
A Refresher on Selective Disclosure and Anti-Fraud Rules: Frost Brown Todd

What Is Selective Disclosure?

The desire of investors to obtain additional information regarding issuers and conduit borrowers of municipal securities must be weighed against what can be provided to them without violating the U.S. Securities and Exchange Commission's (SEC) rules. While there is no direct guidance on the application of selective disclosure rules to municipal securities, guidance may be drawn from SEC enforcement actions in this area and how the law is applied to other types of securities.

Selective disclosure may occur when only certain investors are provided material non-public information. Information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision and view it as having significantly altered the information currently available. SEC Rule 10b-5 prohibits organizations, including municipalities, from making false statements and omitting material information and applies both during and after the issuance of securities. It is imperative for issuers and conduit borrowers of municipal securities to understand what disclosures could result in selective disclosure or violate the anti-fraud rules.

Selective Disclosure and Violation of Anti-Fraud Rules Scenarios

A violation of the anti-fraud rules occurs when an organization provides inaccurate information about financial conditions to investors with the hope of obtaining favorable results. An organization also violates anti-fraud rules when it fails to provide adequate information to investors and leaves them to rely on potentially inaccurate public statements. The following are examples of violations of anti-fraud rules:

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