

# BUDGET LETTER

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|   | NUMBER: BL 19-02               |
| SUBJECT: SECURITIES AND EXCHANGE COMMISSION RULE 15C-12;<br>DISCLOSURE REQUIREMENTS EFFECTIVE FEBRUARY 27, 2019 | DATE ISSUED: February 22, 2019 |
| REFERENCES:   | SUPERSEDES:                    |

TO: Agency Secretaries  
Department Directors  
Departmental Budget and Accounting Officers  
Department of Finance Budget and Accounting Staff

FROM: DEPARTMENT OF FINANCE

## **Background**

The state sells securities, i.e., bonds, in the public markets to raise funds for capital projects. These funds are used for public benefit projects including, schools, prisons, water quality, and public parks. In connection with selling securities in the public markets, the state enters into continuing disclosure agreements (CDAs) to provide investors with certain ongoing information that would be of interest to such investors. This information must be provided to investors promptly.

The State Treasurer's Office, with assistance from Finance and the State Controller's Office, is the state entity that is responsible for providing this information to investors in a timely manner, as required by the CDAs.

The type and scope of information required to be provided by the state to investors is set forth in a Securities and Exchange Commission (SEC) rule commonly referred to as Rule 15c2-12 (the Rule). The SEC has recently amended the Rule to add to the information that must be provided by the state to investors. The new information requirements become effective on February 27, 2019, and the new information being requested is, as further described below, not of a type that would necessarily be promptly available to, or brought to the attention of the Treasurer, Controller, or Finance.

This Budget Letter (BL) is intended to provide state departments with guidance on when to report certain information promptly to Finance so that Finance can work with the Treasurer to determine whether a disclosure to investors is required under the CDAs.

## **Reportable Financial Obligations**

The information that must be promptly provided to Finance in accordance with this letter relates to a "financial obligation" of the department. The term financial obligation has a specific meaning as defined in the Rule. It generally does not include ordinary financial and operating liabilities incurred in the normal course of business but is intended to capture any obligation that can be described as a debt (i.e. borrowing money to be repaid over time), debt-like (e.g. certain leases) or debt-related (i.e. derivatives or guarantees related to debt or debt-like agreements), regardless of what the obligation is called and regardless of whether it is a short-term or long-term financial obligation. For instance, this definition would include an agreement called a lease if the purpose of that lease was as a vehicle to borrow money.

Other “debt-like” arrangements could exist in the context of “public-private partnership” or “P3” arrangements using financing techniques like availability payments.

Note that the SEC excluded from the term “financial obligation” any municipal securities/bonds for which an offering document has been filed on the Municipal Securities Rulemaking Board’s EMMA website and for which a CDA is in place. Also note that this exclusion does not apply to guarantees and/or derivatives related to excluded municipal securities, only to the municipal securities themselves.

**Information that Must Be Promptly Provided to Finance**

A. Any proposed incurrence by the department of a financial obligation, with an effective date on or after February 27, 2019, if the total payment obligation thereunder is \$1 billion or more. Such information should be provided to Finance staff as soon as possible after your agency has decided to enter into the obligation, and no later than the date on which the department, through its officials or a governing board, has agreed to the final terms of the obligation. After discussion with Finance staff the department may need to provide the document(s) demonstrating this financial obligation, as certain material terms may need to be incorporated into the disclosure to investors.

B. Any proposed agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation whether or not previously reported under paragraph A that materially alter the terms of the financial obligation. Notification to Finance of any proposed agreement should be made in the same timeframe as described in paragraph A.

C. Any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any financial obligation (whether or not previously reported under paragraph A), which reflect material financial difficulties of the department related to funding of the department from the General Fund. Note that the term “default” could be broader than an “Event of Default,” which may be defined in a loan or other financing document, because it includes an event or circumstance that with the passage of time and absent any action would become an “Event of Default” under the terms of that document. Notification to Finance of any event described in this paragraph should be made in the same timeframe as described in paragraph A.

D. Note that the notice under paragraph A only relates to a new financial obligation which is incurred after February 27, 2019, while the notices under paragraphs B and C will cover both financial obligations reported under paragraph A and financial obligations which existed before February 27, 2019.

**Ramifications for Non-reporting**

Failure of a department to comply with the actions directed in this letter, may have significant consequences for the state. The state may be required to disclose this failure to investors in the public capital markets for the next five years, which could impact the pricing or marketability of the state's bonds, or the state may be charged with violations of federal securities laws. If you have questions regarding the specific reporting requirements detailed in this BL, please contact your assigned Program Budget Manager or Assistant Program Budget Manager.

/s/ Thomas Todd

Thomas Todd  
Program Budget Manager