CDIAC

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION

Top COVID-19 Disclosure "Hacks" Issue Brief

INTRODUCTION

Few events have affected businesses and agencies as suddenly or as profoundly as COVID-19 has over the past several months. Public agency issuers in the municipal market have been stretched while responding to effects of the pandemic in addition to dealing with sharp declines in revenue and unprecedented uncertainty about the future.

A common concern arising from municipal issuers during this time is responsibilities related to disclosure of their financial condition to current or potential investors. Many issuers have expressed an "analysis paralysis" of whether – and how – to disclose effects of COVID-19 to investors. To help address these concerns and provide guidance for this question, the California Debt and Investment Advisory Commission (CDIAC) hosted a webinar on "Navigating Investor Disclosures during the COVID-19 Crisis" on May 1, 2020. CDIAC then followed up with a quantitative analysis of trends related to voluntary disclosure of COVID-19 in the July 2020 edition of CDIAC's *Debt Line* publication. CDIAC has also been posting updated dashboards on COVID-19 disclosures filings to the Electronic Municipal Market Access (EMMA) site since June 2020.[1] Other organizations have also hosted webinars and published guidance related to COVID-19 disclosure. For example, in August 2020, a Disclosure Industry Working Group led by the Government Financial Officers Association (GFOA) also released a paper with continuing disclosure guidance for issuers of municipal securities.[2]

The disclosure landscape has evolved considerably over the past few months, and there are a variety of perspectives about what is the right approach to disclosing effects of COVID-19. CDIAC built upon this body of work related to COVID-19 disclosure by conducting interviews with several respected industry professionals to get their perspective on important factors to consider when disclosing effects of COVID-19. CDIAC was fortunate to have broad participation for these interviews with several experts in the public finance industry, including Natalie Brill, Chief of Debt Management at the City of Los Angeles; Kevin Civale, Shareholder at Stradling Yocca Carlson & Rauth, P.C.; Daniel Deaton, Partner at Nixon Peabody, LLP; Robert Hannay, Treasury Manager at the East Bay Municipal Utility District; Jacqui Jennings, Partner at Schiff Hardin LLP; Bridget Katz, Development Finance Specialist at the City & County of San Francisco; Brian Mayhew, Chief Financial Officer at the Metropolitan Transportation Commission; Nikolai J. Sklaroff, Deputy Director of Finance who oversees the Debt & Treasury Management at the City of San José; Stephen Spitz, Partner at Orrick Herrington & Sutcliffe, LLP; and Anna Van Degna, Director of the Controller's Office of Public Finance for the City & County of San Francisco.

CDIAC heard a variety of perspectives that sometimes led to a consensus, and also diverged at times. Insights from these interviews were compiled and the themes that emerged from these discussions formed the basis of the list of top COVID-19 disclosure tips, or "hacks," below.

IMPORTANT DISCLAIMER: The general guidance shared in this article is not meant as a substitute for actual legal advice. Issuers should consult with their disclosure and/or bond counsel for disclosure recommendations specific to their unique situation. (See Disclosure Hack #10 on this list: "Everything depends on everything else.") Also note that the opinions expressed in this article are from the industry professionals who participated in this project, and they should not be construed as reflecting the views of their employers. Statements should not be attributed to any specific participant in the CDIAC interviews unless the statement's author is mentioned explicitly.

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[1] Data from the Municipal Securities Market COVID-19-Related Disclosure Summary updated monthly by the Municipal Securities Rulemaking Board, available at: www.msrb.org/msrb1/pdfs/Municipal-Securities-Market-COVID-19-Related-Disclosure-Summary.pdf.

[2] Government Finance Officers Association Disclosure Industry Working Group, "General Continuing Disclosure Considerations for Municipal Securities Issuers, Including Those Related to COVID-19 Financial Matters," *Government Finance Officers Association*, Published August 2020, Accessed September 17, 2020, www.gfoa.org/gfoa-led-disclosure-industry-working-group-publishes.

Top COVID-19 Disclosure "Hacks" List

1.Voluntary disclosure: Just because you haven't done it before doesn't mean you shouldn't do it now.

