorporate concurrent information sharing with the Municipal Advisor to the issuer who is responsible to report on an evaluation of the information received and the issue proposed.

It is ultimately the decision of the municipal issuer on whether or not they would like to grant certain underwriters an IRMA Exemption and what that timeframe or project that IRMA Exemption should cover. Please contact your representative at Speer Financial with any questions regarding the IRMA Exemption.

## **NAMA Helps Member Organizations**

The National Association of Municipal Advisors (“NAMA”) that Speer Financial is a founding member of has recently hired a new Executive Director, Susan Gaffney. Ms. Gaffney’s comes to NAMA with a vast knowledge of the municipal sector due to her previous position as the Federal Liaison Center Director at the Government Finance Officers Association (“GFOA”) and running her own consulting firm. This new hire was another step in the ongoing transition into new regulation of NAMA’s firm members under the Dodd Frank Act. The unanimous decision by the Board of Directors for the new hire shows how committed the NAMA organization is to providing their membership with excellent professional executive expertise.

NAMA continues to be a leader in MA regulation. At the Annual NAMA Conference in October a workshop will be provided to the membership with study outlines, materials, practice questions and good study techniques in preparation for the MA Series 50 examination expected to be offered in early 2016. All Registered MA’s will be required to take and pass the MA Series 50 exam within a 12 month period to continue actively serving as an MA. Speer Financial MA’s are planning to utilize this opportunity in October to brush up on their MA knowledge.

Speer Financial is fortunate to have such a strong organization behind it. NAMA is helping navigate new and ongoing regulation, and continues to be an active participant with the MSRB and SEC with respect to new rules, regulations, review and testing.