

COVID-19 Municipal Finance Disclosure: Public Statement Issued by SEC Chairman and Director of Office of Municipal Securities

05.06.2020

PRACTICE AREAS

Public Finance

In view of the fluid and unpredictable nature of the COVID-19 public health crisis and its fiscal impacts on municipal debt issuers, the Chairman and the Director of the Office of Municipal Securities (OMS) of the U.S. Securities and Exchange Commission (SEC) have issued a statement regarding associated municipal finance disclosures. "The Importance of Disclosure for our Municipal Markets" can be found [here](#).

While disclosures regarding potentially material impacts of COVID-19 could be included in annual information filings, listed event disclosures, or pending bond offerings, the SEC Chairman and OMS Director observe that many municipal issuers will not be required to make such disclosure filings in the coming months, nor will they be conducting new bond offerings in the near future. This timing issue raises the question of whether voluntary disclosures regarding potential COVID-19 fiscal impacts are advisable or practicable for municipal debt issuers. Their statement urges municipal issuers to consider voluntary disclosures regarding current and reasonably anticipated COVID-19 fiscal impacts. However, it also recognizes that the issue of liability often is raised when voluntary disclosures - or the expansion of required disclosures - are considered, and that each issuer, in many cases in consultation with legal counsel, will have to assess this risk in the context of its particular circumstance.

Noting the complexity and specialized nature of the municipal securities market, the SEC Chairman and OMS Director state that the diverse nature of this market means it is particularly ill-suited to a "one size fits all" approach to disclosure. Rather, disclosure needs to be evaluated specific to each issuer and each type of security involved, guided by the doctrine of materiality. As a general matter, a fact is material if there is a substantial likelihood that the information would have been viewed by a reasonable investor as having

significantly altered the total mix of information available in connection with an investment decision.

The SEC Chairman and OMS Director identify certain considerations for voluntary, unaudited, and non-routine or expanded disclosures regarding current and potential future impacts of COVID-19 on financial statement and operating conditions, including the following:

- ▶ The challenges of providing investors with forward-looking information regarding the potential future impact of COVID-19 on financial and operating conditions, particularly as response strategies to mitigate and effectively treat COVID-19 are rapidly evolving and likely to change in the future
- ▶ In many cases, and even for disclosures regarding current status, certain financial disclosure would be based on estimates and assumptions, as well as projections regarding future circumstances, and not have the benefit of a formal audit process or an established framework
- ▶ The need to ensure that any voluntary disclosures are kept confidential until disclosed, and when disclosed, disclosed broadly and consistently across all contexts, regardless of the purpose (e.g., in connection with efforts by federal and state governments to assess the financial impact of COVID-19 on states, municipalities and special purpose entities; or the pursuit by municipal securities issuers of funding or other support from governmental authorities and private parties)
- ▶ The need to accompany voluntary or expanded disclosures with meaningful cautionary language

Subject to these and other federal securities law considerations, categories of information that the SEC Chairman and OMS Director identify for consideration for voluntary or expanded disclosure, or making readily accessible to investors, include the following, if material: information regarding the impact of COVID-19 on operations and financial condition; information regarding sources of liquidity; information regarding the availability of federal, state and local aid; and reports prepared for other governmental purposes that may provide insight into local, regional, and sector-specific strategies to fight and recover from COVID-19.

The statement is qualified as not being approved nor disapproved by the Commission itself and not having any legal force or effect; instead, it represents the views of the Chairman and the Director of the Office of Municipal Securities.

For assistance with evaluating and preparing COVID-19 disclosures relating to municipal debt, please contact **Diana K. Chuang** or any other member of the Firm's **Public Finance Department**.