

ALERT

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PUBLIC & PROJECT FINANCE AND GLOBAL SECURITIES

News Concerning
Recent Securities Issues



SEC Recommends Major Changes in Municipal Securities Market

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The Securities and Exchange Commission (the SEC) on July 31, 2012 issued a comprehensive report with recommendations to improve the municipal securities market and enhance disclosure provided to investors. The report follows an extensive review of the municipal securities market that began in 2010 and involved field hearings, meetings between the SEC and market participants and public comments. Although the report does not change existing law, the report recommends certain legislative changes, potential rulemaking by the SEC or the Municipal Securities Rulemaking Board (MSRB), and enhancements to best practices.

In the report, the SEC recognizes the current limits to its statutory authority and identifies at least five significant proposals that would require authorization from Congress. First, the SEC proposes it be authorized to require municipal issuers to prepare disclosure pursuant to certain minimum disclosure standards. However, this would not entail registration or pre-sale filings of disclosure documents with the SEC. Second, the SEC recommends proposed amendments to the municipal securities exemptions (e.g., Section 3(a)(2) under the Securities Act of 1933, as amended) for conduit borrowers that are not municipal entities. This proposal is not intended to alter the continuing availability of other registration exemptions such as those for small offerings (e.g., intrastate offering exemption and Regulation A's exemption for public offerings not exceeding \$5 million in any 12-month period), private offerings and nonprofits. Third, the SEC recommends it be authorized to establish the form and content of financial statements for municipal issuers, to recognize the financial reporting standards of a designated private sector body as generally accepted

for purposes of the federal securities laws, and to require municipal securities issuers to have their financial statements audited. Fourth, the SEC proposes the creation of a safe harbor from private liability for forward-looking statements of municipal issuers who meet certain requirements. Fifth, the SEC seeks authorization for a mechanism (most likely through indenture trustees) to enforce compliance by issuers and obligated persons with their continuing disclosure undertakings pursuant to SEC Rule 15c2-12 pursuant to the Securities Exchange Act of 1934, as amended (Rule 15c2-12).

Within the scope of current regulatory authority, the SEC noted that it could consider: issuing updated interpretive guidance regarding disclosure obligations (the SEC's last major guidance dates back to 1994), amending Rule 15c2-12 and/or continuing to work with the MSRB to strengthen its rules and further enhance the MSRB's Electronic Municipal Market Access system (EMMA is the municipal analogue to the corporate sector's EDGAR).

The report also discusses certain disclosure issues, such as relating to the content and timing of financial information, disclosures related to pensions and other post-employment benefits (OPEB), exposure to derivatives and conflicts of interest.

The report is posted on the [SEC's website](#).

For additional information concerning these proposals and how to deal most effectively with requirements that may arise from them, feel free to contact any member of our Public & Project Finance Practice Group or Global Securities Practice Group.

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