



# Developments in Municipal Securities Disclosure Related to COVID-19

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# Presenters

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# Agenda

- **Introduction**
- **Addition to Dorsey's Public Finance Team**
- **Guidance to Corporate Issuers**
- **Guidance to Municipal Markets**
- **Changes to Due Diligence Process**
- **Changes to Disclosure**
- **Questions and Answers**



# Guidance to Corporate Issuers

May 2020 Developments

# Guidance to Corporate Issuers

- **April 8, 2020 Public Statement: The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19**
  - SEC Chairman Jay Clayton and Director, Division of Corporation Finance William Hinman
- **Two Themes in the Public Statement**
  - Importance of Disclosure, Especially Forward-Looking Disclosure
  - Investor Protection, Market Integrity and Legal Risks
- **Importance of Disclosure, Especially Forward-Looking Disclosure**
  - Economic impacts of COVID-19
  - First Quarter 2020 earnings
    - Historical nature of the information
    - Changed circumstances

# Guidance to Corporate Issuers

- **Importance of Disclosure, Especially Forward-Looking Disclosure, continued**
  - Information updates to investors regarding current status and plans for addressing the effects of COVID-19
    - Current liquidity position
    - Expected financial resource needs
    - Receipt or expected receipt of financial assistance
  - Recognition that the assumptions upon which this new type of disclosure are based is new and changing
  - Disclosure should be meaningful and not boilerplate
  - Belief that sharing this information broadly will help the collective fight against COVID-19
- **Investor Protection, Market Integrity and Legal Risk**
  - SEC's commitment to investor protection and market integrity
  - Companies are encouraged to use the safe-harbors for forward-looking statements



# Guidance to Municipal Markets

May 2020 Developments

# Guidance to Municipal Markets

- **February 7, 2020 Staff Legal Bulletin: Application of Antifraud Provisions to Public Statements of Issuers and Obligated Persons of Municipal Securities in the Secondary Market**
  - Office of Municipal Securities Staff
  - The “antifraud provisions apply to any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets.”
  - Types of statements: public announcements, press releases, media interviews, discussions with groups interested in the issuer, reports to local or state governments (perhaps containing financial or operating data), statements by officials, information on websites
- **May 4, 2020 Public Statement: The Importance of Disclosure for our Municipal Markets**
  - SEC Chairman Jay Clayton and Director, Office of Municipal Securities Rebecca Olsen
- **Dorsey’s May 14, 2020 summary of the May 4, 2020 Public Statement**



# Guidance to Municipal Markets

- **Two Themes in the May 4, 2020 Public Statement**
  - Even greater importance of current disclosure
  - Importance of the municipal securities market
  
- **Even greater importance of current disclosure**
  - Impact of COVID-19 on operations and financial condition
  - Sources of liquidity
  - Availability of federal, state, or local aid
  - Reports prepared for other governmental purposes

# Guidance to Municipal Markets

- **Even greater importance of current disclosure, continued**
  - New information would mean basing it on estimates, assumptions, and projections regarding future circumstances
  - Including additional disclosure requires special care and attention
  - Adding new disclosure presents the need to carefully consider appropriate cautionary language describing how estimates were made, what assumptions were used, and how data was projected
  - The potential for adding disclosure requires assessing the risks of such additional disclosure

# Guidance to Municipal Markets

- **Importance of the municipal securities market**
  - This portion of the Public Statement reiterated concepts of which you are already well-aware.
  - The municipal securities market:
    - Provides funding for beneficial public purposes
    - Involves many retail investors
    - Reflects diversity of issuers
    - Usually trades infrequently

# Parallels Between Corporate Issuer and Municipal Markets Guidance

- Premised on a need to address investor uncertainty
- Stated the importance of high quality disclosure for capital markets and municipal markets
- Asked issuers to provide investors with updated information
- Noted the importance of consistency for publicly available information about issuers
- Encouraged issuers to make use of relevant safe-harbors for forward-looking statements (for municipal securities, it's the “bespeaks caution” doctrine)
- Reflected the expectation that the SEC would not second-guess good faith efforts to provide such appropriately framed current or forward-looking information

