

**Testimony on Examining the Agenda of Regulators, SROs, and Standards-Setters for  
Accounting, Auditing, and Municipal Securities**

by

**Jessica S. Kane**

**Director, Office of Municipal Securities**

**U.S. Securities and Exchange Commission**

**Before the U.S. House of Representatives Committee on Financial Services  
Subcommittee on Capital Markets and Government Sponsored Enterprises**

**September 22, 2016**

Chairman Garrett, Ranking Member Maloney, and Members of the Subcommittee:

I am Jessica Kane, Director of the Office of Municipal Securities (OMS) at the United States Securities and Exchange Commission (Commission). I appreciate the opportunity to appear before you today to testify on behalf of the Commission regarding the Office of Municipal Securities and current issues related to the municipal securities market.

**Office of Municipal Securities**

The Office of Municipal Securities was created in September 2012 as an independent office that reports directly to the SEC Chair, as required by section 979 of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The municipal securities market encompasses over \$3.7 trillion in outstanding municipal securities and over 44,000 municipal issuers consisting of a diverse group of entities that includes states, their political subdivisions (such as cities, towns, counties, and school districts), and their instrumentalities (such as housing, health care, airport, port, and economic development authorities and agencies). In 2015 alone, there were over 14,000 new bond issues.<sup>1</sup>

OMS is responsible for overseeing the municipal securities market and administering the Commission's rules pertaining to municipal securities brokers and dealers, municipal advisors,

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<sup>1</sup> See *EMMA Market Statistics*, MUNICIPAL SECURITIES RULEMAKING BOARD, <http://emma.msrb.org/MarketActivity/ViewStatistics.aspx>.

investors in municipal securities, and municipal issuers. OMS also coordinates with the Municipal Securities Rulemaking Board (MSRB) on rulemaking and enforcement actions.

Upon its establishment, OMS devoted its attention primarily to finalizing and implementing the municipal advisor registration rules, including providing interpretive guidance to market participants, participating in the review of municipal advisor registrations, and reviewing a considerable number of rule filings by the MSRB related to municipal advisor regulation. OMS expects to continue to devote significant attention to implementing these final municipal advisor rules.

In addition, OMS is continuing to provide oversight for 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. OMS also closely monitors current issues in the municipal securities market.

Set forth below are some of OMS's most prominent current activities.

### **Municipal Advisors**

The Dodd-Frank Act imposed a new requirement that “municipal advisors” register with the SEC and provided for regulation of municipal advisors by the MSRB.<sup>2</sup> This registration requirement applies to persons who provide advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities, or who solicit municipal entities or obligated persons. In September 2013, the Commission adopted final rules for municipal advisor registration.<sup>3</sup>

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<sup>2</sup> See 15 U.S.C. § 78o-4(b).

<sup>3</sup> See Registration of Municipal Advisors, Exchange Act Release No. 70462, 78 Fed. Reg. 67468 (Nov. 12, 2013), <http://www.sec.gov/rules/final/2013/34-70462.pdf>. See also OFFICE OF MUN. SEC., SEC, REGISTRATION OF MUNICIPAL ADVISORS FREQUENTLY ASKED QUESTIONS (issued Jan. 10, 2014, last updated May 19, 2014),

These registration requirements and regulatory standards were intended to mitigate some of the problems observed with the conduct of some municipal advisors, including failure to place the duty of loyalty to their municipal entity client ahead of their own interests, undisclosed conflicts of interest, and advice rendered by financial advisors without adequate training or qualifications.

OMS has significant responsibilities related to the implementation of municipal advisor registration and is currently overseeing the registration of over 650 municipal advisory firms and over 4,000 associated persons who engage in municipal advisory activities. Municipal advisors were required to comply with the final rules as of July 1, 2014, including registering with the SEC using the final registration forms.<sup>4</sup> Except for certain personally identifiable information, the SEC municipal advisor registration information is available to the public through the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system website.<sup>5</sup>

OMS continues to implement the final rules for municipal advisor registration by monitoring and improving the SEC's registration system for municipal advisors, participating in the review of municipal advisor registrations, and reviewing and processing MSRB rule filings related to municipal advisor regulation. In December 2015, the Commission approved the MSRB's adoption of new MSRB Rule G-42, which establishes the core standards of conduct and duties of municipal advisors when providing advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities.<sup>6</sup> OMS also

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<http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf>.

