

Speech

Remarks at the Municipal Finance Leadership Conference



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Introduction

Thank you [Colin] for that kind introduction and for inviting me to speak today. I am always happy to visit Boston, particularly since I grew up just outside the city in the town of Easton.

Before I continue, I must give the standard SEC disclaimer that the views that I express today are my own and do not necessarily reflect the views of the Commission, any of the Commissioners, or any of my colleagues on the staff of the Commission.^[1]

My remarks today come on the heels of World Investor Week,^[2] a global campaign that took place last week to raise awareness about the importance of investor protection and to highlight the investor education and protection initiatives of securities regulators. The SEC is committed to the principles and goals of World Investor Week, and I am pleased to be here today to discuss an issue of crucial importance to investors – disclosure in the municipal securities market.

Today, I will first talk about the importance of the municipal securities market, particularly for retail investors.

Second, I will discuss the regulatory structure – including the role of the Office of Municipal Securities (OMS) within that structure – that governs disclosure in the municipal securities market. While the municipal securities market lacks some of the statutory disclosure obligations that exist in other capital markets, I believe investors in municipal securities should have the same ability as investors in other types of securities to access accurate and timely financial information and other material information, which are essential both to informed investor decision-making and protection and an efficient trading market.

Third, in light of the unique regulatory structure in the municipal securities market, I will speak to the important role members of the municipal securities market play in promoting investor protection and facilitating a fair and efficient municipal securities market through the development of best practices for the market.

Finally, I will highlight two areas –accessibility and understandability of information – of particular importance to retail investors that I believe could benefit from the focused attention of market participants.

Continued robust retail participation in the municipal securities market is important to the health of the market, and the Commission continues to be attuned to the protection of retail investors. As such, I believe it is essential that disclosure practices in the municipal securities market account for the profile of these investors.

Importance of the Municipal Securities Market

The importance of the municipal securities market cannot be overstated. Municipal securities provide critical funding for public projects, including the building and maintenance of infrastructure, and day-to-day government needs. More than two-thirds of all infrastructure projects in the United States are financed by municipal bonds.^[3] These securities also provide financing for important non-governmental private projects such as hospitals, colleges, and energy facilities.

One of the signature characteristics of the municipal securities market is its diversity. There are approximately 50,000^[4] state and local issuers^[5] of municipal securities, ranging from the largest states and territories, to the smallest towns and school districts.^[6] This compares to approximately 10,000 corporate issuers.^[7] The diversity of the municipal securities market further extends to the variety of credit structures available to issuers. Additionally, it is estimated that there are over one million different municipal bonds outstanding compared to approximately 60,000 corporate bonds.^[8]

A second notable characteristic of this market is the concentration of municipal securities in the hands of retail investors. Currently, the municipal securities market has over \$3.853 trillion in principal outstanding,^[9] and at the end of the second quarter of 2018, individuals held, either directly or indirectly through mutual or other funds, over 66 percent of the total market, or approximately \$2.579 trillion of outstanding municipal securities.^[10]

Office of Municipal Securities and Overview of Federal Regulatory Structure of the Municipal Securities Market

Office of Municipal Securities

For those of you who have not engaged with OMS, I will provide some background on our responsibilities in connection with the SEC's three-part mission to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation.

OMS reports directly to the Chairman and is responsible for coordinating the Commission's municipal securities activities and administering the Commission's rules pertaining to municipal securities brokers and dealers, municipal advisors, investors in municipal securities, and municipal issuers. OMS advises the Commission on policy matters relating to the municipal securities market and is responsible for policy development, coordination, and implementation of Commission initiatives to improve the municipal securities market, as well as providing technical assistance to the Division of Enforcement and the Office of Compliance Inspections and Examinations (OCIE). OMS also coordinates with the Municipal Securities Rulemaking Board (MSRB) on rulemaking and enforcement actions.

