



ACCESS TO CAPITAL

The Importance of Disclosure Transparency and Procedures for Health Care Borrowers

Thursday, May 23, 2013



1

©2013 Foley & Lardner LLP • Attorney Advertising • Prior results do not guarantee a similar outcome • Models used are not clients but may be representative of clients • 321 N. Clark Street, Suite 2800, Chicago, IL 60654 • 312.832.4500

12 8594



Presenters



Dave Bannard
Partner
Foley & Lardner LLP - Boston
dbannard@foley.com



Heidi Jeffery
Partner
Foley & Lardner LLP - Chicago
hjeffery@foley.com



Eric Golden
Research Analyst
Fixed Income Division,
Fidelity Investments
eric.golden@fmr.com



Christine (Chris) Doyle
Managing Director
PFM Group
doylec@pfm.com

2

©2013 Foley & Lardner LLP

12 8594



Disclosure Issues for Health Care Borrowers

What We'll Cover Today:

- The current state of play:
 - Recent SEC enforcement actions
 - Recent rulemakings and association activities
 - Recent experience
- The buy side's perspective:
 - Why disclosure matters
 - How disclosure is changing
 - How self liquidity disclosure works
- What the SEC teaches: practical considerations
- Establishing and maintaining a successful investor relations program
- Q&A with Eric Golden
- Questions from attendees for the panel



Disclosure Issues for Health Care Borrowers

Recent Enforcement Decisions -- SEC vs. Harrisburg

- Background
 - City of Harrisburg's failure to comply with its continuing disclosure obligations
 - Material deterioration in credit due to calls on guarantees
 - Other publicly available information materially misleading and/or incomplete



Disclosure Issues for Health Care Providers

SEC vs. Harrisburg – the outcome

- Settlement – finding by SEC of “reckless conduct” and violation of Rule 10b-5 by Harrisburg:
 - Cease and desist order
 - Reminder that “speaking to the market” can be construed broadly
 - Dicta regarding possibility of holding public officials accountable for misleading or incomplete disclosure
 - Importance of remedial efforts
 - Enhancements to disclosure processes
 - Written policies and procedures
 - Designated responsible official
 - Clear internet practices
 - Training



Disclosure Issues for Health Care Borrowers

- SEC vs. Illinois
 - Focus on public pension disclosure
 - Importance of understanding specific pension plan(s) applicable to borrower in order to make good disclosure
 - Importance of mitigating factors
 - Enhanced disclosure
 - Written policy
 - Designated responsible individual
 - Training



Disclosure Issues for Health Care Borrowers

Recent Rulemakings & Association Activities

- Amendment of Rule 15c2-12
 - Limited exceptions to Rule's scope
 - New and revised list of mandatory reporting events
- MSRB actions
- Joint task force on bank loan disclosure
- SEC Report from July 2012
 - Legislative changes
 - SEC rule changes
 - MSRB regulatory changes

©2013 Foley & Lardner LLP

7

12.0504



Disclosure Issues for Health Care Borrowers

Recent Experience

- Many issuers have failed to comply strictly with their continuing disclosure obligations
 - Late filings
 - Failure to file event notices
 - Incomplete filings
 - Remedies undertaken
- Disclosure issues relating to recent mergers and acquisitions
- Coordinating with other public filings (e.g., 10K, 10Q), and associated pitfalls
- Senior living issues
 - Related entity disclosure
 - Enhanced disclosure – during construction, investor calls, etc.

©2013 Foley & Lardner LLP

8

12.0504



Disclosure Issues for Health Care Borrowers

The State of Play in Municipal Disclosure:

- Improved – but still imperfect - practices and procedures
- Continuing failures to comply with on-going disclosure requirements
- Enhanced SEC scrutiny and enforcement
- Buy side's voice and need for timely information
- Continuing need for transparency and improved practices

FMR Municipal Bond Group

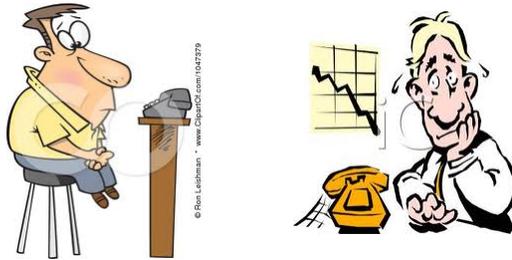
▶ Healthcare Disclosure: An Investor's Perspective

▶ Eric Golden



▶ Bond Disclosure

- ▶ Disclosure is an essential line of communication between lenders and borrowers
- ▶ In its absence, the borrowers will assume the worst
- ▶ It *will* impact our decision to buy or sell a bond