Although some of the industry professionals interviewed for this project mentioned that they had the same perspective on disclosure before and after COVID-19, there was a general consensus that there has been a change in the market about the need for voluntary disclosure, especially in extreme scenarios such as the current global pandemic. In an interview with CDIAC, Brian Mayhew from the Metropolitan Transportation Commission (MTC) explained: "Voluntary disclosure is intended for something extraordinary, and COVID-19 and the shelter-in-place order fit right into that." Many of those interviewed by CDIAC agreed and spoke of a feeling of urgency to voluntarily disclose the preliminary effects of COVID-19 on their agencies. The main concern from issuers and counsel was that investors – and possibly regulators – could find that the issuer had not been responsive to a possible material change in the agency's operations and/or financial condition. In extreme cases, this could result in a violation of SEC Rule 10b-5 of the Securities and Exchange Act of 1934.[3]

Not all of the experts interviewed by CDIAC agreed on a widespread need for voluntary disclosure, and those who did made that determination at different times depending on each issuer's unique situation. That said, there was a clear determination made across the board in all of the interviews. As Kevin Civale from Stradling Yocca Carlson & Rauth, P.C. explained: "If an issuer decides to make a voluntary disclosure, it must be done thoughtfully, and accurately communicate the material facts relating to the matter being disclosed."

Voluntary disclosure due to COVID-19 was almost nonexistent in February, but by March there were hundreds of voluntary disclosures filed by issuers across the country.[4] Hundreds more were added in April, and on May 4, 2020, Chairman Jay Clayton and Rebecca Olsen of the Securities and Exchange Commission (SEC) released a public statement on the importance of disclosure for municipal markets, particularly related to effects of COVID-19.[5] Most of the interviewees agreed that the response from the SEC was a welcome one, and that it reflected a shift in tone to one considered more "prescriptive" than had been seen in past statements. In an interview with CDIAC, Jacqui Jennings from Schiff Hardin LLP mentioned that: "The May 4 SEC statement didn't actually change very much, because those expectations were already there, but what it did do was really focus the issue." Nikolai Sklaroff from the City of San José added that: "There was already a momentum building for additional disclosure before COVID-19, and COVID-19 intensified the demand for disclosure from investors." Several issuers interviewed by CDIAC reported filing a voluntary disclosure in response to COVID-19 whether or not voluntary disclosure had been a standard practice for the organization. For example, Natalie Brill from the City of Los Angeles noted during an interview that despite never filing a voluntary disclosure before, she felt convinced after reading the May 4 SEC statement that filing a voluntary disclosure of effects due to COVID-19 was the right course of action.

Voluntary disclosure does have both advantages and disadvantages that each issuer will need to evaluate to determine the best course of action for the agency. Stephen Spitz from Orrick Herrington & Sutcliffe, LLP explained some of the important considerations for issuers deciding whether or not to file a voluntary disclosure. "If something significant happens, investors will want to know about it. Communicating proactively and thoughtfully with investors can also strengthen your reputation within the investor community." Another advantage of voluntary disclosure mentioned by Mr. Spitz was that a voluntary disclosure provides the same information to everyone. Mr. Spitz also noted that there are disadvantages to filing a voluntary disclosure, most notably in the amount of staff and financial resources it will cost to produce. If an issuer is going to file a voluntary disclosure, it is important to dedicate the appropriate time and resources to make sure all of the information included in the disclosure is fully accurate and complete. "There are risks of including bad or incomplete information."

2. Get the story straight.

It can prove difficult to have consistent messaging in a large organization in even a normal scenario, and the context of COVID-19 further complicates this situation. According to Daniel Deaton from Nixon Peabody, LLP, one major advantage of voluntary disclosure is that it allows an issuer to control the information the market receives about the agency's financial and operational condition. Mr. Deaton emphasized that: "The situation is often that your agency ***is*** disclosing, but you do not have control over what you are disclosing. The elected official is speaking to the press, the budget document is posted to the website, and data has been put out there already. It is important to consider what information is out there or is ***likely*** to be out there." Investors may look to other public statements or sources they

[3] California Debt and Investment Advisory Commission, *California Debt Financing Guide*, i-16, (Sacramento: 2019), Accessed September 24, 2020, www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf.

