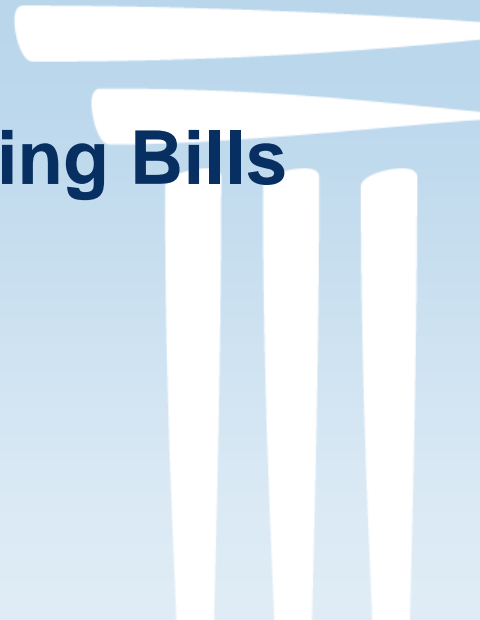




MSRB

Municipal Securities
Rulemaking Board

Side-by-Side Comparisons of Pending Bills



Side-by-Side of Municipal Bond Legislative Proposals

Current Law/Issue	Senate Banking Committee Draft Bill II	House Financial Services Committee Bill
<p>Advisors to municipal issuers are not subject to federal regulation unless they are broker-dealers or banks.</p>	<p>“Municipal advisors,” GIC, and other investment brokers, swap and other municipal derivatives advisors, and certain third party solicitors of municipal entities are registered with SEC and regulated by MSRB (including advice provided to obligated parties). The bill’s definition of “municipal advisor” includes any person (e.g., consultant/placement agent) who solicits a municipal entity to hire an investment advisor – consultant/placement agents to register with SEC as a municipal advisor. Under the proposal, the MSRB would have limited authority to write rules solely relating to the solicitation activities of such consultants/placement agents.</p>	<p>“Municipal financial advisors” are registered with, and regulated by, SEC. Definition includes broker-dealers not acting as underwriters.</p>
<p>No federal fiduciary duty standard for financial advisors.</p>	<p>“Municipal advisors” are not subject to federal fiduciary duty standard.</p>	<p>“Municipal financial advisors” are subject to federal fiduciary duty standard.</p>
<p>MSRB writes rules for broker-dealers and banks.</p>	<p>MSRB writes rules for broker-dealers, banks, and municipal advisors.</p>	<p>No provision.</p>
<p>SEC, FINRA, and bank regulators enforce MSRB rules. MSRB provides information to regulators.</p>	<p>MSRB assists in enforcement. MSRB receives 1/2 of fine revenue collected by SEC for MSRB rule violations; SEC determines level of MSRB fine sharing with FINRA.</p>	<p>No provision.</p>

Side-by-Side of Municipal Bond Legislative Proposals

MSRB has 15 members: 5 broker-dealers, 5 banks, 5 public members (at least 1 issuer and at least 1 investor)	MSRB has 15 members: 8 public members (at least 1 institutional or retail investor, at least 1 issuer, at least 1 municipal expert); 7 non-public members, including at least 1 broker-dealer, at least 1 bank, and at least 1 municipal advisor).	MSRB has 15 members: majority independent, public members (at least 1 issuer and at least 1 investor); remaining members must include at least 1 broker-dealer and at least 1 bank. No requirement to have municipal financial advisor representation on Board.
MSRB provides information systems for municipal securities.	MSRB may develop additional information systems for systemic regulator/and SROs, and may assess reasonable charges and fees. Not limited to municipal securities.	No provision.
SEC Office of Municipal Securities	Creates a new Office of Municipal Securities at the SEC to coordinate with the MSRB for rulemaking and enforcement actions, as required by law.	No provision.
Studies	GAO to study 1) disclosure transparency in trading mechanisms and 2) credit enhancement of municipal securities.	No provision.
GASB	SEC to study funding for GASB	No provision.

Side-by-Side of Municipal Bond Legislative Proposals

Issue	Credit Rating Provisions	
<p>SEC</p>	<p>Authorizes the SEC to temporarily suspend or permanently revoke the registration of a credit rating agency with respect to a particular class or subclass of securities if it finds that the rating agency lacks adequate financial and managerial resources to consistently produce credit ratings with integrity. The draft creates an Office of Credit Ratings at the SEC with its own compliance staff and the authority to fine agencies. The bill requires the SEC to issue rules directing each NRSRO to use universal ratings symbols.</p>	<p>Authorizes the SEC to oversee credit rating agencies registered with the Commission as NRSROs and requires rating agencies to register with the SEC. SEC must establish an office to administer SEC rules with respect to the practices of credit rating agencies in determining ratings, in the public interest and for the protection of investors.</p>
<p>Ratings</p>	<p>Requires rating agencies to consider information in their ratings that comes to their attention from a source other than the organizations being rated if they find it credible. The SEC is authorized to deregister an agency for providing bad ratings over time. The Senate draft would allow investors to bring private rights of action against ratings agencies for a knowing or reckless failure to investigate or to obtain analysis from an independent source. The draft would require rating agencies to disclose their methodologies, their use of third parties for due diligence efforts, and their ratings track record.</p>	<p>Requires national rating agencies to rate securities on the likelihood of loss to investors and apply ratings consistently across all asset classes—effectively to require a global, or uniform, rating scale for the ratings of governmental debt, but bars the SEC from adopting rules that bar the rating agencies from considering credit factors “that are unique to municipal securities” or establishing “complementary” ratings to measure a “discrete aspect of the security’s or instrument’s risk.” The bill creates a prototype independent committee to oversee the SEC regulation and enforcement of the rating agencies: The Credit Ratings Agency Advisory Board established by the SEC would consist of seven members appointed by the SEC.</p>