11



▶ Bond Disclosure

▶ New Environment, New Questions

Historically Sufficient...	Going Forward...
Inpatient Market Share	Outpatient Market Share
Net Patient Revenue	% Revenue: Outpatient vs Inpatient
Volume	Unique Patients
Medicare Case Mix	Total Case Mix
Employed Physicians	% of Doctors Above Breakeven
Operating Margins	Operating Margins - by Payer
5 year Capex Budget	Capex Details
Payer Mix	What % of Revenue is FFS
	What % of Revenue is Shared Savings
	What % of Revenue is Capitation
	Lives Covered & Risk-Based Capital
	Readmission Rates & Other Quality Scores

12



▶ Money Market Disclosure: Essential

▶ FMR Requirements

- » Same day assets
- » Details of demand debt
- » Contingent liabilities
- » Frequency of Disclosure depends...
- » Access to Management

Cleveland Clinic
Financial Liquidity Disclosure
As of December 31, 2012
Cleveland Clinic Health System's Investment Portfolio

Assets by Pool (in millions \$)	Operating		Long Term	Other	Total
	Exp	Liquidity			
Cash & Cash Equivalents	23.9	5.2	27.2	-	56.3
Money Market Funds	-	0.5	10.7	-	11.2
Debt Securities	-	-	-	-	-
U.S. Treasury (1-3 year)	-	2.2	100.0	-	102.2
U.S. Treasury (3-6 month)	-	1.6	20.0	-	21.6
U.S. Treasury (6-12 month)	-	6.2	21.0	-	27.2
U.S. Treasury (1-5 year)	-	-	400.0	-	400.0
U.S. Treasury (5-9.99 year)	-	-	300.0	-	300.0
Non-investment Grade Debt	-	1.2	300.0	-	301.2
Other Investments	-	-	2,788.1	-	2,788.1
Receivable Assets	-	-	320.0	-	320.0
Total Assets by Pool	23.9	20.2	2,776.0	-	2,820.1

Assets by Liquidity (in millions \$)	7-10		11-30		31-90		91-360		Greater than 360 days	Total
	Days	Days	Days	Days	Days	Days				
Cash & Cash Equivalents	23.9	-	-	-	-	-	-	-	-	23.9
Money Market Funds	0.5	-	-	-	-	-	-	-	-	0.5
Debt Securities	-	-	-	-	-	-	-	-	-	-
U.S. Treasury (1-3 year)	102.2	-	-	-	-	-	-	-	-	102.2
U.S. Treasury (3-6 month)	21.6	-	-	-	-	-	-	-	-	21.6
U.S. Treasury (6-12 month)	27.2	-	-	-	-	-	-	-	-	27.2
U.S. Treasury (1-5 year)	-	400.0	-	-	-	-	-	-	-	400.0
U.S. Treasury (5-9.99 year)	-	300.0	-	-	-	-	-	-	-	300.0
Non-investment Grade Debt	-	301.2	-	-	-	-	-	-	-	301.2
Other Investments	-	-	2,788.1	-	-	-	-	-	-	2,788.1
Receivable Assets	-	-	320.0	-	-	-	-	-	-	320.0
Total Assets by Liquidity	23.9	421.2	401.2	3,108.1	-	-	-	-	-	3,934.4

Series	Self-Liquidity Program ⁽¹⁾ (in millions \$)				Total	Cumulative Total
	2008 04	2009 12	2010 09	2010 06		
Same Day	95.3	127.3	127.3	127.3	95.3	95.3
One Month	-	-	-	-	-	95.3
Three Months	-	41.9	17.5	27.0	66.4	161.7
Six Months	-	19.2	30.0	30.0	88.4	250.1
One Year	-	56.4	70.0	136.6	433.2	683.3
Over One Year	-	-	-	100.0	100.0	783.3
Total	95.3	214.8	234.8	333.9	833.9	833.9

13



What the SEC Has Taught Us: A Guide on Practical Considerations



Time to Challenge Disclosure Process

It is time to THINK about disclosure. A robust disclosure process should include the following:

- Policies and Procedures
- Training
- Designated Individual(s) or Disclosure Committee
- Use of Clear Internet Approach

15

©2013 Foley & Lardner LLP

12.0504



Procedures Help

Procedures referenced in recent SEC settlements have focused on:

