

Municipal Market SEC Initiatives 2010



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Topics to Cover:

- SEC Reform Initiatives
- Proposed Amendments to SEC Rule 15c2-12

SEC Reform Initiatives

- Reform Under Current Commission Authority
 - Rule 15c2-12 amendments
 - Increase current antifraud authority
 - Update the 1994 Interpretive Release on the antifraud provisions
 - Work closely with the MSRB to further enhance the usefulness of EMMA

SEC Reform Initiatives

- Legislative Reform
 - Changes to the MSRB composition
 - Whether to combine the enforcement and regulatory authority over the municipal market into one self-regulatory organization
 - Apply the registration and disclosure standards to non-governmental conduit borrowers that would apply if they issued their securities directly without using municipal issuers as conduits

SEC Reform Initiatives

- Legislative Reform (continued)
 - Regulatory authority over all financial intermediaries involved in the municipal securities market, not just municipal brokers and dealers
 - Repeal Tower Amendment

SEC Reform Initiatives

If Tower repealed:

1. The Commission could require that municipal issuers make available to investors offering documents and periodic reports that contain information similar, although not identical, to that required of issuers and offerings of corporate securities

SEC Reform Initiatives

If Tower repealed: (continued)

2. Establish time periods for release of critical information
3. Give the Commission the authority to mandate that municipal issuers use “generally accepted” governmental accounting standards.

SEC Reform Initiatives

If Tower repealed: (continued)

4. Congress should provide an independent funding mechanism for the GASB and permit Commission oversight of the GASB

Principle Provisions of Rule 15c2-12

- Prior to bidding for, purchasing, offering, or selling municipal securities in a primary offering, Underwriter must obtain and review an official statement that the issuer “deems final,” subject to certain permitted exceptions related to the pricing of the bonds.

Principle Provisions of Rule 15c2-12, continued

- Underwriter may not purchase or sell municipal securities in a primary offering unless it has “reasonably determined” that an issuer (or obligated person) has undertaken in a written agreement or contract to provide:
 - “annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement,” which must include audited financial statements for each such obligated person, and
 - notice in a “timely manner” of certain specified events, “if material”

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Proposed Amendments to SEC Rule 15c2-12

- Complete exemption for VRDOs provided by current paragraph (d)(1)(iii) would be deleted. New primary offerings of VRDOs would be subject to the continuing disclosure provisions of the Rule (see new (d)(5)), but would continue to be exempt from the primary offering provisions of (b)(1-4).

- Materiality determination would be removed from the following events:
 - Principal and interest payment delinquencies
 - Unscheduled draws on debt service reserves reflecting financial difficulties
 - Unscheduled draws on credit enhancement reflecting financial difficulties

- Materiality determination would be removed from the following events: (continued)
 - Substitution of credit or liquidity providers, or their failure to perform
 - Adverse tax opinions or other events affecting the tax exempt status
 - Defeasances
 - Rating changes

- The following new events would be added:
 - The issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the securities
 - Tender offers

- The following new events would be added:
(continued)
 - Bankruptcy, insolvency, receivership or similar event of the obligated person
 - The consummation of a merger, consolidation, or acquisition, if material
 - Appointment of a successor or additional trustee, if material

- The current requirement to provide notices “in a timely manner” would be subject to an outside limit of ten business days after the occurrence of the event.