

Chapman Client Alert

March 1, 2019

Current Issues Relevant to Our Clients

New Reporting Requirements for our Illinois Governmental Clients

Effective February 27, 2019, there are two new reportable events (the “*New Reportable Events*”) for which an issuer must provide notice to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) website. The New Reportable Events will be added to the 14 existing reportable events for all publicly offered transactions occurring on and after February 27, 2019. The Securities and Exchange Commission (the “SEC”) added the New Reportable Events to address a perceived lack of investor access to material financial information about issuers.

The New Reportable Events, as most commonly applied, require disclosure of the following:

- (1) a new financial obligation, if it is “material” (see below for a discussion of materiality considerations), and any covenants, events of default, remedies, priority rights or similar terms under a new financial obligation or a modification of a pre-existing financial obligation which affect the holders of outstanding municipal securities of the issuer, if material, and
- (2) a default, acceleration, termination, modification of terms or similar event under a new or pre-existing financial obligation which reflects financial difficulties of the issuer.

With respect to (1) above, for most of our governmental clients, the term “financial obligation” for practical purposes will mean any form of debt obligation, including both short-term and long-term debt obligations, under the terms of a bank loan, capital lease, or similar contract regardless of the length of the repayment period, if material. The materiality of a financial obligation is determined under general securities law standards. A guiding principle with respect to materiality is that “materiality determinations should be based on whether the information would be important to the total mix of information made available to the reasonable investor.”

With respect to (2) above, any of the described occurrences must be reported if the information is relevant to investors in making an assessment of the current financial condition of the issuer.

Timing and Format for Reporting New Reportable Events

The New Reportable Events could apply to any number of agreements which could potentially be considered financial obligations requiring disclosure, if material. If disclosure is required, as with the fourteen existing reportable events, notice of the New Reportable Events must be reported to EMMA promptly and not later than ten business days of the occurrence of the event.

Finally, an issuer will need to determine whether to disclose material terms of a financial obligation in summary form or by posting the entire agreement to EMMA. Bond Counsel or Disclosure Counsel can assist with that analysis.

Final Considerations for Issuers

Determinations required to be made by an issuer under the New Reportable Events discussed above will present a range of challenges. Whether a particular financial obligation, its terms or an event under a financial obligation is “material” is a mixed question of law and fact. The issuer will need to determine the personnel who are authorized and qualified to make

these determinations, and consultation with legal counsel or a municipal advisor may be necessary. Issuers with municipal securities disclosure policies and procedures should review and possibly update them in light of the New Reportable Events, and issuers without disclosure policies and procedures should consider developing and implementing them.

[For More Information](#)

If you would like further information concerning the matters discussed in this article, please contact your primary Chapman attorney.

For additional information, see Chapman's [Client Alert dated August 27, 2018](#).

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