# Changes to Due Diligence Process



May 2020 Developments

# Changes to Due Diligence Process

- **Obtaining and Reviewing Additional Information**
  - Enhancements to the due diligence questionnaire to obtain this information for review
  - New section for COVID-19 questions
  - Request regarding Annual Financial Reports (or other financial reports to governmental bodies)
  - Request for current budget
  - Request for descriptions of information provided to rating agencies

# Changes to Due Diligence Process

- **Due Diligence Meetings**
  - Review other filings or information provided for other governmental purposes
  - Discuss Appendix A tables
  - Review of unaudited information for possible inclusion in the official statement
  - Assess risks of potential new disclosure

# Changes to Disclosure



May 2020 Development



# Changes to Disclosure

- **Content additions (provide updated information)**
  - Timing of the offering in relationship to availability of audited information is significant
  - When to make the disclosure
    - “For municipal issuers with pending offerings of securities or required filings, we encourage you to include the disclosures discussed above, including for reasons of completeness.”
    - For issuers who are not conducting new offerings or are not required to make a disclosure filing in the coming months, the Public Statement provided: “However, for the reasons of consistency and fair dissemination of disclosure discussed above, and because the operational and financial condition of a municipal issuer, particularly under the current circumstances, can change rapidly, we urge these issuers to consider providing voluntary disclosure regarding the current and reasonably anticipated future impacts of COVID-19 on their operational and financial condition.”

# Changes to Disclosure

- **Content additions (provide updated information), continued**
  - Operations and Financial Condition
    - Updates on revenues and collections on revenues
    - Unbudgeted costs related to responding to COVID-19
    - Expectations of how operational and financial condition might change as efforts to respond to COVID-19 evolve
  - Liquidity
    - Cash on hand
    - Access to reserves or other funds
    - Liquidity facility access

# Changes to Disclosure

- **Content additions (provide updated information), continued**
  - Availability of Federal, State, and Local Aid
    - Aid sought or intend to seek
    - 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
    - Any other reports that may be prepared for governance purposes should be assessed for content and value to investors

# Changes to Disclosure

- **Cautionary language addition (provide context)**
  - What assumptions were used to generate the information
  - “Accompanying those disclosures with meaningful cautionary language—including, for example, (1) a description of relevant facts or assumptions affecting the reasonableness of reliance on and the materiality of the information provided, (2) a description of how certain important information may be incomplete or unknown, and (3) the process or methodology (audited vs. unaudited) used by the municipal issuer to produce the information—will not only improve the quality of the disclosure but also will reduce legal and other risks.”

# Conclusion

- **Key Takeaways**

- Evolving expectations for information investors need to know
  - Timeliness of financial and operating information
  - By not including additional information, what valuable investor information is being omitted
- Increased due diligence
- Case by case analysis regarding appropriate additional disclosure
- Additional disclosure
- Heightened regulatory interest and scrutiny of what is disclosed
  - The SEC's Office of Municipal Securities will be hosting a virtual conference on June 16, 2020 to discuss secondary market disclosure practices, including COVID-19 related disclosure

# Developments in Municipal Securities Disclosure Related to COVID-19

## Questions?

# Resources

- **February 7, 2020 Staff Legal Bulletin: Application of Antifraud Provisions to Public Statements of Issuers and Obligated Persons of Municipal Securities in the Secondary Market**
  - <https://www.sec.gov/municipal/application-antifraud-provisions-staff-legal-bulletin-21>
- **April 8, 2020 Public Statement: The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19 (corporate guidance)**
  - <https://www.sec.gov/news/public-statement/statement-clayton-hinman>
- **May 4, 2020 Public Statement: The Importance of Disclosure for our Municipal Markets**
  - <https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04>
- **May 14, 2020 Dorsey summary of the May 4, 2020 Public Statement**
  - <https://www.dorsey.com/newsresources/publications/client-alerts/2020/05/municipal-securities-expanded-covid-19-disclosures>
- **June 16, 2020 SEC Virtual Conference on Municipal Securities Disclosure**
  - <https://www.sec.gov/news/press-release/2020-121>

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