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The Financial Data Transparency Act Casts a Looming Shadow Over Municipal Securities Disclosure

In December of 2022, Congress enacted the Financial Data Transparency Act (the “FDTA”), legislation intended to modernize and improve the organization, readability and availability of financial information collected by certain federal agencies from regulated organizations. Focusing on the public finance industry, the FDTA directs the Securities and Exchange Commission (the “SEC”) to adopt new uniform data reporting standards for financial disclosures filed by municipal issuers and obligors with the Municipal Securities Rulemaking Board (the “MSRB”). It is important to note that the FDTA does not add any new disclosure requirements. Rather, it is intended to change the way in which financial information is presented in disclosure filings, facilitating a better understanding of the context behind the data. Theoretically, these new standards will enhance the accessibility, transparency and comparability of the data included in the financial disclosures, resulting in a more user-friendly product for investors and other municipal market participants. Nevertheless, the practical impact on issuers and obligors of implementing these new data reporting standards, in terms of time, expense and resources, remains to be seen.

Broad in its scope, the FDTA mandates across-the-board improvements in the quality and transparency of private sector and public sector financial disclosures. As such, the FDTA applies to a number of other federal financial regulatory agencies in addition to the SEC, including the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency and the National Credit Union Administration.

The rulemaking process to effectuate the FDTA relative to municipal securities will occur in two stages. First, the SEC and the other federal agencies are required to jointly publish proposed rules establishing the data standards to be applied to financial disclosures under their jurisdictions. The proposed rules must be published for public comment by June of 2024, with the final rules published by December of 2024. The data standards established in the final rules are to take effect no later than December of 2026.

These jointly-issued data standards are intended to provide the SEC with the framework to then develop uniform municipal securities data standards and rules for the financial disclosures submitted by issuers and obligors to the MSRB. However, these specific municipal securities data standards must be compatible with the jointly-issued data standards (to the extent feasible and applicable). Under the FDTA, the SEC must publish final rules adopting these uniform data standards by December of 2026, the expectation being that proposed rules would be published earlier in 2026 to allow for public comment. Although the FDTA does not mandate a specific effective date for the municipal securities data standards established in the final rules, they could become effective as early as 2027.

Under these new uniform data standards, financial disclosures by municipal issuers and obligors would be presented in a fully machine-readable and searchable structured format, tagged with identifier codes allowing for greater data analysis and comparability. By way of example, since 2009,

the SEC has required that private companies use a similar structured data format, the eXtensible Business Reporting Language (XBRL), in making their financial disclosures. Although not mentioned in the FDTA, the SEC could use XBRL as a model for implementing the FDTA's requirements.

Notably, the FDTA's requirements are not limited in scope to a particular type of financial information (i.e., an issuer's or obligor's financial statements). Such ambiguity raising questions as to whether the SEC might extend the reach of the new data standards to other types of disclosures, such as particular portion(s) of an official statement (beyond any attached financial statements) or the sixteen event notices included in an issuer's or obligor's continuing disclosure undertaking. Additionally, the new data standards could impact the format in which financial information is submitted under current MSRB rules, such as Rule 15c2-12, Rule G-32 or Rule G-34. Other open questions include the establishment of an enforcement mechanism to ensure compliance and the impact on ongoing disclosure relative to outstanding bond issues.

In the end, the manner in which the SEC effectuates the FDTA will determine the impact on issuers and obligors specifically and the public finance industry overall. Significantly, the FDTA requires the SEC to consult with municipal market participants in developing the new data standards. Furthermore, the FDTA permits the SEC to adjust the data standards to reduce any unjustified burden on certain reporting entities and minimize disruptive changes overall. These mitigating factors, coupled with the approximately four-year window until adoption of the final rules, allow for meaningful participation in the rulemaking process and some time to prepare for the eventual outcome. At a minimum, issuers and obligors should consult their various advisors, counsel and professional associations to develop: (1) effective strategies for commenting on the proposed rules and (2) best practices to modify their disclosure processes, update software or other technology, and train appropriate staff members in anticipation of the effective date of the final rules.

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