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SEC Official Tackles Muni Disclosure.

AUSTIN, TEXAS – A Securities and Exchange Commission Official tried Tuesday to provide some clarity on disclosure issues in the municipal market, as the effective date of a major amendment to the disclosure requirements looms in two weeks.

Ahmed Abonamah, senior counsel to the director in the SEC's Office of Municipal Securities, discussed the soon-to-be effective amendments to the SEC's Rule 15c2-12 and other disclosure topics during a panel discussion at The Bond Buyer's Texas Public Finance Conference being held here this week. The amendments, which add two new material events to the list which issuers must agree to disclose on a continuing basis, take effect Feb. 27.

Abonamah, who arrived at the SEC in 2016 after several years in the private sector, told conference attendees that the SEC does not endorse any particular way for underwriters to fulfill their duties to reasonably determine that issuers for whom they underwrite bonds will comply with the new material events in their continuing disclosure agreements. Event 15 says issuers have to disclose when they incur material financial obligations, while event 16 says that issuers have to disclose events connected to those obligations which "reflect financial difficulties," such as a default or modification of terms.

One bright line rule is that underwriters can't rely solely on an issuer's reputation to determine whether the representations in the offering document are accurate, Abonamah said, though he allowed that the determination includes an element of judgment on the underwriter's part.

Abonamah said the commission has received a lot of requests to clarify what sort of "non-debt debt" might qualify as requiring disclosure under event 15. The key determination is whether there is a borrowing in the transaction such as in those that involve a lease development corporation. The rule was not intended to capture more straightforward leases, such as those of city vehicles, he said.

Other panelists also weighed in on disclosure topics. Bill Oliver, a spokesman for the National Federation of Municipal Analysts, said the SEC could be helpful by providing the market with clarity on how comfortable the commission is with issuers disclosing unaudited financial information. The industry is wrestling with how to overcome the stale nature of the numbers in issuers' comprehensive annual financial reports, and Oliver said unaudited data could be useful to analysts. Such information is already routinely disclosed in certain sectors, such as healthcare, he noted.

The SEC could further offer issuers some reassurance on the permissibility of talking to investors, when investor-issuer communication is "at an all-time low," Oliver said. Some buy-side analysts have said they believe issuers are hesitant to speak to them in any detail because they are afraid of "selectively disclosing" non-public information over the phone.

Panel member Gregg Bienstock, the CEO and a Co-Founder of Lumesis, said that whatever regulators might do to try to improve the timeliness of issuer disclosure, including technological investments, they have to keep in mind that disclosure is only as good as the data provided. Many of documents posted to EMMA aren't actually word-searchable, Bienstock said.

“Data has to be useful to the market participants,” said Bienstock.

Abonamah said the SEC is studying those disclosure issues, but did not commit to any commission action.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/12/19 03:45 PM EST

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