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What GFOA Members Need to Know About Bank Loans.

WASHINGTON - The Government Finance Officers Association posted an alert on Thursday encouraging its members to both voluntarily disclose the terms of their bank loans and pay attention to regulators' increased scrutiny of the lack of such disclosures.

GFOA gave its members several options for how to make the disclosures rather than suggesting one uniform method.

Bank loans have become popular in the municipal market with some issuers using them as an alternative to the issuance of munis because they are cheaper and subject to much less regulation.

While general information, such as the size of the loan, usually ends up in an issuer's annual financial reports, specific loan terms are only disclosed sporadically.

Many muni market participants, including the Municipal Securities Rulemaking Board, have urged the Securities and Exchange Commission to provide more guidance on bank loans, including when they could be considered a security and when municipal advisors working with issuers on them may be crossing over into broker-dealer activities.

GFOA told its members that they can make their disclosures in a variety of ways, including: posting loan agreements or a summary of their terms on the MSRB's EMMA website; incorporating bank loan information into their comprehensive audited financial reports; or releasing summaries of the loans' material terms on their own websites.

GFOA also warned members that if they use EMMA, they will have to be aware that the bank loan will not have a CUSIP and thus will have to be uploaded as "other information" connected with an already posted bond issue.

The MSRB recently said that it had conducted a search ending on March 28 that uncovered only 143 hits when searching EMMA for the term "bank loan." Of those hits, 64 were not filed in the recommended subcategory for bank loans.

The MSRB recommends issuers disclose bank loans under its continuing disclosure category of "financial/operating filing" and then "investment/debt/financial policy."

"Disclosure of a bank loan would be relevant to bondholders if the bank loan is secured by any or all of the same revenues as the outstanding bonds, and is large enough to be material to the creditworthiness of the government," GFOA said in the alert. Additionally, if a government executes numerous bank loans, the combination of those loans in the aggregate and the terms and conditions of the loans may be important for investors in the government's bonds to know, the group said.

GFOA also advised members to develop policies and procedures that address applicable legal and financial requirements for using bank loans in their jurisdictions and to seek guidance from outside professionals like municipal advisors and bond counsel when reviewing the terms of bank loans.

Without that focus, regulators may feel the need to step in, GFOA warned.

“While disclosure of bank loans is not required under MSRB or SEC rules, issuers are advised that increased regulatory scrutiny may result in mandatory disclosure of bank loans in the future, subject to similar standards of materiality and timeliness as apply to municipal securities,” GFOA said.

The alert also focused on an MSRB concept release from March 28 that asked whether the self-regulator should require MAs to disclose information about the bank loans or privately placed munis of their issuer clients. The MSRB said it proposed requiring the disclosures from MAs because issuers have not readily responded to requests for voluntary bank loan disclosures on EMMA.

GFOA said it has significant concerns with the proposal, partly because municipal advisors are the only party in a municipal debt transaction that has a fiduciary responsibility to issuers.

“MSRB’s proposed approach to pass along responsibility of issuer disclosure of bank loans and private placements breaches that fiduciary duty, making MAs also beholden to the investor community,” GFOA said in the alert. “Such a requirement would change the nature of issuers’ relationships with MAs in a manner that is neither beneficial to issuers or MAs.”

The group did not explicitly ask members to file comments but provided them links to the proposal with a reminder that comments are due by May 27.

The Bond Buyer

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