



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

June 16, 2008

Frank R. Hoadley  
Chairman, Governmental Debt Management Committee  
1301 Pennsylvania Avenue, NW Suite 309  
Washington, D.C. 20004

Dear Mr. Hoadley,

I am writing in response to your letter of February 20, 2008 concerning the apparent confusion among some of your members regarding informal communications with the National Association of Bond Lawyers (NABL) by staff of the Division of Trading and Markets on January 18 and February 8, 2008 concerning the need for issuers to file material event notices in connection with the rating downgrade of AMBAC. We believe that the rapid occurrence of events at the time our informal guidance was provided may have led to this confusion.

The initial advice was issued in response to an inquiry from a NABL representative on January 18, 2008 - the day that AMBAC was downgraded by Fitch and placed on negative creditwatch by Standard & Poor's - regarding the interpretation of previous staff guidance to NABL. At that time changes to the ratings of individual bonds insured by AMBAC had not been announced. The exigencies of the moment required a quick response in order to assist issuers under the unusual circumstances presented.

The staff advice in question was issued on June 23, 1995<sup>1</sup> and stated, in relevant part:

Question 9:

The Rule appears to require notice of rating changes **with respect to the municipal securities being offered**. Providers of guaranteed investment contracts, reserve fund surety bonds and credit enhancers receive ratings (individually, a "rated entity"). The rating on an issue of municipal securities with such features may not be affected if there is a rating change with respect to a rated entity. *Must a material events notice be filed if the rating changes on the rated entity but not on the municipal securities?*

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<sup>1</sup> Letter dated June 23, 1995 to John S. Overdorff, Chair and Gerald J. Laporte, Vice-Chair of the Securities Law and Disclosure Committee, National Association of Bond Lawyers from Robert L.D. Colby, Deputy Director, SEC Division of Market Regulation. 1995 SEC No-Act. LEXIS 563

Response:

Given the diversity of possible structures of offerings in the municipal securities market, any rating change that relates to the issue, an issuer, an obligated person, credit enhancer, or liquidity provider for the issue that could affect the value of a municipal security could be the subject of a notice, if such rating change is material. For example, whether or not the municipal securities themselves were rated, there may be circumstances in which a rating change for an entity that has provided a guarantee or insurance to support repayment of the securities could affect the securities. *In such a situation, in assessing the materiality of a rating change of such an entity, the degree to which the rating change has been widely reported and has widespread impact may be taken into account.* In certain circumstances, it may not be clear, absent individual disclosure, which classes of outstanding securities are affected by rating changes with respect to such an entity. (italics added)

In response, staff of the Division of Trading and Markets orally indicated its agreement with NABL that press coverage of the recent downgrade of AMBAC by Fitch had been so widespread and extensive that it fell within the 1995 guidance quoted above and NABL advised its members and others of this informal oral staff guidance. Subsequently, staff became aware that some issuers and bond lawyers may have become confused after Fitch announced the rating changes for specific bonds resulting from the AMBAC downgrade. In order to eliminate the source of this confusion, on February 8<sup>th</sup> staff withdrew the January 18<sup>th</sup> advice.

Staff did not address whether or not a material event notice should be filed if the rating of an individual bond were to change as a result of the AMBAC downgrade. It is unfortunate that such misinformation may have been conveyed to some issuers and bond counsel.

The two questions you pose regarding whether issuers must provide material event notices in certain situations requires an interpretation of the terms of individual contracts between issuers and bondholders regarding future continuing disclosures in light of all relevant facts and circumstances, not of Commission rules or previous staff advice alone. Although as a general matter we encourage increased transparency and disclosure in the municipal market, issuers should consult with their bond counsel for advice on the questions you have posed.

As we have discussed in the past, it is important for issuers to stay apprised of changes to the ratings on their securities so that they may meet their obligations under

Frank R. Hoadley  
June 13, 2008  
Page 3

continuing disclosure agreements consistent with Rule 15c2-12. We encourage your efforts to work with the rating agencies to establish some mechanism by which this might more easily and reliably be accomplished.

Sincerely,

A handwritten signature in cursive script that reads "Martha Mahan Haines". The signature is written in dark ink and is positioned above the printed name.

Martha Mahan Haines  
Assistant Director

cc: Susan Gaffney, GFOA