INSIGHTS + NEWS

Full Disclosure – Tips, Tricks and Traps for the Unwary in Navigating Public Finance Disclosure Obligations

Part I – The Current Disclosure Landscape in Public Finance

Given the increasing SEC scrutiny on disclosure practices in municipal finance, governmental issuers and conduit borrowers [e.g., 501(c)(3) corporations] are taking a fresh look at their disclosure policies and procedures, developing best practices to confirm compliance with federal securities law requirements.

On March 16, 2023, members of Bowditch's Public Finance team, offered a practical guide for complying with the necessary disclosure requirements, including:

- Preparing the offering circular in connection with the public sale of municipal bonds
- Ongoing disclosure requirements once the bonds are issued
- Impact of other public statements in relation to the antifraud provisions
- Guidelines for preparing effective disclosure policies and procedures
- Environmental, social and governance (ESG) matters
- Cybersecurity-related disclosure

Part II – The Financial Data Transparency Act and the Evolution of Financial Disclosures in Public Finance

The newly-enacted Financial Data Transparency Act (FDTA) has the potential to significantly change the format currently used by issuers and conduit borrowers in submitting financial information to the Municipal Securities Rulemaking Board (MSRB).

How much extra time, resources and money will governmental issuers and conduit borrowers [e.g., 501(c)(3) corporations] need in order to comply with the new reporting standards? The jury is still out, but the FDTA's impact could be significant.

On March 30, 2023, members of Bowditch's Public Finance team offered insight into the FDTA's requirements, timeline and potential challenges relative to the new financial reporting filing requirements, including:

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- Discussion of the FDTA's new financial reporting format
- Operational/technological adjustments to producing financial information in a fully machine-readable and searchable structured format
- Potential for unintended consequences resulting from an extension of these new standards to other financial disclosures beyond audited financial statements
- Considerations for confirming compliance with FDTA requirements relative to new public finance transactions
- Ways in which issuers and conduit borrowers can engage in a meaningful dialogue with respect to the SEC's rule making process

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