<sup>4</sup> The final rules require municipal advisors to register with the SEC by completing a Form MA and to provide information regarding natural persons associated with the municipal advisor and engaged in municipal advisory activities on such municipal advisor's behalf by completing a Form MA-I for each such natural person.

<sup>5</sup> To search by a municipal advisor company's name, see <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

<sup>6</sup> See Order Granting Approval of a Proposed Rule Change Consisting of Proposed New Rule G-42, on Duties of Non-Solicitor Municipal Advisors, and Proposed Amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers, Municipal Securities Dealers, and Municipal Advisors, Exchange Act Release No. 76753, 80 Fed. Reg. 81614 (Dec. 30, 2015), <https://www.sec.gov/rules/sro/msrb/2015/34-76753.pdf>.

consults with the Commission's Office of Compliance Inspections and Examinations regarding inspections and examinations of municipal advisors, coordinates with the MSRB and FINRA<sup>7</sup> to help promote fair and uniform application of new rules applicable to municipal advisors, and provides interpretive guidance to those market participants who may be required to register as municipal advisors.

### **Disclosure and Market Structure Initiatives**

OMS's current efforts also include the development and implementation of important disclosure and market structure initiatives for the municipal securities market. On July 31, 2012, the Commission issued a Report on the Municipal Securities Market that recommended a number of possible actions to improve the municipal securities market in these two areas.<sup>8</sup> In a June 2014 speech, Chair White discussed three of the 2012 Report's market structure recommendations with respect to the fixed income markets.<sup>9</sup> First, Chair White explained that to assure that brokers are subject to meaningful obligations to achieve the best executions for investors in both corporate and municipal bond transactions, staff will be working closely with the MSRB as they finalize a robust best execution rule for the municipal securities market, and with FINRA and the MSRB as they work together to provide practical guidance on how brokers might effectively achieve best execution. Second, Chair White noted that to help investors better understand the cost of their fixed income transactions, staff will work with FINRA and the

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<sup>7</sup> Section 15A of the Securities Exchange Act of 1934 provides FINRA with authority to conduct examinations of its members' activities as registered municipal advisors in order to evaluate their compliance with the Exchange Act, rules and regulations thereunder, and MSRB rules. *See* 15 U.S.C. § 78o-3. In addition, pursuant to Exchange Act Section 15B (as amended by the Dodd-Frank Act), the Commission designated FINRA to examine its members' activities as registered municipal advisors and evaluate compliance by such members with federal securities laws, Commission rules and regulations, and MSRB rules applicable to municipal advisors. *See* 15 U.S.C. § 78o-4.

<sup>8</sup> *See* U.S. SECURITIES AND EXCHANGE COMMISSION, REPORT ON THE MUNICIPAL SECURITIES MARKET (JULY 31, 2012), <https://www.sec.gov/news/studies/2012/munireport073112.pdf>.

<sup>9</sup> Mary Jo White, Chair, SEC, Intermediation in the Modern Securities Markets: Putting Technology and Competition to Work for Investors, Speech Before the Economic Club of New York (June 20, 2014), <https://www.sec.gov/News/Speech/Detail/Speech/1370542122012>.

MSRB in their efforts to develop rules regarding disclosure of markups in certain principal transactions for both corporate and municipal bonds. Third, Chair White explained that she asked the staff to focus on a regulatory initiative to enhance the public availability of pre-trade pricing information in the fixed income markets, particularly with respect to smaller retail-size orders. This initiative would require the public dissemination of the best prices generated by alternative trading systems and other electronic dealer networks in the corporate and municipal bond markets.

Steady progress has been made on these initiatives. The MSRB filed a proposed rule change to require brokers, dealers, and municipal securities dealers to seek best execution of customer transactions in municipal securities, and the Commission approved the rule change.<sup>10</sup> In addition, the MSRB and FINRA have issued related practical guidance on their respective best execution rules. The MSRB and FINRA also have filed proposed rule changes with the Commission to require broker-dealers to disclose markups and markdowns to retail customers on certain principal transactions for municipal, corporate debt, and agency debt securities. In addition, OMS continues to work with the Division of Trading and Markets to consider ways to enhance the public availability of pre-trade pricing information for municipal and corporate bonds.

