

MEMO# 26363

August 2, 2012

SEC Issues Report on the Municipal Securities Market

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 34-12 RE: SEC ISSUES REPORT ON THE MUNICIPAL SECURITIES MARKET

The Securities and Exchange Commission has [issued a comprehensive report](#) with recommendations to help improve the structure of the municipal securities market and enhance the disclosures provided to investors. The report is the culmination of an extensive review of the municipal securities market that was initiated by SEC Chairman Mary L. Schapiro in mid-2010 and led by SEC Commissioner Elisse B. Walter. The recommendations address concerns raised by market participants and others in public field hearings and meetings with Commissioner Walter and SEC staff as well as the public comment process during the agency's review of the municipal securities market.

Disclosure

The SEC's report discusses several disclosure issues including the timing and content of financial information, disclosures relating to pension and other post-employment benefit plans, derivatives use by issuers and obligated persons, and conflicts of interest including pay-to-play practices. In light of the SEC's limited regulatory authority, it recommends a number of potential legislative changes which, if implemented by Congress, would provide the SEC with additional authority to initiate changes to improve municipal securities disclosures made by issuers. The legislative changes would not result, however, in the repeal or modification to the existing proscriptions on the SEC or the MSRB requiring any presale filing of disclosure documents, known as the "Tower Amendment."

Legislative

The report recommends the following as possible legislative approaches that could be considered in order to provide the SEC authority to establish improved disclosures and practices in the municipal securities market.

- Require that municipal issuers prepare and disseminate official statements and disclosure during the outstanding term of the securities, including timeframes,

frequency for such dissemination and minimum disclosure requirements, including financial statements and other financial and operating information, and provide tools to enforce such requirements.

- Eliminate the availability of Securities Act and Exchange Act exemptions for conduit borrowers who are not municipal entities.
- Authorize the SEC to establish the form and content of financial statements for municipal issuers who issue municipal securities and recognize a designated private-sector body as the standard setter for federal securities law purposes.
- Provide a safe harbor from private liability for forward-looking statements of repeat municipal issuers that satisfy certain conditions.
- Permit the Internal Revenue Service to share information with the SEC that it obtains from returns, audits, and examinations related to municipal securities offerings, particularly in instances of suspected securities fraud.
- Providing a mechanism, through trustees or other entities, to enforce compliance with continuing disclosure agreements and other obligations of municipal issuers to protect municipal securities bondholders.
- Require municipal securities issuers to have their financial statements audited, whether by an independent auditor or a state auditor.

Regulatory

The report also highlights a number of regulatory approaches that the SEC could consider pursuing under its existing authority to improve disclosures and practices in the municipal securities market.

- The SEC could host market participants, regulators, and academics at an annual conference on the municipal securities markets.
- The SEC could consider issuing updated interpretive guidance regarding disclosure obligations of municipal securities issuers and others.
- The SEC could consider amendments to Exchange Act Rule 15c2-12 to further improve the disclosures made regarding municipal securities.
- The SEC should continue to work with the MSRB to strengthen its rules and further enhance EMMA.

Municipal Market Initiatives

The report further recommends that market participants continue to strive for high-quality disclosure practices through development and enhancement of best practices guidelines.

Market Structure

The report reviews the current structure of the municipal securities market and discusses potential initiatives to improve pre-trade and post-trade transparency and support existing dealer pricing obligations.

Improve Pre-Trade Price Transparency

- Consider amendments to Regulation ATS to require an alternative trading system (ATS) with material transaction or dollar volume in municipal securities to publicly disseminate its best bid and offer prices and, on a delayed and non-attributable basis, responses to “bids wanted” auctions.
- The MSRB could consider rules requiring a brokers’ broker with material transaction or dollar volume in municipal securities to publicly disseminate the best bid and offer prices on any electronic network it operates and, on a delayed and non-attributable

basis, responses to “bids wanted” auctions.

Improve Post-Trade Price Transparency

- The MSRB could consider requiring municipal bond dealers to report “yield spread” information to its Real-Time Transaction Reporting System to supplement existing interest rate, price, and yield data.
- The MSRB should promptly pursue enhancements to its EMMA website so that retail investors have better access to pricing and other municipal securities information.

Buttress Existing Dealer Pricing Obligations

- The SEC and the MSRB should consider initiatives to improve the understanding of retail investors as to the various ways in which they might buy or sell a municipal bond, and the relative advantages and disadvantages of each.
- The SEC and the MSRB could consider ways to encourage the use of ATNs or similar electronic networks that widely disseminate quotes and provide fair access.
- The MSRB should consider encouraging or requiring municipal bond dealers to provide retail customers relevant pricing reference information in connection with any municipal securities transaction a municipal bond dealer effects for such customer.
- The MSRB should consider issuing more detailed interpretive guidance to assist dealers in establishing the “prevailing market price” for a municipal security, for purposes of determining whether the price offered a customer (including any markup or markdown) is fair and reasonable.
- The MSRB should consider requiring municipal bond dealers to disclose to customers, on confirmations for riskless principal transactions, the amount of any markup or markdown.
- The MSRB should consider a rule that would require municipal bond dealers to seek “best execution” of customer orders for municipal securities.

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