[4] *MSRB COVID-19 Detail Report dataset*, (September 22, 2020), distributed by the Municipal Securities Rulemaking Board, Accessed September 22, 2020, www.msrb.org/msrb1/pdfs/Municipal-Securities-Market-COVID-19-Related-Disclosure-Summary.pdf.

[5] Jay Clayton and Rebecca Olsen, "The Importance of Disclosure for our Municipal Markets," The U.S. Securities and Exchange Commission, Published May 4, 2020, Accessed September 11, 2020, www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04.

can find that reference the financial condition of the issuer. These sources can lead to an inconsistent or incomplete message, yet this information becomes an element of the "total mix of information" that reasonable investors use to inform their investment decisions. If issuers have more accurate, consistent, and complete information about a financial condition that significantly alters the total mix of information or "sets the story straight," they have a responsibility to disclose that information to the market.

Kevin Civale from Stradling voiced similar concerns and suggested that issuers need to be especially mindful in the case where they are adopting or revising budgets, or providing budget updates, because such public statements about those plans could be considered by the SEC as "speaking to the market." Mr. Civale suggested that issuers consider the use of cautionary language in these public statements, similar to what they might include in their official statements (OSs). (See Disclosure "Hack" #3: "Use strong, cautionary language.") It is worth noting that there is precedent of SEC enforcement action in the case of misleading statements made by city officials in the absence of timely disclosure.[6] In the words of Natalie Brill from the City of Los Angeles: "It is better they hear it from you than read it in the newspaper."

3. Use strong, cautionary language.

A consistent theme that emerged during the interviews was the tension between a strict "compliance" mindset of disclosure and an approach to disclosure that investors find meaningful. Although there was not a consensus among those interviewed about the type of disclosure approach an issuer should employ, there was a general agreement among those interviewed to use cautionary language in all disclosure documents, whether primary, ongoing, or voluntary. This is especially recommended when accounting for potential effects of COVID-19 given the characteristic volatility and uncertainty related to the effects of the pandemic and fundamental changes in consumer behavior. In the words of Daniel Deaton from Nixon Peabody: "It is probably the most challenging disclosure environment that any of us have encountered in our careers."[7]

In the case of an offering in the primary market, the expectation is for all issuers to disclose potential effects of COVID-19 in the official statement. Jacqui Jennings from Schiff Hardin noted that investors would find an OS that does not mention COVID-19 "conspicuous in its absence." Stephen Spitz from Orrick added a suggestion that issuers should not only include a general discussion of COVID-19 and its impact on the organization's service area, but also a discussion of how the effects of COVID-19 are expected to impact the organization's operations and finances.

Including a discussion about COVID-19 in an official statement is now common practice, but some issuers lack clarity on how to craft a message around how COVID-19 is expected to affect their agency. According to Kevin Civale from Stradling, there is no reason not to use strongly worded, cautionary language when discussing potential effects of COVID-19 on the issuing organization, as appropriate. For example, it may make sense for an issuer to include a statement such as: "The COVID-19 pandemic has materially adversely impacted the financial condition of the issuer, and there can be no assurances that it will not result in additional adverse impacts."

Many of the considerations listed above also apply to ongoing and voluntary disclosure, though filing a voluntary disclosure for an outstanding bond is dependent on an internal decision about what is prudent and appropriate for that particular issuer. In the case of voluntary disclosure, several of the industry experts interviewed by CDIAC noted that it is important to include a legal disclaimer that the issuer is not required to update the document if conditions change, and that investors should not expect any update to the posted voluntary disclosure.

