

May 21, 2014

Disclose Bank Loans to Standard & Poor's or Risk Rating Withdrawal

This month, Standard & Poor's Ratings Services ("S&P") sent letters to all issuers of the bonds it rates advising the issuers to provide all relevant documentation related to any private debt, including bank loan financing, that the issuer enters into.

What Type of Debt Does S&P Want Disclosed?

- Direct Bank/Private Loans
- Private Placements
- Private Debt
 - S&P is looking to be notified of all such debt, regardless of whether or not such additional debt is rated by S&P.

What Documentation Is S&P Looking For?

- All relevant documentation
 - Form of Note or Bond
 - Loan or Financing Agreement
 - Covenant Agreement
 - Security Documentation (mortgages, security agreements, etc.)

When Does S&P Want the Information?

- No later than promptly following the closing of the transaction, though preferably before closing.

What Is the Consequence of Not Disclosing?

- Risk suspension or withdrawal of your S&P rating.

While S&P is requiring direct disclosure of the referenced debt to it, bondholders and their representatives have also encouraged issuers to voluntarily post information about such bank loans and private debt on the Electronic Municipal Market Access ("EMMA") website, which is maintained by the Municipal Securities Rulemaking Board ("MSRB"). In 2012, the MSRB published a notice in which it encouraged, but did not mandate, issuers to post such information in order to provide timely access to investors and other market participants to allow them to make informed investment decisions. The MSRB encouraged the filing of either a PDF of the appropriate loan documents or a summary of the transaction, including the name of the lender, payment dates, maturity and amortization, prepayment provisions, purpose, security, tax status, guarantees, events of default, and remedies, among other information.

Any issuer considering voluntary disclosure on EMMA or with questions on when and what to send to S&P may wish to consult with counsel prior to any disclosure. The attorneys in Day Pitney's Municipal Finance Group routinely counsel clients on such matters. Please feel free to contact any of the attorneys listed to the right of this alert if you would like to discuss this alert or your disclosure obligations.