

Municipal issuers and borrowers may be receiving inquiries from investors and lenders about the COVID-19 crisis and its impact on operations. Responding to investor inquiries is an important part of investor relations. However, you should remember that such interaction with market participants must be approached with the understanding that federal securities laws apply to these interactions and what you say should be accurate and complete.

The SEC staff has very recently discussed the applicability of federal securities laws to public statements made by municipal issuers and borrowers to the secondary market (i.e., not connected to a public offering of municipal bonds). Our [previous publication](#) discussed the staff analysis and practical approaches to public statements in light of the staff analysis.

It is important to consider a few things in responding to these inquiries from investors in the secondary market or lenders. Note, the following does not apply to statements made in offering documents when you are selling bonds.

- Consider keeping a journal of all inquiries that includes who inquired and when, what questions were asked, who responded and what answers were provided. This will aid you in providing the same information to all who inquire.
- Try to make sure all inquiries are directed to a single point person (or department).
- Have talking points for how your entity is responding and what potential impact the current crisis may have.
- There is no need to speculate about potential impact or create reports or projections or provide specifics (unless you have them). The range of possibilities is too great for any projections to be meaningful and, absent a covenant in your bond or loan documents, there is no legal requirement to create or provide such information. However, if you choose to speak and respond to inquiries, the information provided must be accurate and complete when the statements are made.
- Consider posting a summary of the information provided for easier and more widespread access, either on your own website, a third party site (such as DAC, if you are a client) and/or EMMA. This may also limit specific inquiries or be an easy response to specific inquiries.
- Anything posted should be clearly dated and indicate it is a voluntary filing and no commitment is made to provide updates.

There is another aspect of secondary market disclosure that should be considered as well. When posting your annual or periodic financial and operating information, should you include some discussion regarding COVID-19 and the potential impact on your operations? For example, if you are posting annual financial information as of a financial period that ended prior to March 1, 2020, should you include a general statement addressing subsequent events to the effect that the current public health crisis may adversely affect operations and finances in subsequent periods and the effect may be significant? Whether you should and how much detail should be included is dependent on your particular facts and circumstances. If you are already responding to investor inquiries or have already made a voluntary posting on EMMA, you probably should make reference to the information already provided. Additionally, the final consideration noted above applies equally to this kind of disclosure. The posting should be clearly dated and indicate that no commitment is made to provide updates.

There is no doubt these are challenging times. However, in most, if not all, parts of the country municipal issuers and borrowers have had to deal with challenging times before (e.g., wildfires, hurricanes, tornados, floods etc.). It is important to continue to follow your disclosure policies and procedures even when challenged by a great national public health crisis.

For additional information, our [COVID-19 Resource Hub](#) provides guidance on key legal issues for businesses to consider, together with some practical steps for businesses to take.