



Voluntary disclosure considerations during the COVID-19 pandemic

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As state and local governments confront the financial and operating strains imposed by the COVID-19 coronavirus pandemic, investors in the debt obligations of such governmental entities (referred to as municipal issuers) are understandably concerned about how the fallout of COVID-19 will affect the repayment of their securities. Some investors are already directly contacting municipal issuers and asking specific questions about their financial condition, and so issuers need a plan for communicating with their investors as the COVID-19 pandemic continues to unfold.

Municipal issuers with continuing disclosure obligations under SEC Rule 15c2-12 have certain mandatory reporting requirements when certain events happen, such as a rating change, bankruptcy, and certain events under the terms of a financial obligation that reflect financial difficulties, which must be disclosed to investors within ten business days after their occurrence through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) system. (More information on the 16 categories of required event disclosures can be found [here](#).)

Most issuers, however, are not yet dealing with a situation requiring a mandatory event disclosure. Rather, they are considering what may need to be voluntarily disclosed to investors, when such disclosures may be required, and the forum for such disclosures. The following concepts merit consideration as issuers evaluate their options.

- There is no uniform approach that would be appropriate for every issuer. Individual issuers should consider their unique situation, risk factors, current financial position, and other factors that may make it prudent to provide voluntary updates to their investors. For example, an issuer that only has debt secured by voted property tax levies (voted bonds) may decide that it is not currently aware of any significant threat to receiving sufficient property tax payments to meet its upcoming debt service payments and, justifiably, determine that no voluntary disclosures are necessary at this time. Conversely, if an issuer is aware that tax revenue collections could be delayed to the point of potentially threatening its ability to make a timely debt service payment, it should strongly consider the need to promptly disclose this to its investors even if the situation has not yet ripened into a mandatory disclosure event.
- Given the almost uniformly negative impact of COVID-19 and the market's general knowledge of the pandemic, an issuer that determines to provide voluntary disclosure should provide specific information about an issuer's financial situation rather than vague statements of fiscal concern.
- While investors may push an issuer for information, an issuer is under no obligation to speculate as to potential impacts from the pandemic, and it would be difficult for an issuer to accurately predict what is going to happen in such a rapidly changing environment.
- Issuers should be careful to avoid making any "selective disclosures," which occurs when certain investors are given access to information that is not available to other investors. This concern is particularly acute for information that is both material and nonpublic. It is easy to see how a phone call with a single investor could result in selective disclosure. To avoid this problem, issuers should have a single point of contact for investors, and that contact person should be

conversant with federal securities laws and the issuer's post-issuance compliance policy and procedures. Furthermore, issuers should make all material disclosures through the EMMA system so all investors have equal and simultaneous access to the information. An issuer's desire to be helpful to investors should not come at the risk of securities law liability.

- As discussed in more detail in our recent [bulletin](#), the anti-fraud provisions of federal law apply to any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets. Issuers should be careful that any of their statements, regardless of venue and whether written or oral, are accurate and complete. Any issuer experiencing financial difficulties should be particularly cautious that its public statements do not intentionally or unintentionally provide an inaccurate or incomplete discussion of the situation that it is facing.
- Voluntary disclosures should include a statement that the issuer is making the disclosure voluntarily, that it assumes no responsibility to make updates to such filing beyond the date on which it is made, and that it is not committing itself to making additional voluntary disclosures.

Issuers can use these concepts to assist in formulating a plan for dealing with investor inquiries and ascertaining the circumstances that necessitate the need for voluntary disclosures.

For additional information on the COVID-19 pandemic, visit our resource page at www.bricker.com/covid19. For more information on the matters discussed herein or for general continuing disclosure questions, please contact:

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