OMS serves as the Commission's liaison to other government agencies, regulators, and a variety of investor and industry groups, on municipal securities issues. OMS regularly meets with market participants, including issuer and investor representatives. I welcome all of you to reach out to us if you are interested in sharing your perspectives and ideas that can help inform our thinking as we undertake policy and rulemaking initiatives that affect the municipal securities market.^[11]

Federal Regulatory Structure of the Municipal Securities Market

Unlike securities offered in the equity and corporate markets, municipal securities are exempt from federal securities registration and reporting requirements that apply to other publicly offered securities. Federal laws

prohibit the Commission from requiring a municipal issuer to file any application, document, or report with the Commission before the sale of the issuer's securities.[\[12\]](#)

In the absence of a statutory scheme for municipal securities registration and reporting, the Commission's investor protection efforts in the municipal securities market have been accomplished primarily through regulation of broker-dealers and municipal securities dealers, including through Exchange Act Rule 15c2-12, Commission interpretations, enforcement of the antifraud provisions of the federal securities laws, and Commission oversight of the MSRB.

While the Commission's authority with respect to the municipal securities market is more limited than that in other markets, OMS recognizes that investors in municipal securities are entitled to the same transparency that investors in other markets are afforded. To that end, the Commission's rules are designed to enhance transparency in the municipal securities market and protect municipal securities investors. For example, recognizing the growth in the use of financing alternatives to publicly offered bonds such as direct placements and bank loans by municipal issuers, the Commission recently approved amendments to Rule 15c2-12 that are designed facilitate timely access to important information regarding material financial obligations whose terms could impact an issuer's liquidity and overall creditworthiness and create risks for investors.[\[13\]](#) The amendments add two new events notices to the list of notices that a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities subject to Rule 15c2-12 must reasonably determine that an issuer undertaken in their continuing disclosure agreement to provide to the MSRB within ten business days of the event's occurrence.[\[14\]](#)

The Commission's commitment to protecting investors in the municipal securities market is further highlighted by the efforts of the Public Finance Abuse Unit (PFAU). The PFAU is a specialized enforcement unit within the Division of Enforcement that maintains a presence all over the country and is dedicated to pursuing investigations related to possible misconduct in the municipal securities market and in connection with public pension funds, including investigations relating to potential offering and disclosure fraud.[\[15\]](#)

Role of Voluntary Disclosure Initiatives

In addition to the Commission's investor protection efforts described above, market participants have played an important role in improving disclosure in the municipal securities market over time. Participants in the municipal securities market have historically worked together to develop voluntary disclosure guidelines and best practices designed to improve the level and quality of disclosure in primary offerings of municipal securities and continuing disclosure in the secondary market.

Existing industry guidelines and best practices relate to, among other matters, the content and timing of financial statements and financial information, disclosure of pension liabilities, industry and financing specific guidelines, disclosure controls and procedures of a municipal issuer, and methods of providing disclosure.

Industry initiatives benefit from thorough knowledge and understanding of current market practices and consensus-building approaches. In addition, best practice guidelines allow market participants to develop solutions to issues that arise in a time- and cost-efficient manner.[\[16\]](#)

While the existing guidelines and the willingness of industry groups to voluntarily discuss and generate consistent way of measuring successful disclosure are encouraging, as the municipal securities market evolves I believe there is a continuing need to both refine these guidelines and explore new areas for guidance.

Market participants should continue to strive for high-quality disclosure practices through development and enhancement of best practices guidelines.

Accessibility and Understandability of Information in the Municipal Securities Market

I would now like to discuss two areas in which I believe that voluntary industry initiatives might be particularly important – the accessibility and understandability of information in the municipal securities market. Access to current financial and operating information about issuers and presentation of information in a clear and understandable format, not only aids investors in making informed investment decisions, but it is critical to the functioning of an efficient trading market and facilitating capital formation. [17]

These issues are particularly important in the municipal securities market due to the significant level of direct and indirect retail investor participation in the market.[18] Regardless of whether an investor participates in the municipal securities market directly or indirectly, timely access to clear and meaningful information is essential.[19] Timeliness of financial information is a major factor in its usefulness. Unequal access to information can create an uneven competitive landscape where those with access are better informed, which can lead to a loss in investor confidence in the fairness and efficiency of the market.

