

# What's the Risk? Considerations in Drafting Risk Factor Disclosures

Kim Magrini, Ballard Spahr LLP  
Heidi Jeffery, Foley & Lardner LLP  
Rebecca Lawrence, D.A. Davidson



# Legal Requirements and Considerations for Inclusion of Risk Factors in Offering Documents

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- History and Regulation S-K model
- Antifraud provisions
- Facts and materiality
- Misleading omissions
- Bespeaks Caution

# Practical Considerations

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- From an underwriter and municipal advisor perspective
  - Disclosure Requirements and duty to review
    - Due diligence records and adequate records of compliance
  - Regulation Best Interest
  - Reasonable basis/suitability analysis
  - Disclosure to customers
  - Fair dealing obligation
  - Municipal advisor role

# Practical Considerations

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- From a deal team perspective
  - Identifying and assessing risk factors
  - Materiality
  - How and where to disclose risks
  - Primary market disclosure vs secondary market disclosure

# Practical Considerations

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- Developing written policies and procedures
  - Process for identifying, evaluating and disclosing risk factors
  - Primary and secondary market disclosure
  - Reduces changes of material misstatement or misleading omission and helps establish a defense of reasonable care for any misstatements and omissions that may still occur

# Notable Examples

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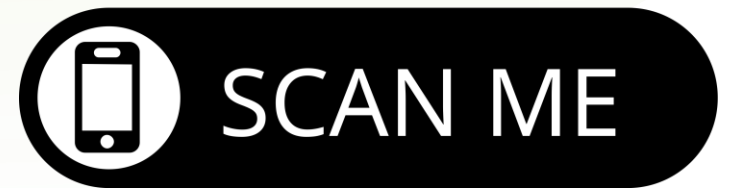
- Climate change and cybersecurity risks
- Rapidly evolving public health risks
- Sector specific examples

# Questions?

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Disclosing Risk Factors in  
Municipal Securities Offerings is  
available at:

<https://www.nabl.org/wp-content/uploads/2023/07/20230711-NABL-Risk-Factors-Paper.pdf>



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