- Accurate primary and secondary market information
- Timely provision of annual report and events notices
- Content. Procedures should cover and identify
 - Who is responsible for primary and secondary market information
 - Who is responsible for material events notices
 - What process needs to be involved before information can be publicly disseminated
- Appropriateness of procedures. Procedures are not a one size fits all
 - Not generic
 - Need to be meaningful, tailored

16

©2013 Foley & Lardner LLP

12.0504



Conduct your own Internal Audit

- Before we discuss training, think through institutional weaknesses
- What mechanism do you have in place to identify and evaluate information
 - Relevant for primary and secondary market disclosures
 - Should consider controls, policies, or procedures to ensure that material information is assembled and communicated to individuals responsible for bond disclosures

17

©2013 Foley & Lardner LLP

12 8594



Training

- Train personnel involved in the disclosure process
 - what departments need general training
 - what departments need focused training
 - liken to other organizational training; some with general, some with focused
- Discuss requirements internally
- Instruct key personnel when to call

18

©2013 Foley & Lardner LLP

12 8594



Use of Disclosure Counsel

- How role adds value
- What you might be missing

19

©2013 Foley & Lardner LLP

12.0504



Designate Responsibility

- Who within an organization
 - Treasury team
 - Financial reporting/audit team
 - Legal
 - Outside counsel
- Who is authorized to speak
- How to the “right people” get looped into the information flow

20

©2013 Foley & Lardner LLP

12.0504



Re-Think the Deal Pattern

- Don't rely on precedent; challenge it
- Meaningful document calls/meetings
- Use of Disclosure Counsel
- Re-think Diligence
- Think through conclusions from disclosure; think through effects of what you are disclosing

21

©2013 Foley & Lardner LLP

12 8594



Website disclosure

- Harrisburg
- Let investors know where information can be obtained

22

©2013 Foley & Lardner LLP

12 8594



Never to Late to Start

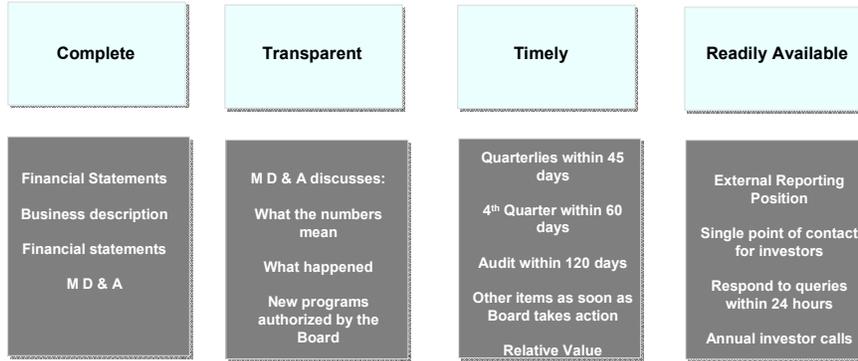
- First steps—take an inventory of what you do have
- Identify weaknesses
- Talk with counsel
- Work to establish a successful investment relations program

Establishing and Maintaining a Successful Investor Relations Program in the Healthcare Sector



Key Elements of an Investor Relations Program

Hallmarks of a High Quality Investor Relations Program



Is it Worth the Time and Effort?

15 c (2) 12

- Annual financial statements
- Utilization statistics

Many Healthcare Issuers

- Annual audit
- Quarterly abbreviated financials
- M D & A – not extensive

10-K/10-Q

- Quarterly and Annual reporting
- Financial Statements
- MD & A
- Significant loan documents
- Line of business reporting

What most investors see
 ▪ Ok, not great
 ▪ Needs a lot of analyst research

High Quality Disclosure

- Analysts always have current data
- Analysts know who to contact at borrower for any additional information
- Investors are unlikely to be surprised by any events
- Investors will generally give issuers the benefit of the doubt if results deteriorate as they knew it was going to happen



Advantages for Borrowers of a Robust Disclosure Program

Access to capital consistently, even in tough markets

- Most institutional investors use internal credit analysts to track & approve holdings
- Investors concerned about “headline risk” – something negative about a holding out of the blue
- In tougher times, institutions usually stick with borrowers with good track record of commitment to high quality disclosure

Reduced Credit Spreads

- Borrowers with high quality disclosure tend to trade at lower credit spreads than similarly rated issuers whose disclosure is not as highly regarded
- Clear demonstration of greater demand for paper of institutions with better disclosure
- Poor disclosure is equated with higher risk in the minds of the analysts



Need for Rapid Evolution in Healthcare Disclosure

Metrics of Operational Performance are Shifting in Healthcare Reform Era

- Traditional focus on volume is becoming less determinative
- Most disclosure requirements focused on utilization

