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Chapman Client Alert

February 18, 2020 Current Issues Relevant to Our Clients

SEC Committee Makes Recommendations Regarding Timeliness of Financial Disclosures in the Municipal Securities Market

On February 10, 2020, the SEC's Fixed Income Market Structure Advisory Committee (the *"FIMSAC"*) approved a series of recommendations designed to improve the timeliness of disclosure in the municipal securities market (the *"Recommendations"*). The Recommendations were drafted by the Municipal Securities Transparency Subcommittee (the *"Subcommittee"*) of the FIMSAC. The approval of the Recommendations was preceded by a discussion of the current state of municipal disclosure among the FIMSAC members and panelists, including members of the issuer and investor communities and Former SEC Chair Elisse Walter.

Background

The SEC established the FIMSAC in 2018 to provide advice to the SEC on the efficiency and resiliency of the U.S. fixed income markets and to identify opportunities for regulatory improvement. The FIMSAC is composed of a group of outside experts, including individuals representing the views of retail and institutional investors, small and large issuers, trading venues, dealers and self-regulatory organizations. The FIMSAC's recommendations to the SEC are not binding. The Subcommittee was formed to consider the impacts of transparency, both pre-trade and post-trade, in the municipal securities market. In preparing the Recommendations, the Subcommittee studied the availability of financial information about issuers and obligated persons (collectively referred to herein as *"issuers"*) and found that while the breadth of information made available to investors is reasonably comprehensive, the timeliness of the submission of such information varies among issuers.

The Recommendations

The Recommendations outline the regulatory framework for disclosure in the municipal securities market and describe, among other things, the broad exemptions offered to issuers from the registration and reporting requirements of the federal securities laws that apply to corporate issuers. Also outlined are the current limitations of the SEC's authority to enforce the contractual promise that an issuer provides in a continuing disclosure agreement. The Recommendations approved by the FIMSAC and designed to benefit municipal securities holders are as follows:

1. Legislative

   - Congress should provide the SEC with statutory authority that gives the SEC a mechanism to enforce compliance with continuing disclosure agreements ("*CDAs*") and other obligations of issuers.

   - Congress should provide the SEC with statutory authority to grant a safe harbor to issuers from private liability from forward-looking statements that satisfy certain conditions, including, but not limited to, the inclusion of appropriate risk disclosure relating to such statements, and if projections are provided, the disclosure of significant assumptions underlying such projections and certifications that the financials are provided in good faith.

2. Regulatory

   - The SEC should explore ways to make deadlines for filings of annual financial information contained in CDAs more certain. In making this recommendation, the FIMSAC noted particular concern with contingency language contained in many CDAs that stipulates that an issuer will present audited financial statements "when and if available."

   - The SEC should seek public comment with respect to the concerns raised by market participants and the potential need for the SEC to establish a disclosure framework including timeframe obligations for issuers. The Recommendations state that after the SEC reviews comments, the SEC can consider whether it should seek legislation providing additional authority over disclosure in the municipal securities market.

3. Education

- The SEC should explore ways to raise awareness among issuers of the potential consequences of providing financial information to investors that is not timely or robust. This recommendation was made while recognizing that in the current competitive, low-interest rate environment, an issuer who provides less timely or robust disclosures than another issuer, is not subject to a significant yield penalty. A change in market dynamics, however, could result in increased costs of borrowing for issuers who provide less timely or robust disclosures.

For More Information

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