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SEC Taking a Closer Look at Issuer Disclosure.

The Securities and Exchange Commission's acting director for its Office of Municipal Securities singled out disclosures related to its Rule 15c2-12 as an area the office is watching closely, following an academic study that found serious deficiencies in continuing disclosure.

Ernesto Lanza raised that subject in his remarks before the Government Finance Officers Association's Committee on Governmental Debt Management during GFOA's 2022 Winter Meeting.

"We think it needs to be more refined," Lanza said. "We think there's more to be looked into in that area. If there are ambiguities in the rules, we should have conversations around that. If there are people who need redouble efforts then we think they need redouble efforts," he added. "So that's an important thing."

The concern is over two 2019 amendments to SEC Rule 15c2-12, which require bond issuers to disclose the incurrence of a financial obligation of the issuer or obligated person, if material, in addition to any agreements to covenants, events of defaults, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, if material.

This matter caused some stir at the Brookings Municipal Finance Conference last year, when Federal Reserve economists Ivan Ivanov and Nathan Heinrich, in addition to the University of Cologne's Tom Zimmermann asserted that there was pretty significant underreporting under the two new provisions and that it remains a significant risk for investors.

Lanza acknowledged the Commission's efforts to quell the concerns that came out of the conference and further guidance on the issue may very well be on the way.

"We continue to think that disclosure is an important area to help provide some guidance," Lanza said.

A GFOA Committee Member remarked that during their time in the muni market, general disclosures have improved over time, but things are still not perfect. "We're always looking for ways we want to make it better," Lanza said. "And I think improvements are not across the board."

"I'd like to have some input and discussions around where the rough edges are," Lanza said. "Again, it looks relatively simple on paper but it is fairly complex to analyze what's in what's out and what needs to be disclosed." Lanza said.

The topic of disclosure eventually led participants to press Lanza on the Commission's as well as the Municipal Securities Rulemaking Board's efforts concerning ESG, a matter recently highlighted in the Board's request for information on ESG, which some believe is overstepping its boundaries and convoluting the matter even further.

"I think it's important for them to get whatever they think is important information and research and market input in order to make decisions on whether or not they undertake rulemaking or not," Lanza said.

“I don’t adhere to the view that they can only ask questions on things that are directly related to a specific proposal that they’re undertaking,” he added. “I think they need to understand the marketplace to be able to undertake rulemaking.”

But there is a line. “That doesn’t speak to what they do with the information afterwards,” Lanza said.

Ultimately the Commission leaves the MSRB to conduct its own fact finding mission if it hopes to provide further rulemaking on a particular issue. As for the SEC, there are no immediate plans to enact further rules, though they are keeping their eyes peeled.

“There’s nothing on the agenda for us right at this moment, although we’re obviously paying attention to that,” Lanza said. “It can change from day to day in terms of what we’re asked to do.”

“It bothers me sometimes when sometimes, participants get the impression that there are certain comments that regulators don’t want to hear,” Lanza added. “We need to hear everything.”

Lanza also said he champions efforts to provide more transparency in fixed income markets.

“There are existing transparency systems for post trade transactions,” Lanza said. “We want to explore with the two SROs, FINRA and the MSRB, potential incremental improvements on the data flow, data quality, timeliness and the extent of the information.”

“Clearly, those are areas that are not of direct concern to the municipal securities issuer community, but certainly have significant knock on effect in terms of efficiency of pricing, and that ultimately will have, if nothing else, potential impact on pricing and new issues down the line,” he added. “We think that’s an important thing to keep in mind.”

By Connor Hussey

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