SPEECH

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Statement at Open Meeting Regarding Municipal Advisors and Pay Ratio Disclosure

Commissioner Michael S. Piwowar

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Sept. 18, 2013

Thank you, Chair White.

"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way…"

The opening lines to the Charles Dickens novel *A Tale of Two Cities* are an apt description of the Commission's current rulemaking process and agenda. The two recommendations that we are considering this morning exemplify why it is simultaneously both "the best of times" and "the worst of times" at the Commission.

The first recommendation is to adopt a final rule that defines a new class of regulated persons, "municipal advisors," and establishes a registration regime for them. The second is to propose a rule that requires the disclosure of the ratio of the median of the annual total compensation of all employees of an issuer to the annual total compensation of that issuer's chief executive officer. The contrast between these rulemakings could not be starker. But, what is consistent is the dedication of the Commission's talented staff. I want to thank both rulemaking teams for your efforts.

Municipal Advisors

The municipal advisor rule, in some ways, represents what is best about the Commission.

In September 2010, the Commission adopted an interim final temporary rule establishing a means for municipal advisors to satisfy the October 2010 registration requirement deadline mandated by Section 975 of the Dodd-Frank Act. In December 2010, the Commission voted to propose a permanent registration regime to govern municipal advisor registration.

Since that time, the staff has diligently and thoughtfully considered the comments received on the municipal advisor rule proposal, and worked to incorporate the public's input into the final rule before us today. As a result, today's recommendation reflects a number of improvements over the proposal. For example, the final rule includes:

- A more narrowly tailored definition of "investment strategies" that responds to commenter concerns about the overly broad nature of the proposal.
- New guidance on what activities constitute "advice" for purposes of the municipal advisor registration provision.
- A modified interpretation of the underwriter exclusion, including examples, that allows entities to engage in customary underwriter activities related to municipal bond issuances without needing to register as municipal advisors.
- A new exemption for entities providing advice to a municipal entity that is otherwise represented by an independent registered municipal advisor.
- A broadened exclusion for employees and appointed officials of municipal entities that provides them with certainty that they will not be forced to register as municipal advisors solely as a consequence of their official activities.
- A new bank exemption that is designed to allow banks to undertake traditional banking activities without being forced to register as municipal advisors.

- Clearer exclusions for attorneys, accountants, and engineers.

These changes illustrate what is best about the Commission's rulemaking process. We engaged the public to identify areas for improvement in the proposal, and then crafted a final rule that incorporates what has been learned.

Nonetheless, even with the benefit of public comment, today's rulemaking is far from a study on how the process can and should work. There may be other notable improvements in today's adopting release. By the same token, there may be other worthwhile improvements to the release that could have been made. Unfortunately, due to the arbitrarily short time frame that I had to review the over 800-page release, I cannot be sure.

While I understand the Chair's goals of promptly completing the rulemakings required by the Dodd-Frank Act and the JOBS Act, I believe that the rush to vote on this final rule was a disservice to the staff that have been so diligently working on this rulemaking, and ultimately to the general public that will be impacted by this rule.

I have been a Commissioner for only 34 days and already have been forced to vote on a 500-page credit risk retention rule reproposal, as well as make important decisions on dozens of other complex issues. As a result, I repeatedly requested that the Chair allow one or two additional weeks of review for this important rulemaking. This extra time would have significantly improved my ability to live up to the oath that all Commissioners take to "well and faithfully discharge the duties of the office," and would have helped ensure that the municipal advisor registration release reflected the full input of all Commissioners. However, my repeated requests to defer today's vote, even for a handful of days, were denied.

The inflexibility in the date of this meeting is particularly frustrating given that it has been 1,155 days since the enactment of the Dodd-Frank Act and 1,113 days since the Commission adopted the interim final temporary municipal advisor rule. In this context, a 7- or 14-day delay would have had a *de minimis* effect on the rule's overall timeline and would have been an insignificant change to the Commission's overall rulemaking agenda.

Chair White, I hope that we can work together in the future to find ways to satisfy your personal desire to "get stuff done" and our shared obligation to "get stuff done right."

Even with my reservations that the adopting release was not given the time and attention that it deserved to ensure that it is the best product it could be, I support the staff's recommendation.