4. You know more than you think...

Many issuers have experienced an "analysis paralysis" about not knowing what or how to disclose the effects of COVID-19 on the agency. This is not surprising given the heightened level of uncertainty about the magnitude and duration of a global pandemic. That said, several of the experts interviewed by CDIAC thought that issuers have access to significant information about their entity and its position to respond to COVID-19. In CDIAC's webinar on May 1, 2020, Daniel Deaton from Nixon Peabody stated: "I think that issuers actually know a lot more than they think that they know." Mr. Deaton continued by saying that although issuers might not know the same type of information that they used for traditional disclosure in the past, "that doesn't mean that there isn't really valuable known information."[8] Stephen Spitz from Orrick agreed and offered that "Investors want to know what you know and what you are going to do about it." In other words, what types of corrective actions are being made or considered at the organization in response to the pandemic. For example, have staffing decisions and/or other expenditures changed in response to COVID-19? Many resources for revenue come at different times, but if you know that you have experienced a significant decline in a revenue source due to the shelter-in-place order or

[6] "SEC Charges City of Harrisburg for Fraudulent Public Statements," *U.S. Securities and Exchange Commission*, Published May 6, 2013, Accessed June 11, 2020, www.sec.gov/news/press-release/2013-2013-82htm.

[7] Brooke Abola, Daniel Deaton, and Robert Berry, "Navigating Investor Disclosures During the COVID-19 Crisis," Webinar from the California Debt and Investment Advisory Commission, May 1, 2020, Accessed May 1, 2020, www.treasurer.ca.gov/cdiac/webinars/2020/20200501/description.asp.

[8] Abola, Deaton, and Berry, "Navigating Investor Disclosures During the COVID-19 Crisis."

other effects of COVID-19, that could be a material change that you may need to disclose to investors. According to Daniel Deaton from Nixon Peabody, one of the most important considerations for an issuer is the importance of disclosing the information and assumptions used to make management decisions. Providing this information gives investors a sense of the governance and an overall risk profile of the issuer that they can use to determine whether they feel comfortable investing in that organization.

The most common suggestions for indicators to include in a disclosure about the effects of COVID-19 on the agency were revenues, expenditures, reserve amounts, and days of cash on hand. Other general suggestions for indicators to include in a COVID-19 disclosure included the debt service coverage ratio, the impact of COVID-19 on the local economy (e.g. the unemployment rate for the jurisdiction), and other annual report indicators that an issuer is likely already collecting. A few of the issuers interviewed by CDIAC mentioned that they found collecting and analyzing information for a voluntary COVID-19 disclosure had been easier because the timing happened to be in conjunction with budget preparation. Some issuers have posted voluntary disclosures on EMMA that contain budget plans or other public reports that were presented to the agency's governing board.

In addition to general indicators to report to investors, each issuer will likely have indicators specific to the entity's industry. For example, Brian Mayhew from MTC discussed reporting on the decrease in local traffic and how the stoppage of cash transactions has affected internal fee collection processes. Robert Hannay from the East Bay Municipal Utility District (East Bay MUD) mentioned the need for enterprise revenue bond issuers to report on any decisions to change rates due to the impacts of COVID-19. Each entity and sector will have its own indicators that are used to determine business decisions, and those can all provide insight to investors. Whether it is appropriate to disclose general indicators and/or ones that are specific to a particular industry, Nikolai Sklaroff from the City of San José offered an additional consideration: "If there is anything that you wake up in the middle of the night worried about, then you might want to consider whether investors are going to want to know about ***that***."

5. ...But you can't know everything.

The experts that CDIAC interviewed for this project offered advice on not only what you should consider disclosing, but also what you should be careful not to include in a disclosure filing. There was a consensus among the experts that disclosure is a legal undertaking that should be taken seriously, as there is a possibility of negative ramifications for disclosing misleading information, even unintentionally.

The May 4, 2020 SEC statement did offer guidance encouraging forward-looking disclosure statements, and assured issuers that "good faith attempts to provide appropriately framed current and/or forward-looking information" would not be subject to an SEC enforcement action.[9] Although most of the finance professionals interviewed by CDIAC agreed that the May 4 SEC statement offered helpful guidance, many of the interview participants noted some important nuances for what constitutes "appropriately framed" and "forward-looking information." For example, there was not a consensus among the group of experts about the role of using forecasts when disclosing information to investors. Despite encouragement from the May 4 SEC statement, several interviewees mentioned that they were less likely to include projections in a disclosure document than before the start of COVID-19; however, some issuers decided to take the opposite approach. For example, Robert Hannay from East Bay MUD explained that his group made the decision to include internal projections in a voluntary disclosure posted to EMMA, despite the fact that including internal projections was a departure from previous disclosure practices for the organization. Mr. Hannay also remarked on the importance of accurately reflecting the current information available to the organization: "There is so much uncertainty right now, and you want to make sure you feel good about what you are disclosing."

