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SEC Municipal Securities Conference Highlights Emerging Trends in Disclosure.

On December 6, 2018, the Securities and Exchange Commission hosted an inaugural one-day conference on municipal securities disclosure. The conference, which the SEC intends to host annually, featured various panels comprising SEC staff as well as a broad array of industry participants. Topics included discussion of developments and current trends in disclosure, the amendments to Rule 15c2-12 of the Securities Exchange Act of 1934 that become effective on February 27, 2019, and potential opportunities for regulatory and industry improvement.

The conference comes just months after the SEC adopted amendments (the Amendments) to Rule 15c2-12 of the Securities Exchange Act of 1934 (the Rule), which is the SEC's principal regime governing periodic disclosure by issuers and obligated persons with respect to municipal securities (including securities issued for the benefit of tax-exempt hospitals and healthcare organizations). The Rule requires that notice filings be provided to the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access (EMMA) system within 10 business days after the occurrence of certain triggering events. The Amendments add the following two new triggering events:

- Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- Default, event of acceleration, termination event, modification of terms or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

In anticipation of the February 27, 2019, compliance date of the Amendments, the conference provided an opportunity for market participants to discuss areas of concern around disclosure, both under the current version of the Rule as well as in light of the Amendments. One such area of concern is the tension between timely reporting and uniformity of information. The Amendments reflect the SEC's view that there may be events that are material to bond owners but that may not be reported through EMMA until annual audited financial statements are filed for the periods in which the events took place. The SEC has noted that as borrowers increasingly incur debt in private-placement transactions where no official statement is issued, EMMA disclosure of new indebtedness may be delayed. Industry panelists emphasized the quality and uniformity of financial information disclosed through an audit, and hence the concerns issuers and obligated persons may have in providing unaudited information.

When the Amendments become effective, issuers and obligated persons will need to determine how to comply with the requirement to provide disclosure with respect to material terms of newly incurred indebtedness. On the one hand, issuers and obligated persons may be tempted to file full debt documents to avoid claims of under-disclosure. On the other hand, investors may prefer a clear and concise summary of material terms rather than voluminous disclosure of actual debt documents.

Industry panelists drew attention to certain areas related to disclosure enforcement where further guidance from the SEC would provide clarification of the disclosure requirements under the Rule:

- **Disclosure of interim financial information** — Many issuers have some form of this information available to the public, and there would be value if issuers were provided with comfort that sharing this type of information would not potentially create a risk of liability.
- **Underwriter due diligence** — It is unclear to what extent municipal underwriters are expected to perform diligence on unaudited figures. Further SEC guidance concerning the required due diligence under the Amendments would be helpful to underwriters.
- **Liability exposure of municipal advisors** — Municipal advisors continue to play a central role in advising issuers on municipal offerings, and guidance on their antifraud liability exposure would be helpful to the industry.

The following emerging issues in disclosure were also discussed:

- Issuers should consider providing specific disclosure in risk factors on emerging issues such as cybersecurity and climate change risk, especially if issuers have commissioned studies that help analyze the costs of addressing these issues. While there is uncertainty about the costs that issuers and obligated persons will incur in addressing cybersecurity and climate change, it is important to note that thoughtful disclosure on these challenges does provide benefit to the market—describing how an issuer will respond to these challenges can demonstrate the quality of management and its planning effort.
- In light of the gradual phasing out of LIBOR, issuers will need to consider how to provide disclosure on the phase-out when it occurs in 2021. Investors will want to see volatility analyses of the new rate alternatives. For transactions still using LIBOR, issuers should expressly state how the phase-out of LIBOR will be addressed.

The SEC emphasized the value of disclosure in the market, while also acknowledging that it is important to strike a balance between providing disclosure that is material to investor decisions and recognizing that it is inefficient and costly for issuers to provide extraneous disclosure.

The role of technology in municipal securities disclosure was also discussed. While technology increases access to information, it is important to consider all impacts of adopting new technology. For instance, while most participants in the municipal market are supportive of concepts like eXtensive Business Reporting Language (XBRL), which improves data aggregation and data analytics, unique external dynamics, such as regulatory factors, that affect issuers must not be forgotten. Further, there is also a concern that technology can create an uneven playing field in the market, with issuers who have the funds to implement technology solutions having an upper hand as compared with issuers who do not readily have the capital needed to implement certain technology.

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