SEC Releases Public Statement Encouraging Issuers to Provide COVID-19 Disclosures

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On May 4, 2020, the Securities and Exchange Commission (SEC) chair and the director of the Office of Municipal Securities issued a public statement calling for municipal securities issuers to provide current and forward-looking disclosures that discuss the current and anticipated effects of COVID-19 on their ongoing finances and operations. The statement is directed to municipal issuers conducting new offerings as well as those with outstanding securities. It stresses the importance of providing such disclosures to investors, issuers, and the municipal securities market generally, and provides example disclosures to be used in both required disclosures and voluntary public statements. The public statement echoes a similar release made by the SEC chair and the director of the Division of Corporate Finance on April 8, 2020, stressing the need for additional disclosure given significant investor uncertainty in the wake of the coronavirus outbreak.

The public statement notes that the unpredictable nature of the current public health crisis necessitates more frequent disclosure than the typical practice of providing annual disclosure filings, which do not allow investors to make informed assessments of the issuer's current and future financial condition. The SEC is encouraging municipal issuers to provide forward-looking information regarding the potential future impact of COVID-19 on financial and operating conditions, and suggests that good faith attempts to provide such information would not be second-guessed by the SEC.

The SEC statement suggests that municipal issuers should consider providing information regarding: (1) their current operational and financial status, including decreases in revenues and delays in collection of revenues; (2) how their COVID-19 response, including efforts to protect the health and well-being of residents and employees, has impacted their operational and financial condition, including unbudgeted costs; and (3) how their operational and financial condition may change as efforts to fight COVID-19 evolve.

In addition, the SEC public statement suggested the following additional disclosures:

- *Information Regarding Sources of Liquidity*. Issuers are encouraged to provide a description of cash on hand, access to reserves or other funds (and to what extent such access is limited), access to liquidity facilities and a statement as to whether current liquidity is expected to be adequate to fund essential services and make timely debt service payments. If not otherwise disclosed, municipal issuers are also encouraged to disclose the material terms of any liquidity facility the issuer has used or expects it may use.
- *Information Regarding Availability of Federal, State and Local Aid*. The SEC suggests that issuers provide a description of available federal, state or local aid the issuer has sought or is planning to seek and the anticipated timing of such aid. In addition, if the municipal issuer has obtained any such aid, it is suggested that issuers disclose the nature, amount, and other material terms of the aid if it materially affects or reasonably likely will materially affect its operational or financial condition.
- *Reports Prepared for Other Governmental Purposes*. The SEC suggests that municipal issuers should consider making reports made for governance purposes more readily accessible to investors, as these reports could provide insight into local, regional and sector-specific strategies to fight and recover from COVID-19.

The full SEC statement can be viewed here.

For more information, please contact Michael Elliott, David Rogers, Beau Zoeller, Denise Barkdull or any attorney on Frost Brown Todd's Public Finance team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on

how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.