



## COVID-19: Reaching Bondholders and the Market with Disclosure

Syracuse ♦ Ithaca ♦ New York City

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Municipal and governmental issuers and conduit borrowers (such as hospitals, colleges, universities and other nonprofits) are taking steps to address and mitigate direct and indirect risks and costs posed by COVID-19. Issuers and conduit borrowers should add continuing disclosure obligations to their growing checklist of items to address with respect to COVID-19 and its impacts on their financial condition and operations.

The first step is to review continuing disclosure agreements entered into in connection with public offerings. These agreements set forth issuer and conduit borrower undertakings for annual disclosure (e.g., CAFR, annual reports and certain operating data) and material events disclosure.

COVID-19 affirmative mitigation measures and actual or anticipated impacts may not fall neatly into one of the material events categories. However, disclosure and filing on EMMA and on issuer or conduit borrower websites may nonetheless be warranted.

The anti-fraud provisions of Rule 10b-5 promulgated under the Securities Exchange Act govern all statements made by municipal and governmental issuers and conduit borrowers that are reasonably expected to reach investors in the primary offering but also in the secondary market.

These anti-fraud obligations continue throughout the term of the bonds. The U.S. Securities and Exchange Commission (SEC) suggests that for ongoing disclosure to the secondary market "a common sense approach to disclosure will usually lead you in the right direction. For example, ask yourself 'If I were buying these bonds, what would I like to know?'"

Under the anti-fraud provisions, information released to the public (e.g., discussion at an open meeting of a legislative or agency session, social media notices to residents or website postings) or in a manner that otherwise may reasonably be expected to reach the market must not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

Issuers and conduit borrowers should consult with financial advisors and with internal and external counsel to manage disclosure of information and for guidance on what, if any, information beyond the requirements in the continuing disclosure agreement should be posted on EMMA and their websites.

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