Healthcare organizations should consider initiating disclosure of newer relevant data

Healthcare Organizations need to make compelling case for Metrics that Demonstrate Success with New Tools

- Population Health
- Measurement of Quality and Value
- Management under capitated model encompassing continuum of care



Evolving Disclosure for Private Direct Loans

Private direct bank loans have become significant part of the funding for non-profit healthcare systems

- Public disclosure is not required for these transactions & a rating is not required

Investors in publicly issued debt have valid concerns regarding loan terms that could compromise their position

- Concerns regarding tighter covenants
- Concerns regarding triggers for events of default
- Important for healthcare organizations to negotiate best possible terms to mitigate concerns

Organizations should consider posting some limited information regarding private loans

- Need to balance needs of public investors with those of private lenders



Q&A With Buy Side

- As a buy-side analyst, why do think transparency in disclosure is important?
- Describe the analytical process you and your colleagues undertake with respect to a new issue of municipal securities. Besides reviewing the POS, what additional research do you do, if any? What areas are of greater (or lesser) importance? What is the impact of ratings on your review? How important is your familiarity – or lack of familiarity – with the credit?
- What is often inadequately addressed in primary disclosure? What would you change if you could?
- What are you looking for – what is the critical information in Appendix A? What is the value of the Risk Factors section, if any?
- Can you describe some other credit positives and negatives that you note or look for?
- Do roadshows and other investor presentations add value? What are the most important elements in these presentations from your standpoint – for example, the ability to ask questions, a canned vs. a live presentation, a new or rare credit vs. an established credit?



Q&A With Buy Side

- In my experience, health care borrowers are agreeing to provide quarterly unaudited financials. Is that consistent with your experience? What other trends in additional continuing disclosure are you seeing that have value, such as regular investor calls? What would you like to see?
- When do you think that continuing disclosure is so late that is stale and not helpful for your analysis? What percentage of conduit borrowers are chronically late in filing?
- Do you feel that it is important that conduit borrowers disclose bank borrowings that are payable from the same basis as bonds that you hold? Does your analysis change if the debt is not on parity? What information regarding the bank debt do you need to see disclosed?
- What are your responsibilities following the purchase of a security? Who follows the credit, and what kind of detail are you looking for?
- Does the quality of the disclosure and the history of continuing and primary market disclosure impact the bids that your firm submits? Do these factors otherwise affect your recommendations with respect to a particular security?

31

©2013 Foley & Lardner LLP

12 0504



Save the Date!

- Next Access to Capital Webinar will be held on **Thursday, August 15, 2013** discussing *“How to Manage the Antitrust Risks Associated with Mergers and Affiliations.”*
**Invitation to follow*

32

©2013 Foley & Lardner LLP

12 0504



Bios

David Bannard

David Y. Bannard is a partner with Foley & Lardner LLP, where he is a member of the firm's Finance & Financial Institutions, Public Finance, Health Care Finance & Restructuring, and Real Estate Practices. He is the leader of the firm's Airport Services Practice and also a leader of the firm's Public/Private Partnership Practice and a member of the Health Care Industry Team.

Mr. Bannard is an experienced bond lawyer, having served as bond counsel and as counsel to various parties to bond transactions, including borrowers and underwriters, and in-house issuer's counsel. He focuses on transportation and health care finance.

Representative transactions include:

- Serves as bond counsel to the Massachusetts Port Authority, including a recent restatement of its \$100 million commercial paper program and issuance of over \$275 million of new money and refunding bonds in July 2012.
- Serving as underwriter's counsel for a \$42 million special facilities revenue bond financing for airport facilities.
- Serving as underwriter's counsel for a \$60 million refunding and new money issue for a large community hospital.
- Serving as underwriter's counsel for a complex \$100 million wind energy prepayment financing.
- Serving as bond counsel for more than \$200 million of taxable and tax-exempt bonds to fund construction of a new airport consolidated rental car facility.
- Serving as bond and disclosure counsel for a seaport, including the issuance of revenue bonds, special facilities revenue bonds, commercial paper and subordinated debt.
- Serving as borrower's counsel to a large acute care city hospital, a small inner-city hospital, and a senior living obligated group.
- Serving as underwriter's counsel for health care financings.

