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Insights

Municipal Securities Debt Service Disclosure Obligations and COVID-19

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Municipal securities disclosure obligations under federal securities law arise under (1) the antifraud provisions of Rule 10b-5 of the Securities Exchange Act of 1934 prohibiting misstatements or omissions of material fact leading to fraudulent statements ("Antifraud Provisions") and (2) post-issuance continuing disclosure regulations which obligate the municipal bond issuer to provide on-going information under a continuing disclosure agreement ("Continuing Disclosure Agreement") while bonds are outstanding. The disruption of COVID-19 does not relieve a municipal bond issuer from its obligations ("Municipal Issuer") under the Antifraud Provisions or any Continuing Disclosure Agreement.

Material Event Notices

Despite COVID-19 disruption, the Municipal Issuer will still be required to file a material event notice within 10 days of occurrence of a material event. The Continuing Disclosure Agreement includes a full list of all events requiring a material event notice. Of particular interest during COVID-19 are rating downgrades, draws on debt service reserves and failures to comply with bond and rate covenants. The Municipal Issuer should review whether debt service reserves, debt service coverage requirements and rate covenants will be affected by COVID-19 and are encouraged to discuss with bond counsel whether a material event notice is required and the content of the notice.

Public Statements

On February 7, 2020, the Securities and Exchange Commission ("SEC") Office of Municipal Securities ("OMS") published Staff Legal Bulletin No. 21 (OMS) addressing the application of the Antifraud Provisions to public statements made by Municipal Issuers which might reach investors. Public statements made on municipal websites, in public speeches and in public meetings are subject to the Antifraud Provisions, for example, when those statements relate to operations and financial conditions could be considered significant by investors. Therefore, statements by Municipal Issuers concerning the effect of COVID-19 on the municipality's operations and finances should be made carefully and based in fact. As a result of public statements, the Municipal Issuer may also need to update its required disclosures on the Electronic Municipal Market Access ("EMMA").

Late Continuing Disclosure Filings

Ongoing continuing disclosure obligations are likely not on the minds of Municipal Issuers at this time. However, if a municipality will be unable to file any ongoing disclosures required under a Continuing Disclosure Agreement, the municipality should file the appropriate late notice. Since the SEC does not directly regulate Municipal Issuers, it cannot relieve Municipal Issuers from complying with a Continuing Disclosure Agreement during COVID-19. As the SEC recently emphasized, a Continuing Disclosure Agreement is between the Municipal Issuer and its investors.

Voluntary Disclosures

If a Municipal Issuer is considering making any voluntary disclosures on EMMA, such statements should be reviewed with bond counsel or disclosure counsel prior to making a voluntary disclosure. The circumstances of COVID-19 are changing rapidly and it is likely a voluntary disclosure would no longer be accurate shortly after filing.

If you have questions pertaining to information found in this alert please contact **M. Catherine Fanello**, **Julie C. Bolling** or reach out to any member of Krieg DeVault's **Public Finance and Municipal Law team**.