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New Standards Coming By 2027 for Reporting Information to EMMA: Kutak Rock

On December 23, 2022, President Biden signed into law the Financial Data Transparency Act of 2022 (Act). The Act requires the Securities and Exchange Commission (SEC) to develop and implement new standards for municipal issuers and obligors to use when reporting financial and operating information on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website (EMMA). Specifically, the Act provides that the SEC's new standards will require municipal issuers and obligors to submit information on EMMA in a machine-readable, structured format. The new standards are expected to be similar to the reporting standards currently used by publicly traded companies when making disclosures on the SEC's Electronic Data Gathering, Analysis and Retrieval system (EDGAR).

Notably, neither the Act nor the standards to be proposed and implemented by the SEC will change the substance of what municipal issuers and obligors are required to report on EMMA; only the format in which the information is uploaded to EMMA will be affected.

The new reporting standards will require that financial and operating data submitted by municipal issuers and obligors be both structured and open. Currently, many issuers and obligors submit their financial and operating information to EMMA in PDF or HTML formats, which can be considered unstructured formats. While these formats have the benefit of being easily readable to humans, they are not conducive to data analysis on a large scale—the type of analysis often carried out by regulatory entities. In contrast, *structured* data uses identifier codes to classify financial data, allowing for aggregation and comparison among reporting entities.

The new reporting standards are expected to become effective in approximately four years or by the start of 2027. The SEC will be required to consult with market participants (including municipal issuers) in formulating the new standards. Over the next 18 months the SEC will be required to issue proposed rules regarding the new reporting standards, which will then be subject to public comments. The public comment period will allow interested parties, including municipal issuers and obligors, to submit feedback to the SEC regarding the proposed rules. After the SEC finalizes the new rules (expected within two years), municipal issuers and obligors will have two years to bring their financial reporting into compliance with such rules (the new rules are expected to be effective at the start of 2027).

Municipal issuers and obligors and other municipal market participants should be aware of the Act and consider reviewing the SEC's proposed rules when such rules are made available to the public. Municipal issuers and obligors are encouraged to participate in the public comment process to ensure the SEC is made aware of undue burdens or unintended consequences, and whether exceptions or accommodations should be incorporated into the rules. Issuers and obligors should consider the format in which they have routinely submitted data to EMMA and confer with their technology personnel on the feasibility of transitioning to a structured and open data format. If preferred, issuers and obligors may want to confer with third-party technology consultants to determine whether and to what extent technology upgrades will be required to comply with the new

standards.

Kutak Rock will continue to monitor the implementation of the Act and update our clients on its progress through the SEC. If you have any questions about the new reporting standards, or how they may impact your organization, please contact your Kutak Rock attorney or a member of the firm's Public Finance Practice Group.

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