An important point that surfaced during the interviews was a possible distinction between "forward-looking information" and forecasts. Forecasts are modeled predictions of future values of indicators based on a set of assumptions. Several of the finance professionals who discouraged the inclusion of forecasts in disclosure filings felt that there was still a way to provide forward-looking information without pinning the agency down with a specific forecast, especially in this time of unprecedented uncertainty. According to Stephen Spitz from Orrick: "In normal times, the past is a pretty good indicator of the future, but 2020 will not be anything like 2019." Mr. Spitz continued by distinguishing that it can be okay to include projections in the right circumstances, but that "it is dangerous to speculate." There are ways to include forward-looking information in a disclosure filing that do not involve speculation on future conditions or events. For example, if an issuer does not feel it has enough information to say with enough certainty what the magnitude of the effect on revenue will be, the issuer can still disclose the direction of revenue trends, and possibly compare to the same point in previous years. Some of the finance professionals interviewed by CDIAC suggested comparing current revenue trends to revenue levels in the 2008 recession. Comparing current trends to a known quantity in the past can be useful information to investors to help give a sense of the magnitude of the situation without limiting the issuer to forecast a specific possible amount in the future. This type of comparative approach may actually be considered just as useful for investors as

[9] Jay Clayton and Rebecca Olsen, "The Importance of Disclosure for our Municipal Markets."

actual forecasting, if not more so. Nikolai Sklaroff from the City of San José offered his take on the challenge for issuers: "The challenge for issuers and the irony of the situation is that investors want forecasts and insights about the future now more than ever, at exactly a time when COVID-19, the national response to COVID-19, and the subsequent unknown health issues all make it more difficult to project future outcomes with certainty."

Another important consideration for issuers who may be contemplating a disclosure filing is whether the issuer has prepared internal forecasts and/or projections related to its internal operations. According to Kevin Civale from Stradling, if an issuer has prepared internal projections and is using them to drive decision-making, then the issuer must determine if such projections are "material" to investors when crafting the voluntary filing. This is particularly important if the internal projections indicate deteriorating financial performance. Once the decision to make a voluntary filing has been made, the issuer must be transparent with respect to its current expectations.

6. Strategies for forecasting: What are the known unknowns?

Several of the interview participants noted that investors have always cared more about the future implications about what is disclosed. What is different now is that the past is no longer a useful predictor of what is expected to happen in the future. As mentioned above, the industry experts interviewed by CDIAC suggested that issuers need to be incredibly mindful and careful if including forecasts in a disclosure to investors, especially now. That said, if an issuer has determined that they want or need to include forecasts in a disclosure filing, there are a few strategies that were recommended as best practices.

INCLUDE CLEAR DISCLAIMERS: You can't and you won't know if the forecasts you include will prove to be correct in the future. Be explicitly clear about the limitations in the information you are providing if including forecasts in any disclosure filing. Note that this point can also be generalized to the rest of the language in the disclosure document. (See Disclosure Hack #3: "Use strong, cautionary language.")

CLEARLY SEPARATE FORECASTS FROM WHAT IS KNOWN: It should also be completely clear to investors and any other readers looking at the disclosure document when a statement is based on actual versus forecasted data. Some strategies for this include proper framing with language (see above), and also the placement of the text within the document. If a disclosure document has language or sections that alternate between actual indicators and forecasts, the shift can be confusing to a reader and introduce unnecessary ambiguity in the information an issuer wants to communicate to investors.

