

SEC Releases Report on the Municipal Securities Market

The SEC issued its long-anticipated “[Report on the Municipal Securities Market](#)” on July 31, 2012. The Report is comprehensive – 150 pages – and contains the SEC’s recommendations to improve the disclosure provided to investors, especially retail investors, in the \$3.7 trillion municipal securities market, as well as recommendations to improve market structure. The municipal securities market includes debt securities of all kinds issued by all types of state and local governments.

The SEC began work on this Report more than 27 months ago, conducted three public hearings around the country and had numerous communications with market participants.

The Report includes a 10-page [Executive Summary](#) and a comprehensive discussion of the current state of the municipal bond market. It focuses on the SEC’s two primary areas of concerns. The first is disclosure, including timeliness and content of financial information provided by municipal issuers, and the adequacy of disclosure relating to pension and other post-retirement benefits, derivatives and conflicts of interest. The second area of the SEC’s concern relates to market structure. Retail investors hold more than 75 percent of the outstanding principal amount of municipal securities, yet those securities trade in a decentralized market that the SEC describes as “illiquid and opaque.” The Report then provides numerous recommendations for further consideration.

The Report identifies a number of possible regulatory approaches the SEC could pursue under its existing legal authority including:

- Updating the SEC’s 1994 Interpretive Guidance on disclosure obligations of municipal issuers in light of the subsequent disclosure-related SEC enforcement actions involving financial statements and financial information, terms and risks of securities and conflicts of interest, among others.
- Amending SEC Rule 15c2-12, possibly to mandate the types of disclosures required by issuers in their initial official statements and continuing disclosure filings.
- Addressing noncompliance by issuers with their continuing disclosure undertakings.

The Report also identifies a number of potential legislative changes which, if enacted by Congress, would increase the SEC’s authority over the municipal bond market including:

- Authorizing the SEC to require the preparation and dissemination of official statements for new issuances and ongoing disclosure through the maturity of municipal bonds, including setting requirements for timing and frequency of disclosure and minimum disclosure requirements, as well as enforcement tools.
- Authorizing the SEC to establish the form and content of the financial statements of municipal issuers and to designate a private-sector body (such as GFOA) to establish accounting standards for federal securities law purposes.
- Authorizing the SEC to require municipal issuers to have their financial statements audited.
- Authorizing the IRS to share with the SEC information the IRS obtains from tax returns, audits and examinations related to municipal bonds, particularly in instances of suspected securities fraud.
- Providing mechanisms, through trustees or other entities, to enforce compliance by municipal issuers with their continuing disclosure obligations.
- Eliminating the availability of exemptions under the Securities Act and Exchange Act for conduit

borrowers who are not municipal entities.

- Providing a limited safe harbor from private liability for forward-looking statements of municipal issuers that satisfy certain conditions.

The Report also makes numerous recommendations relating to possible regulatory changes designed to provide retail investors with improved information about prices of municipal bonds and to bolster existing obligations of dealers concerning pricing. The recommendations focus on both pre- and post-trade pricing information as part of the ongoing effort by the SEC to improve pricing transparency in the municipal market.

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