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2023 SEC Municipal Securities Disclosure Conference - Voluntary Disclosure and FDTA Structured Data Present Benefits and Pose Uncertainties for Issuers and Obligated Entities: Hunton Andrews Kurth

The 2023 SEC Municipal Securities Disclosure conference took place on May 10, 2023, the first in nearly three years. Hunton Andrews Kurth LLP's municipal disclosure lawyer Andrew Kintzinger participated as a speaker in the first panel discussion, "Voluntary Disclosure," moderated by Adam Wendell, Deputy Director of the SEC Office of Municipal Securities ("OMS"). Mr. Kintzinger, along with other panelists, discussed current trends with voluntary disclosure and the value of voluntary disclosure generally to rating agencies, investors, and municipal analysts. In addition, the panelists deliberated ways to encourage additional voluntary disclosure with guidance from the SEC while mitigating exposure to antifraud liability. Key takeaways from the panel included a reminder that, although Regulation FD1 does not apply to municipal securities issuers, selective disclosure by municipal issuers should still be avoided. We recommend that issuer clients ensure that proper disclosure policies and procedures are in place to avoid selective disclosure. In addition, most municipal issuers still struggle to define what is "material" in the absence of clear guidance from the SEC. The panel echoed what we are seeing in our practice as a trend among issuers to avoid materiality determinations altogether by simply erring on the side of disclosure. It remains to be seen whether too much information ends up eroding the benefits of good disclosure, particularly for retail investors of municipal bonds.

The second panel discussion, the "Financial Data Transparency Act ("FDTA")," moderated by Mary Simpkins, Senior Special Counsel of OMS, discussed the FDTA's requirements that the SEC adopt structured data standards for information submitted to the MSRB. The potential scope of the requirement is remarkably broad – the FDTA mandate is not limited to specific information (e.g., financial statements alone), particular submissions (e.g., primary or secondary market disclosures alone), or particular categories of municipal market participants (i.e., broker dealers' trade reports) could also be included. The "covered data" will need to be fully searchable and machine readable on a far greater level than simply a searchable PDF, meaning that every piece of data will need to be given a commonly agreed-upon "tag." Given the diversity of issuers and credits in the municipal securities market (compare, for example, the Official Statement for a large hospital system versus a water and sewer system), establishing a common taxonomy for all municipal securities market data could be a challenge. Based on the timeline set out in the FDTA mandate, we expect the SEC and other federal financial regulators to issue proposed rules by mid-2024, and final rules by December 2024 to establish data standards that are to be effective no later than December 2026. Until the proposed rules are issued, we can only surmise that implementation of the structured data standards will generally track the implementation of XBRL standards for financial statements that publicly reporting companies were required to undertake beginning in 2009. Based on our experience, if the burden to adopt data standards is left up to each individual municipal securities data reporter, then any affected municipal securities issuer will likely end up working closely with its auditor and internal accountants over a year or more to understand the requirements, select an appropriate electronic platform and convert its financial statements and disclosures into the required 'tagged'

format. An interesting proposal from the FDTA panel was more centralization of the tagging work to ease the burden on individual issuers (especially smaller or new issuers) – such as the SEC building the platform itself, or that all issuers in a state send their information to one entity who does the work for them. Of course, there are pros and cons to that centralization idea. Any initial taxonomy will undoubtedly undergo revisions as the market provides the SEC with feedback on applying the tags and utilizing the structured data. Transitioning to structured data is no simple undertaking, and we will be following the proposals closely.

The conference continued with two afternoon panels: "Broad Risks," moderated by Mark Elion, Senior Counsel of OMS, discussed the current trends in Environmental, Social and Governance ("ESG") risks, and "Hot Topics and Cold Cases," moderated by Dave Sanchez, Director of OMS, discussed recent enforcement actions for the SEC in the municipal securities market and their applications regarding responsibilities for municipal advisors and the use of the "Limited Offering" exemption under SEC Rule 15c2-12.

During the conference, SEC Chair Gary Gensler provided opening remarks, SEC Commissioner Jaime Lizárraga provided remarks prior to the ESG panel, SEC Commissioner Hester Peirce provided remarks prior to the last panel, and OMS Director Dave Sanchez provided closing remarks.

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1 See 17 C.F. R. § 243.100-.103 (2022).

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