

# SEC Statement Encourages Municipal Securities Issuers to Provide Expanded COVID-19 Disclosures

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On May 4, 2020, Securities and Exchange Commission (“SEC”) Chairman Jay Clayton and Director, Office of Municipal Securities Rebecca Olsen issued a joint statement<sup>1</sup> (the “Statement”) urging voluntary expanded disclosure for the municipal market on the effects of COVID-19. The Statement was directed to issuers of municipal securities, investors, and market participants and follows on the heels of a statement<sup>2</sup> issued on April 8, 2020 by Chairman Clayton and Director, Division of Corporation Finance William Hinman and is intended to extend the guidance offered to public companies to the municipal securities market<sup>3</sup>.

In particular, the Statement highlights that the effects of COVID-19 have raised uncertainties regarding the financial status of state and local governments and special purpose entities, encourages municipal securities issuers to provide updated financial and other disclosures, and encourages financial professionals to discuss these matters with main street investors.

The guidance in the Statement covers the following themes:

***The importance of robust, timely and accurate municipal issuer disclosures has become even greater as a result of the effects of COVID-19.***

The Statement notes the SEC’s history of encouraging municipal issuers to provide robust, timely, and accurate information to investors and market participants. In light of the potentially significant effects COVID-19 may be having on the finances and operations of municipal issuers, issuers are encouraged to give investors as much information about their current financial and operating condition as is reasonably practicable. The Statement recognizes that the current disclosure framework (usually providing historic annual financial information), given the fluid nature of the public health crisis and the resulting financial and economic impacts on municipal issuers, may not be providing investors the information needed to make informed assessments of the issuer’s

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## Related Capabilities

- Public Finance
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financial condition.

- *Important considerations that generally weigh in favor of providing updated investor-oriented disclosures discussing the current and anticipated effects of COVID-19.* Despite the challenges of developing voluntary, unaudited and non-routine disclosures regarding the current financial status, Chairman Clayton and Director Olsen believe such challenges are outweighed by the benefits to issuers, investors, and municipal securities markets generally. Further, issuers are encouraged to provide forward-looking information regarding the potential future impact of COVID-19 on their financial and operating conditions. Issuers should put such additional disclosure into context for investors by describing the facts or assumptions used, the certainty of information, and the process or methodology (audited or unaudited) used by the issuer to produce the information. Chairman Clayton and Director Olsen do not expect that the SEC will second-guess good faith attempts to provide such appropriately framed information.
- Some examples of information municipal issuers could provide to investors include:
  - *Information regarding the impact of COVID-19 on operations and financial condition.* Issuers should consider providing information regarding their operational and financial status (including any decreases in revenues and delays in collection of revenues); how their efforts to respond to COVID-19 have affected their operational and financial condition (including un-budgeted costs); and how their operational and financial condition may change as COVID-19 efforts evolve.
  - *Information regarding sources of liquidity.* Issuers should consider describing cash on hand, access to reserves or other funds, and access to liquidity facilities. Describing material terms and limitations on these options is also advisable.
  - *Information regarding availability of federal, state and local aid.* Issuers should consider describing any governmental aid obtained or sought or aid the issuer is planning to seek. If any aid has been obtained, the issuer should provide certain details about it.
  - *Reports prepared for other governmental purposes.* Issuers should consider making available to investors the reports issuers routinely prepare for governance purposes because such reports could be a source of current information on how the issuer is addressing the impacts of COVID-19.

***Market participants should recognize the size, importance, complexity and specialized nature of the municipal securities market.***

The municipal securities market serves important public purposes by providing financing to make public improvements. The Statement notes that over 72% of investors in the municipal securities market are retail investors, that there are approximately 50,000 issuers of municipal securities, and that there are approximately one million different municipal securities outstanding. The size of the offerings ranges from thousands to billions of dollars and the principal and interest payments come from a variety of sources. Because of the many market forces at work, issuers need to be mindful of the disclosure they provide about their offerings.

Keeping those themes in mind, issuers must remember that the SEC's assessment of disclosure is guided by materiality. The Statement summarizes the assessment of materiality by noting that generally, "a fact is material if there is a substantial likelihood that the information would have been viewed by a reasonable investor as having significantly altered the total mix of information available." Such an assessment requires

evaluating the facts and circumstances of a given situation.

The Statement also addressed timing questions of providing updated disclosure. Municipal issuers with pending offerings or required filings to be made are encouraged to include the disclosures discussed above. Other municipal issuers will not have new offerings or be required to make a disclosure filing in the coming months. Nevertheless, the Statement urged such issuers to consider providing voluntary disclosure regarding the current and reasonably anticipated future impacts of COVID-19 on their operational and financial condition.

While the Statement expresses the views of Chairman Clayton and Director Olsen and does not carry the force of SEC Rule, it presents views that issuers should consider. Chairman Clayton and Director Olsen recognized that liability issues are often raised when considering undertaking voluntary disclosures or expanding required disclosures. Legal counsel can help guide issuers with assessing these risks in light of the issuer's unique circumstances.

<sup>1</sup> [https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04#\\_edn1](https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04#_edn1).

<sup>2</sup> <https://www.sec.gov/news/public-statement/statement-clayton-hinman>.

<sup>3</sup> It is through the antifraud provisions of federal securities laws, regulation of broker-dealers and municipal securities dealers, and Rule 15c2-12 under the Securities Exchange Act of 1934 (which provides a framework for municipal securities disclosure) that the SEC reaches the municipal securities market.