LIST AND EXPLAIN THE ASSUMPTIONS BEHIND FORECASTING MODELS: All forecasted models will use at least some underlying assumptions; even in cases where the status quo remains unchanged, there is an assumption that the current situation will not worsen or improve. If you plan to include any forecasts in a COVID-19 disclosure, be transparent about the assumptions that you used to make that prediction. In fact, the assumptions used in the forecast might end up being even more informative to investors than the forecast itself. The assumptions that an issuer uses in a forecast can give a sense of the governance of the organization, which is an important consideration for investors.

CONSIDER MORE THAN ONE SCENARIO: Given the heightened level of uncertainty and volatility in the financial markets, it may make sense to consider more than one possible scenario when creating forecasts. This strategy was used by multiple issuers, including Robert Hannay at East Bay MUD. For example, East Bay MUD used this approach to present a "more severe" and "less severe" case in a voluntary disclosure filing. Not only does considering more than one model or set of assumptions add more nuance to the forecast, but it can also serve as an extra signal to investors that the forecast should not be considered an actual prediction of what will happen in the future. Any specific forecasted value will almost always end up proving to be "incorrect" even in the most standard situations; however, an approach that considers multiple scenarios can generate a range of possible future values that are more likely to be consistent with the original forecasts. Daniel Deaton from Nixon Peabody had another perspective, and suggested that the focus should not necessarily be on the number of scenarios the issuer considers, but instead reiterated the importance of disclosing all of the scenarios upon which the issuer bases important management decisions.

EMPLOY BEST PRACTICES: Although COVID-19 adds plenty of unique challenges to forecasting, there are a number of best practices for forecasting that are worth considering in the context of COVID-19 as well as in general. The industry professionals interviewed by CDIAC had some additional suggestions when choosing to employ forecasts, including testing the assumptions you make (where possible), controlling for seasonality,[10] reviewing data quality prior to forecasting, as well as other general approaches to maintain the integrity of the underlying data.

YOU MIGHT NEED TO UPDATE: Although this can be said in general for COVID-19 disclosures, the calculus for updating the investor community with a new voluntary disclosure is even more important when including forecasts. There was a general consensus among the interview participants that issuers may need to consider posting a new, updated

[10] Controlling for seasonality entails identifying and analyzing data patterns that differ in a specific period due to notable, predictable differences in customer behavior. Examples include increased travel volume in summer months, above average consumer spending during a holiday season, etc. A resource for more information on seasonality can be found here: Will Kenton, "Seasonality," Investopedia, Updated May 27, 2019, Accessed September 17, 2020, www.investopedia.com/terms/s/seasonality.asp.

disclosure filing in a case where there is an important (especially material) change. For example, if a forecast is included in a voluntary COVID-19 disclosure filing and the actual amount for that indicator is significantly worse, it is very possible that it will be necessary to update the investor community with that new information.

7. Give a complete snapshot.

A common theme that emerged in the interviews was to be wary of selective disclosure, and to give a full picture of the agency, even if it is just a "snapshot" based on limited information. Jacqui Jennings from Schiff Hardin offered a suggestion to make sure to get all of the right people in the (likely metaphorical) "room" to ensure that the disclosure document includes everything needed to give a complete and accurate picture of agency operations. One suggestion from Kevin Civale from Stradling was: "When preparing a voluntary disclosure, I would approach it as I would an official statement. While the issuer might not necessarily include every table or data point it typically includes in an OS, the critical factors impacting the issuer's finances should be considered for discussion in the voluntary filing." For an official statement, the expectation is to have a broad look at all of the factors that investors may find material and disclose those factors to the market. Using the same process to determine what is material when filing a voluntary disclosure can help prevent selective disclosure that omits important details about material factors outside of any one particular department.

Multiple industry experts interviewed by CDIAC also noted the importance of making sure the information you share with any investors is shared to the investor community at large. This can be done either by filing a voluntary disclosure through EMMA and/or by posting the information to the issuer's investor website. (See Disclosure Hack #8: "Disclosure is not the same as information.")

