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Commentary: Don’t Be Selective About Disclosure.

A fair and efficient municipal marketplace depends on a shared commitment of all participants to disclose information fairly, equitably and in the public domain.

Bond issuers, for their part, support market integrity by disclosing certain important information to investors throughout the life of a bond. This information helps investors and others make informed decisions. Selective disclosure—an often-unintentional sharing of material, nonpublic information to a select group of investors—creates an information imbalance, giving certain market stakeholders access to more information than others.

As the regulatory agency responsible for preserving market integrity, the Municipal Securities Rulemaking Board encourages issuers to make important current information available to all. Our Electronic Municipal Market Access (EMMA®) website is the official nationwide repository for free public access to material information about municipal securities. It provides the means for full and fair municipal bond disclosure, and a simple means for issuers to address any inadvertent selective disclosure.

Federal regulations prohibit selective disclosure by public companies. Regulation FD —for “Fair Disclosure”—prohibits public companies from making intentionally selective disclosures and requires prompt public disclosure following any inadvertent selective disclosure. Issuers of municipal bonds are not subject to any similar regulations but can support market integrity by ensuring that all market stakeholders receive the same information at the same time. Adding a voluntary filing on EMMA is a simple step to ensure that information that may have been shared in a private setting is promptly available to the public at large.

Selective disclosure often occurs unintentionally. Municipal officials who stick around at the end of a town hall meeting with a few constituents and casually mention additional information about bond projects not raised during the public meeting could be inadvertently making selective disclosure. It also can happen when issuers or members of their deal team host roadshows, investor conferences and one-on-one investor calls or meetings. These events themselves are not inherently problematic, but they can become so if the information shared is material to all bondholders and not made public.

Selective disclosure in the municipal market can be more troubling in instances of credit distress, when some stakeholders’ interests may be at odds.

Take, for example, Puerto Rico, which is confronting an ongoing debt crisis with many competing interests at stake. In August 2014, the Puerto Rico Power Authority (PREPA) pledged to provide monthly cash reports, vendor agreements, budgets, and other information to owners and insurers controlling over 60 percent of its outstanding revenue bond debt. In exchange, the participating creditors that received confidential information were required to sign confidentiality agreements and waived their rights to sue PREPA for a period of time. Other stakeholders were not part of this arrangement, putting them at an information disadvantage.

The MSRB recommends that municipal bond issuers carefully manage their response to both intentional and accidental instances of selective disclosure. Issuers may open themselves up to federal fraud charges if they make material omissions or misstatements in their public disclosures. If something was material enough to mention in private, it may well have merited public disclosure.

Some market observers may fear that increasing regulatory attention on selective disclosure could cause issuers to choose to limit their contact with bondholders and ultimately provide less information to the marketplace. Fortunately, the experience of the corporate market under Regulation FD shows that corporations have become more transparent in the wake of greater regulatory focus on selective disclosure rather than less. Academic studies have tracked an increase in the frequency of companies providing earnings forecasts and continuing to hold conference calls, on an open basis, that were previously closed.

The MSRB provides resources to facilitate timely and complete disclosure of material information to bondholders by issuers on its EMMA website. Among the free tools available on EMMA are an email reminder service for recurring financial disclosures, customized issuer homepages to collect and display all disclosures from an issuer in a single page, and a dedicated submission process for voluntary disclosure of information about bank loans and other debt.

The MSRB also offers direct assistance to state and local government issuers to advance their knowledge on disclosure best practices through in-person educational events, webinars and an online education center.

When it comes to municipal market disclosure, it’s better to be inclusive than selective.

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