

Hurricane Harvey – After the Storm, Disclosure Considerations for Bond Issuers

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The Bracewell public finance team understands that all of our clients and their employees have been deeply affected by Hurricane Harvey, which caused billions in damage and destruction to private and public property across Texas. The scope and reach of Hurricane Harvey's impact is still being assessed; however, it is clear that the unprecedented nature of this storm will create important legal questions. We are prepared to assist our clients as these issues arise.

With the process of rebuilding and restoring services underway, issuer and conduit borrower officials may begin to consider whether it is appropriate to provide disclosure to market participants regarding the economic impact of Hurricane Harvey and/or the impact of the storm on infrastructure and long-term operations.

Disclosure Considerations

Since a natural disaster, such as Hurricane Harvey, is not one of the events for which an event notice is required under Rule 15c2-12, disclosure relating to Hurricane Harvey provided outside of the context of an offering is generally voluntary. If an issuer or conduit borrower (each, an "Obligated Person") chooses to voluntarily provide disclosure regarding Hurricane Harvey, it is important to discuss such disclosure with consultants, such as financial advisors and legal counsel (e.g., bond counsel and/or disclosure counsel). Listed below are a few considerations regarding secondary market disclosure.

- **Communication with Rating Agencies or Bondholders:** In consultation with your financial advisor and bond counsel or disclosure counsel, consider having one point of contact to field calls from market participants such as rating agency representatives, the press and bondholders. While there is not a prohibition against an issuer speaking to market participants on an individual basis, many issuers find that preparing a voluntary notice posted to EMMA ensures all material facts are received by the market at the same time and same manner.
- **Format:** The manner in which an Obligated Person chooses to communicate with market participants is important. Speaking to the entire market through a voluntary EMMA filing may help an Obligated Person control the substance and timing of the disclosure. Similarly, if a press release speaks to the economic impact of Hurricane Harvey, an Obligated Person should consider whether it should be included in a voluntary EMMA filing.

- **Substance:** Any voluntary disclosure that is reasonably expected to reach investors is subject to the antifraud provisions of the federal securities laws. As such, any voluntary disclosure must not make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading. If an Obligated Person determines to prepare voluntary disclosure regarding Hurricane Harvey, the disclosure should be carefully drafted to help avoid any potential liability under the antifraud provisions of the federal securities laws. It is important to discuss the substance of such disclosure with legal counsel experienced in federal securities laws, which may include bond counsel and/or disclosure counsel.
- **Disclaimers:** Since, at this time, any economic impact of Hurricane Harvey would likely be estimated or speculative, an Obligated Person should consider including certain disclaimers in the disclosure. For example, an Obligated Person should consider stating (i) that the disclosure is being made on a voluntary basis, (ii) the date as of which the disclosure speaks, and (iii) that the Obligated Person is not undertaking to update the disclosure in the future or to regularly report on financial or other developments. Further, if forward-looking statements are contained in the disclosure, an Obligated Person should consider including appropriate cautionary language about the forward-looking statements.

Links to Disaster Proclamations and Declarations

- **Governor Proclamations:** The Governor of Texas, Greg Abbott, has issued several proclamations. These include adding certain counties to the disaster declaration and suspending certain sections of the Texas Education Code for limited purposes. More information about such proclamations can be found [here](#).
- **Presidential Declarations:** The President of the United States, Donald J. Trump, has approved a declaration of a major disaster with several amendments for Texas. More information about the declaration can be found [here](#) and [here](#).