With respect to the 2012 Report's disclosure recommendations, the Division of Enforcement's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative has focused significant attention on compliance with the continuing disclosure requirements of Rule 15c2-12 and disclosure practices more generally. Announced in March 2014, MCDC is a self-reporting

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<sup>10</sup> See Order Granting Approval of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals ("SMMP"), and Rule D-15, on the Definition of SMMP, Exchange Act Release No. 73764, 79 Fed. Reg. 73658 (December 11, 2014), <https://www.sec.gov/rules/sro/msrb/2014/34-73764.pdf>.

program designed to encourage underwriters and municipal issuers to self-report federal securities law violations involving issuers' inaccurate certifications in their municipal bond offerings of their compliance with their continuing disclosure obligations. The federal securities law violations reported by underwriters and issuers pursuant to the MCDC Initiative have provided OMS with valuable information as to how Rule 15c2-12 is working, which in turn will help us determine where to best channel our efforts going forward.

In addition, OMS will continue assisting with the development of disclosure and market structure initiatives recommended for potential further consideration by the Commission in the 2012 Report.

### **Regulatory Coordination**

OMS regularly coordinates with other regulators of municipal securities. OMS acts as the Commission's liaison to the MSRB, FINRA, the Internal Revenue Service's (IRS) Office of Tax-Exempt Bonds, the Department of the Treasury's Office of State and Local Finance, a variety of investor and industry groups, and regulators on municipal securities issues. OMS interacts closely with the MSRB and is responsible for reviewing and processing all MSRB rule filings on behalf of the Commission. OMS communicates with the MSRB Chairman, Board, and staff concerning MSRB activities, market developments, and potential improvements of MSRB systems that either collect information for regulators or provide information to the public.

OMS staff also continues to lead semiannual meetings with the MSRB and FINRA regarding the municipal securities market, as required by the Dodd-Frank Act; meets with MSRB and FINRA staff regularly to discuss rulemaking, examination, and enforcement activities; meets with IRS staff to discuss market risks, practices, and events relating to tax-exempt bonds and municipal securities; and has coordinated with banking and other regulators. OMS also continues

to work closely with the municipal securities industry to educate state and local governmental officials and conduit borrowers about the Commission's rules and to foster a thorough understanding of the Commission's policies among all market participants.

### **FY 2017 Budget Request**

OMS's budget request for FY 2017 seeks to continue and expand on OMS's efforts to provide effective oversight of the municipal securities market, as set forth above. OMS's workload is anticipated to grow due to the expanding responsibilities of OMS and the offices OMS directly supports, such as the Office of Compliance Inspections and Examinations and the Division of Enforcement. Specifically, OMS's budget request for FY 2017 seeks to:

- Continue to implement the final rules for municipal advisor registration by monitoring and improving the SEC's registration system for municipal advisors, participating in the review of municipal advisor registrations, reviewing and processing MSRB rule filings related to municipal advisor regulation, advising the Office of Compliance Inspections and Examinations regarding municipal advisor examinations, coordinating with the MSRB and FINRA to help promote fair and uniform application of new rules applicable to municipal advisors, and providing interpretive guidance to those market participants who may be required to register as municipal advisors;
- Continue its oversight of MSRB rule filings and regulatory coordination with the MSRB concerning MSRB activities, market developments, and potential improvements of MSRB systems that either collect information for regulators or provide information to the public;
- Provide increased support to other SEC divisions and offices with respect to examinations and enforcement relating to the municipal securities market;

- Continue to monitor current developments and emerging risks in the municipal securities market and communicate OMS's observations and conclusions to other SEC offices and divisions and other regulators for possible regulatory responses; and
- Continue to work closely with the municipal securities industry to educate state and local governmental officials and conduit borrowers about the Commission's rules and foster a thorough understanding of the Commission's policies among market participants.

### **Conclusion**

OMS will continue its efforts to provide effective oversight of the municipal securities market guided by the Commission's mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

Thank you, and I would be happy to answer your questions.