

COLORADO MUNICIPAL LEAGUE

#### RULE 15c2-12 AMENDMENTS

- Event 16 requires an Event Notice if the following occurs:

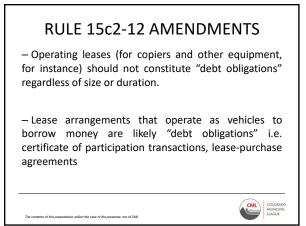
• (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a "financial obligation" of the obligated person, any of which reflect financial difficulties.

#### RULE 15c2-12 AMENDMENTS - The Amendments define "financial obligation" to mean a: (A) Debt obligation; (B) Derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation: or (C) Guarantee of an obligation or instrument described in paragraph (A) or (B).

The term "financial obligation" does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

#### RULE 15c2-12 AMENDMENTS - The Rule does not define any of the terms used in the definition of "financial obligation." - Adopting release indicates that the term "financial obligation" includes only debt, debt-like, and debt-related obligations. - A "debt obligation" is a vehicle to borrow money.

- Ordinary financial and operating liabilities incurred in the normal course of an issuer's business do not constitute "financial obligations."



## **RULE 15c2-12 AMENDMENTS**

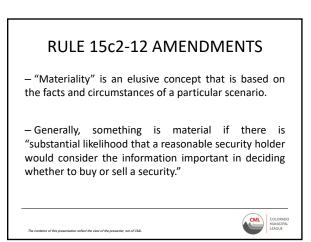
- The Rule does not define "derivative instrument."

- The release provides that the term is limited to derivative instruments entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation.

- A derivative instrument could be a swap, futures contract, forward contract, option, or any similar instrument to which an issuer is a counterparty if the instrument is designed to hedge against the risks of a related debt obligation.



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### RULE 15c2-12 AMENDMENTS

 If an issuer issues new securities that are subject to the Rule on or after February 27, 2019, the Amendments apply and Event 15 and Event 16 must be included in the related Undertaking.

- After the securities are issued:
- issuer will be required to disclose any financial obligations specified in Event 15 that are entered into (if they are material),
- issuer must provide notice of the occurrence of any of the items listed in Event 16 that occur in connection with any of its financial obligations (if they reflect financial difficulties), regardless of when they were issued.

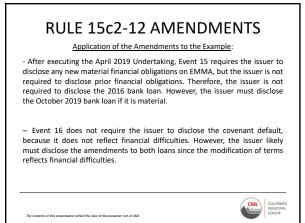
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# RULE 15c2-12 AMENDMENTS - Example: An issuer entered into a bank loan in 2016. On April 1, 2019. the

Example: An issuer entered into a bank loan in 2016. On April 1, 2019, the issuer closes on \$15,000,000 of publicly offered fixed rate bonds and enters into an Undertaking with respect to those bonds. The Undertaking includes Event 15 and Event 16 as required by the Amendments and the issuer now has the contractual obligation to provide Event Notices for those events. In October 2019, the issuer enters into another privately placed bank loan and no Undertaking is required. In June 2019, the issuer forgets to file an insurance certificate with the bank that made the 2016 loan, resulting in a covenant default under the loan agreement. In December 2019, the issuer's largest taxpayer closes and the issuer notifies the banks holding the 2016 loan and the 2019 loan that it will not be able to meet its debt service obligations in the next several years; the issuer and the banks negotiate an extension of the loan terms and a reduction in annual payments.





# RULE 15c2-12 AMENDMENTS

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– For new bond issues, Underwriters will not only review the Undertaking being executed in connection with the new securities to determine compliance with the Amendments, but may also inquire about the issuer's existing "financial obligations" and the material terms of those financial obligations (whether or not they are required to be reported under Event 15).

 Underwriters will likely inquire as to whether the issuer has policies or procedures reasonably designed to comply with the Amendments. If the issuer does not have formal policies and procedures, it should be able to describe the steps it takes to ensure compliance with its Undertakings.

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# **RULE 15C2-12 AMENDMENTS**The Government Finance Officers Association has advised its members as follows: "issuers should also review their debt management and disclosure policies and consider adding new provisions to address the Amendments, including: creating a master list of all current financial obligations including, but not limited to, bank loans, capital leases, derivatives, as well as any guarantees of these types of obligations, developing a system to track any financial difficulties related to these obligations, having a process in place to add new financial obligations, and working with counsel to determine materiality of your financial obligations and when financial difficulties may arise."

#### RULE 15C2-12 AMENDMENTS

- The GFOA guidance regarding the Amendments can be found at http://www.gfoa.org/new-amendments-sec-rule-15c2-12
- The MSRB also has resources available for issuers regarding the Amendments.
- http://www.msrb.org/~/media/Files/Resources/10-Things-to-Know-New-SEC-Rule-15c2-12.ashx
- http://www.msrb.org/EducationCenter/issuers/Disclosing.aspx.
- https://www.butlersnow.com/2019/02/a-brief-guide-to-the-2018-amendments-to-continuing-disclosure-requirements/

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