Prior to joining Foley, Mr. Bannard served as the deputy chief legal counsel of the Massachusetts Port Authority, where he oversaw all transactional legal matters, including:

- Participating in the issuance of over \$2 billion in airport debt, including consolidated revenue bonds; special facilities revenue bonds; PFC-backed bonds; and commercial paper.
- Legal oversight of the Authority's financial matters, including the development of Massport's GFOA award winning CAFR and its electronic disclosure.
- Inter-governmental negotiation, serving as the legal liaison from Massport to the Central Artery/Tunnel project (the "Big Dig"), and negotiation of payment in lieu of taxes agreements.

Mr. Bannard is admitted to practice in Massachusetts. He is a member of the American Bar Association and the National Association of Bond Lawyers. He is vice chair of the Board of the World Business Partners of ACI-NA. He was awarded the Volunteer Lawyers Project Pro Bono Award and also served as vice president of the board of Habitat for Humanity North Central Massachusetts, Inc.

33

©2013 Foley & Lardner LLP

12 0594



Bios

Heidi Jeffery

Ms. Jeffery is a partner with Foley & Lardner LLP. Ms. Jeffery is a member and former vice chair of the firm's Senior Living Industry Team. She is also a member of the firm's Finance & Financial Institutions, Health Care Finance & Restructuring, and Public Finance Practices and the Health Care Industry Team. Ms. Jeffery has experience in general municipal, private activity bond, housing, student loan, health care and senior living finance. In such transactions, she has served as bond counsel and counsel to developers, underwriters, credit enhancers, issuers and borrowers.

Ms. Jeffery also frequently represents broker-dealers in connection with municipal securities compliance matters. In addition, Ms. Jeffery also has experience representing banks in general lending transactions, including both secured and unsecured commercial loans.

She was elected by her peers for inclusion in The Best Lawyers in America® 2012 and 2013 in the field of public finance law.*

Ms. Jeffery received her law degree, with distinction, from the University of Iowa College of Law in 1996, where she was a managing editor of the Iowa Law Review. She received her bachelor's degree from Northwestern University in 1993.

Ms. Jeffery is active in civic and industry organizations. She is a former member of the board of directors of Girls in the Game, the President's Council of Chicago's Museum of Science and Industry and the board of directors of Women in Public Finance. Ms. Jeffery also is a member of the National Association of Bond Lawyers, the American Health Lawyers Association and the American Bar Association. Ms. Jeffery is admitted to practice in Illinois and Michigan.

* The Illinois Supreme Court does not recognize certifications of specialties in the practice of law and no award or recognition is a requirement to practice law in Illinois.

34

©2013 Foley & Lardner LLP

12 0594



Bios

Eric Golden

Eric Golden is a Research Analyst in the Fixed Income Division for Fidelity Investments is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and other financial products and services to more than 20 million individuals, institutions and financial intermediaries. Mr. Golden is responsible for covering not for profit healthcare, senior living and tobacco credits for the Bond and Money Market funds.

Mr. Golden joined Fidelity in 2004 as a finance intern for the Registered Investment Advisor Group. He joined the Fixed Income Division of FMRCo as a Research Associate in July of 2005 originally covering public power and then moving on to healthcare. He was promoted to Associate Research Analyst in February 2008. He assumed his current position in February of 2009.

Mr. Golden received a bachelor of science degree in corporate finance and accounting with a minor in information technology from Bentley College in 2005. He is also a member of the National Federation of Municipal Analysts and a CFA charter holder.

35

©2013 Foley & Lardner LLP

12 0504



Bios

Chris Doyle

Ms. Christine Doyle is a partner at PFM and co-head of the firm's Healthcare Group. She has 25 years of experience in public finance. Ms. Doyle advises client on the strategic use of financial resources to achieve financial goals and manage risks. She has advised clients on the development of several debt, credit, and legal structures. Ms. Doyle has also assisted clients with both the public and the private placements of securities. Ms. Doyle has advised several clients on their inaugural entry to the credit markets and on their initial engagement of the credit rating agencies.

Prior to joining PFM, Ms. Doyle was a member of the Public Finance Department of Kidder, Peabody & Co., Inc. and the corporate finance department of Donaldson, Lufkin, & Jenrette. She also worked for the Budget Director of the City of Boston and was the Boston mayoral appointee to the Advisory Board of the Massachusetts Water Resources Authority.

Ms. Doyle has a B.A. from Harvard University and a Master's degree in Business Administration and International Affairs from Columbia University's Graduate School of Business. In the community Ms. Doyle is on the finance committee of Mother Caroline Academy in Dorchester, Massachusetts and on the board of Cambridge Sports Union Nordic.

36

©2013 Foley & Lardner LLP

12 0504