The diversity and complexity of the municipal securities market appear to provide challenges for investors. Offering statements and ongoing disclosure documents often use complex, legalistic language that is opaque to all but financial or legal experts. Retail investors may have difficulty understanding lengthy disclosure documents or the terms of complex municipal securities. Indeed, the Commission has previously noted the importance of investor access to information[20] and of communicating with investors in clear, easily understandable language (e.g., plain English).[21] The Commission is committed to communicating with the public in plain English[22] and has, over the years, developed resources for drafting clear and meaningful documents in plain English.[23]

The challenge of making information about issuers of municipal securities more accessible, clear, understandable, and meaningful for all investors on the MSRB's EMMA system and elsewhere presents a real opportunity for stakeholders in the municipal securities market to exercise the type of leadership they have demonstrated over the years.[24] A challenge that I am sure all of you and your colleagues are capable of meeting. As for the Office of Municipal Securities, we stand ready to support efforts to improve the availability and understandability of information in the municipal securities market.

Closing

Throughout my career as a municipal bond lawyer and as a regulator at the SEC, I have been continuously impressed by the capacity of this market to come together to address persistent issues. As our market continues to evolve, I believe it is essential that we continue to ensure that investors have access to timely, clear, and understandable information about issuers of municipal securities. I am confident that we are up for challenge. Thank you for your attention, and enjoy the rest of the conference.

[1] The Securities and Exchange Commission disclaims responsibility for any private publication or statement of any SEC employee or Commissioner. This speech expresses the author's views and does not necessarily reflect those of the Commission, the Commissioners, or other members of the staff.

[2] For information about World Investor Week, see <http://www.worldinvestorweek.org/>; and <https://www.investor.gov/additional-resources/specialized-resources/world-investor-week>.

[3] See MSRB, Municipal Market by the Numbers ("Municipal Market by the Numbers") (Mar. 2018), available at <http://www.msrb.org/msrb1/pdfs/MSRB-Muni-Facts.pdf>.

[4] See MSRB, *Self-Regulation and the Municipal Securities Market* (Jan. 2018), available at <http://www.msrb.org/Market-Topics/~/media/8059A52FBF15407FA8A8568E3F4A10CD.ashx>.

[5] The term issuer, as used throughout these remarks, includes obligated persons.

[6] See Registration of Municipal Advisors, Exchange Act Release No. 34-70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013).

[7] Municipal Market by the Numbers, *supra* note 3.

[8] *Id.*

[9] See Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts (Second Quarter 2018) (Sept. 20, 2018), available at <https://www.federalreserve.gov/releases/z1/20180920/z1.pdf>.

[10] See *id.* As of the second quarter of 2018, the amount of municipal securities held directly by the household sector was \$1.625 trillion and mutual funds, money market funds, closed-end funds, and exchange-traded funds collectively held \$953.9 billion.

[11] OMS can be reached at 202-551-5680 or at munis@sec.gov. The office also maintains a website located at <https://www.sec.gov/municipal>.

[12] Section 15B(d) of the Securities and Exchange Act of 1934, commonly referred to as the “Tower Amendment,” states: “(1) Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities. (2) The Board is not authorized under this title to require any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: Provided, however, That the Board may require municipal securities brokers and municipal securities dealers or municipal advisors to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title.”

[13] See Exchange Act Release No 34-83885 (Aug. 20, 2018), 83 FR 44700 (Aug. 31, 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-08-31/pdf/2018-18279.pdf>.

[14] *Id.*

[15] A non-exhaustive list of municipal securities enforcement actions can be found at <https://www.sec.gov/municipal/oms-enforcement-actions.html>.

[16] See Report on the Municipal Securities Market (July 31, 2012) (“2012 Report”) at 56 and 90, available at <https://www.sec.gov/news/studies/2012/munireport073112.pdf>.

[17] *Id.* at 74 and 105.

[18] See *supra* note 10.

[19] See Remarks at the Economic Club of New York, Chairman Jay Clayton (July 12, 2017), available at <https://www.sec.gov/news/speech/remarks-economic-club-new-york>.

[20] See 2012 Report, *supra* note 17 at 105. See also Exchange Act Release No. 59966 (May 21, 2009), 74 FR 25790 (May 29, 2009), available at <https://www.sec.gov/rules/sro/msrb/2009/34-59966.pdf>.

[21] See <http://www.sec.gov/plainwriting.shtml>.

[22] See <https://www.sec.gov/files/PWAAnnualPlan2018.pdf>.

[23] See A Plain English Handbook: How to Create Clear SEC Disclosure Documents, available at <https://www.sec.gov/pdf/handbook.pdf>.

[24] See, e.g., <https://www.sec.gov/info/municipal/mr-munimarketreport1993.pdf>.