8. Disclosure is not the same as information.

Another common theme that emerged over the course of the interviews for this project was the important distinction between general information and disclosure, and that disclosure is often subject to a tension between the goals of transparency and regulatory compliance. Multiple industry experts shared cases and reasons why information may not be appropriate for an agency to share in an official disclosure document, including reasons stemming from a materiality threshold, unofficial estimates, future uncertainty, legal ramifications, and/or other valid reasons. There was also a wide range of opinions on the role that transparency should play in voluntary disclosure.

One of the topics with the most divergent opinions in interviews with CDIAC was on the use of an investor website. Several counsel we spoke with did not recommend the use of an investor website and suggested posting exclusively on EMMA. Some issuers also emphasized using EMMA instead of an investor website. Natalie Brill from the City of Los Angeles addressed this issue directly by saying: "If it's important enough to communicate with the investor community, then put it on EMMA."

On the other hand, some interviewees felt strongly that the use of investor websites in addition to EMMA could be a valuable way to build investor relations through transparency. This approach can make sense given that there may be some informational context that serves a goal of transparency to the public but otherwise might not make sense to include in an official legal disclosure. That said, it is worth the reminder that anything posted on an investor website can be considered by the SEC as speaking to the market, and all information posted there is still subject to SEC securities regulations.[11] In addition, all of the interview participants that use investor websites reiterated the importance of communicating material updates with the investor community by posting to EMMA.

Another important consideration about the use of investor websites is whether that website is a platform you have already been actively using for posting information in the past. According to Daniel Deaton from Nixon Peabody, an issuer planning on using its website to communicate with the market may need to consider first posting to EMMA to let investors know that the issuer intends to post relevant information about updates related to COVID-19 on an its investor website.[12] This can be especially important in cases where this is a change in practice for the issuer.

9. Ownership with a shared responsibility.

Many of the interviews converged around the idea that good disclosure starts with setting up the right internal process for identifying and analyzing issues to disclose. The main takeaway through all of the conversations was that proper disclosure works best with a culture of both strong ownership with a shared responsibility in the outcome. According to Stephen Spitz from Orrick: "There should be a single person who ultimately has individual responsibility for the disclosure, and the issuer also needs a culture of transparency so problems don't get buried." Mr. Spitz added about the importance of governance and buy in when preparing disclosure, especially across large organizations that might need to be more cognizant about finding ways to coordinate across departments. Most of the finance professionals interviewed advocated for ongoing disclosure training throughout the organization to ensure that all managers fully comprehend the importance of disclosure.

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[11] "SEC Charges City of Harrisburg for Fraudulent Public Statements," *U.S. Securities and Exchange Commission*.

[12] Brooke Abola, Daniel Deaton, and Robert Berry, "Navigating Investor Disclosures During the COVID-19 Crisis," Webinar from the California Debt and Investment Advisory Commission, May 1, 2020, Accessed May 1, 2020, www.treasurer.ca.gov/cdiac/webinars/2020/20200501/description.asp.

The sudden transition to a remote working environment was an additional challenge that several of the industry experts addressed during the interviews with CDIAC. Although some counsel and issuers said that operations are proceeding as normal, others acknowledged that collaboration and coordination across teams is less natural than before when most (if not all) employees worked out of the same building. Anna Van Degna from the City and County of San Francisco offered some advice for issuers in this new period of remote work: "Expect things to take longer." She went on to add that personnel is stretched thinner than normal in many departments and agencies due to additional complexities and work volume exacerbated by COVID-19, but that the commitments in continuing disclosure agreements are still hard deadlines that have not changed.

10. Everything depends on everything else.

Although there were a number of themes that emerged from our interviews with several experts in the public finance industry, there is so much variation among issuers that it is impossible to generalize takeaways that apply to all organizations. Effects of COVID-19 on issuer credits have had varying degrees of magnitude, and material changes that apply to some sectors or repayment sources might not affect other industries in the same way. For example, credits that rely on sales or transient-occupancy taxes for debt service have tended to be significantly affected, whereas utilities have generally fared better during the pandemic. Any entity considering filing (or not filing) a disclosure should work directly with a disclosure and/or bond counsel to determine the most appropriate approach for that specific organization.

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