Side-by-Side of Municipal Bond Legislative Proposals

<p>Issuers</p>	<p>No similar provision.</p>	<p>Requires issuers to publicly disclose preliminary credit ratings received from NRSRO's on structured products and all forms of corporate debt.</p>
<p>NRSROs</p>	<p>Dodd II would require each NRSRO to establish, enforce, and document an effective internal control structure governing the implementation of policies and methodologies it uses to determine credit ratings. Further, the SEC must adopt rules requiring credit rating agencies to submit to the Commission an annual internal controls report, containing a description of the responsibility of the management of the rating agency in establishing and maintaining effective internal controls. In addition, the rating agency must assess the effectiveness of the internal controls and the attestation of the CEO. The draft would require an NRSRO to refer to the appropriate law enforcement or regulatory agency any credible information from a third party alleging a material violation.</p>	<p>Clarifies the ability of individuals to sue NRSROs. Statements made by rating agencies would not be deemed forward-looking statements for purposes of the Exchange Act's safe harbor and requires each NRSRO to have a board with at least one-third independent directors to oversee policies and procedures aimed at preventing conflicts of interest. The compensation of the directors cannot be linked to the business performance of rating agencies and must be structured to ensure the independence of their judgment. Significantly enhances the responsibilities of NRSRO compliance officers to address conflicts of interest. The measure also requires the compliance officer to be responsible for administering the policies and procedures required to be established by the legislation and, more broadly, ensure compliance with securities laws and SEC regulations.</p>

Side-by-Side of Municipal Derivatives Proposals

Issue	Senate Agriculture	Senate Banking	House
Definitions of "Swap"	Same as House	Same as House	Includes all municipal derivatives.
Definition of "Security-based Swap"	Definition is same as House, but SEC's anti-fraud authority over SIFMA-based swaps is removed.	Same as House	Includes municipal credit default swaps, but not existing municipal interest rate swaps. The SEC's asserted anti-fraud authority over SIFMA-based swaps is unchanged.
Definition of "Major Swap Participant"	Explicitly excludes employee benefit plans and captive finance arms of manufacturers, require foreign exchange swaps to obtain written waivers from the Treasury, and clarify that financial institutions cannot claim to be commercial entities for the sake of obtaining an exemption.	A non-swap dealer with a substantial net position in outstanding swaps, which creates substantial counterparty exposure (current and potential future) that could <u>expose</u> counterparties to significant credit losses.	A non-swap dealer with a substantial net position in outstanding swaps, which creates substantial counterparty exposure (current and future) that could expose counterparties to significant credit losses and have a material adverse effect on counterparty capital.
Jurisdiction	Same as House, except that SEC's anti-fraud authority over SIFMA-based swaps is eliminated.	Same as House	CFTC has regulatory jurisdiction over existing municipal rate swaps. SEC has regulatory jurisdiction over municipal credit default swaps.
Mandatory Central Clearing	All swaps must be cleared if accepted by a clearinghouse unless exempted by the CFTC. CFTC may exempt non-standardized swaps (e.g., municipal swaps) from clearing.	All swaps must be cleared <u>unless</u> exempted by CFTC/SEC. Exemptions allow only if: i) no clearinghouse accepts swap for clearing, or ii) one party to contract is not a swap dealer or major swap participant. Most municipal swaps will qualify for exemption.	Clearing is required if: i) clearing house accepts swap for clearing and ii) CFTC/SEC requires swap to be cleared. Most municipal swaps will not be accepted by clearinghouses, because they will not be standardized.

Side-by-Side of Municipal Derivatives Proposals

Issue	Senate Agriculture	Senate Banking	House
Fiduciary Duty	Imposes a fiduciary duty on dealers that offer, <u>advise</u> , or serve as counterparties to state and local governments, endowment funds, and pension funds.	No requirement	No requirement
Trade Execution	Same as House	Same as House	Exchange trading required for i) cleared swaps and ii) swaps with parties that are not “eligible contract participants.” Otherwise trades must be reported to a swap repository.
Definition of “Eligible Contract Participant”	Same as House	Municipality is an “eligible contract participant” if it has more than \$50 million of discretionary investments. Bond proceeds do not count towards the \$50 million threshold.	Municipality is an “eligible contract participant” if it i) has more than \$50 million of discretionary investments, or ii) enters into a swap with a regulated party such as a bank, broker-dealer, or insurance company.
Business Conduct Standards	Same as House	Swap dealers must disclose material terms and risks of derivatives to counterparties. Fees must also be disclosed. <u>Additional business conduct standards if counterparty is a governmental entity.</u>	Swap dealers must disclose material terms and risks of derivatives to counterparties. Fees must also be disclosed.
Collateral	Same as House	Same as House	Swap dealers must segregate collateral at counterparty’s request. Municipalities not required to <u>post collateral.</u>