Before moving on to discuss the second item on today's agenda, I note that, even if the Commission adopts a final municipal advisor rule today, our work on municipal advisors is not complete. The Dodd-Frank Act granted the Municipal Securities Rulemaking Board (MSRB) regulatory authority over municipal advisors. Because the overall costs and benefits of the new municipal advisor registration and regulatory regime will depend critically on the MSRB's follow-on rules, I will be paying particularly close attention to the economic analyses in the MSRB's municipal advisor rule submissions.

Pay Ratio Disclosure

The second item on our agenda, the pay ratio disclosure proposal, represents what is worst about our current rulemaking agenda.

I am not only unable to support the pay ratio disclosure proposal, I object to the Commission even considering it. The Commission should not be spending any of its limited resources on any rulemaking that unambiguously harms investors, negatively affects competition, promotes inefficiencies, and restricts capital formation.

Proponents of the pay ratio disclosure rule, to their credit, have been transparent about the fact that the objective of the rule has nothing to do with any part of the Commission's core mission of protecting investors, maintaining fair, orderly, and efficient markets, and promoting capital formation. In fact, proponents have acknowledged that the sole objective of the pay ratio disclosure rule is to shame CEOs.

But the shame from this rule should not be put upon CEOs. It should be put upon

the five of us who will be voting on this proposal today. Shame on us for putting special interests ahead of investors. Shame on us for letting special interests distract us from our core mission. Shame on us for surrendering our rulemaking agenda to special interests.

Proponents of the pay ratio disclosure rule point to the Dodd-Frank Act's mandate as justification for moving forward on it today.

But I point to our investor protection mandate, as well as our statutory mandate to consider the effects on competition, efficiency, and capital formation, as justification for not moving forward with a pay ratio disclosure rule.[1]

The pay ratio disclosure rule will harm investors. Because many external factors may affect the calculation of the pay ratio, any investor that uses pay ratio disclosures to compare companies will be at best distracted from material investment information and at worst misled about the investment itself. In fact, the release specifically warns that "using the pay ratio to compare companies may not be relevant and could generate misleading interpretations or conclusions." Furthermore, investors and issuers will be harmed when pressure to maintain a low pay ratio curtails expansion of business operations into regions with lower labor costs.

The pay ratio disclosure rule will have negative effects on competition, efficiency, and capital formation. Registrants subject to pay ratio disclosure will be at a competitive disadvantage to companies not subject to pay ratio disclosure. For example, competitive impacts will disproportionately fall on U.S. companies with large workforces and global operations. Furthermore, the proposed treatment of temporary and seasonal workers will create an anti-competitive effect on registrants who employ temporary and seasonal workers at the year-end, as opposed to other times of the year. The proposed pay ratio certainly also will influence how some companies structure their business (*e.g.,* outsourcing jobs versus in-house employees). Some of these business structure changes undoubtedly will lead to inefficiencies, higher costs of capital, and fewer jobs.

Thus, the Commission is forced to choose between incompatible statutory mandates that essentially lead us to favor one of two groups – organized special interests or ordinary retail investors. That is a simple choice for me. I will choose investor protection over special interests every time.

Before closing, I want to make a few specific requests for public comments.

I ask registrants who would be subject to a pay ratio disclosure rule to provide realistic estimates of the costs of compliance with the proposed rule, either individually or through their trade associations. I realize that you will need to make a number of assumptions (*e.g.,* how the calculation of a pay ratio would interact with Sarbanes-Oxley-mandated internal control assessments), so please clearly describe those assumptions and the rationale for choosing them, and, where alternative assumptions are plausible, include analysis based on each.

I ask anyone who holds himself or herself out as an "investor advocate" or "consumer advocate" to submit public comments that acknowledge the proposed pay ratio disclosure rule unambiguously harms investors. You have been very vocal about very specific investor protection concerns with respect to Commission rule proposals that promote capital formation. I ask you to be consistent in your advocacy. Be just as vocal and just as specific about investor protection concerns with respect to Commission rule proposals, such as this one, that restrict capital formation.

I hope that, in future rulemakings, the Commission will hold itself to higher standards with respect to the process by which we deliberate. We should not have to settle for living in the "worst of times."

Thank you.

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[1] Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us to consider, in addition to the protection of investors, whether an action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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