



## Municipal Financing

July 2009

### Developments in Regulation of Municipal Securities Marketplace Participants

This briefing discusses recent developments in the regulatory and legislative arenas that foreshadow increased regulation of participants in the municipal securities marketplace.

#### FINRA Initiatives

On June 30, the Financial Industry Regulatory Authority (“FINRA”) announced that it has launched a comprehensive initiative to protect retail investors in municipal securities, including sweep examinations of retail sales practices in the municipal securities market.<sup>1</sup> These initiatives were described in a press release that was linked to a regulatory notice that reminded members of their disclosure and sales practice responsibilities when selling municipal securities. The press release also provides links to an Investor Alert and an online “Muni Bond Check List,” which provide guidance to avoiding common pitfalls of municipal bond investing.

- *Sweep Examinations.* FINRA’s statement to the press said that FINRA investigators currently are conducting sweeps to gather information in three areas: (i) industry sales and supervisory practices with respect to sales of municipal bonds to retail investors; (ii) potential conflicts, disclosure practices and marketing by firms underwriting municipal securities involving swaps and derivatives for small municipalities; and (iii) retail sales of certain fixed income products called “gas bonds” that were underwritten and guaranteed by the now-defunct Lehman Brothers and quickly became distressed.
- *Regulatory Notice 09-35.* In Regulatory Notice 09-35 (“RN 09-35”), released on June 30, FINRA reminded its member firms of their ongoing obligation to disclose material information to customers - including changes in the financial condition of the issuing municipality - as well as their obligations regarding the suitability of recommendations to customers and the supervision of the firm’s municipal securities activities. FINRA recommends that firms engaged in the municipal securities business review and, if necessary, modify their policies and procedures relating to compliance with SEC Rule 15c2-12 in light of (i) changes to the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access system (“EMMA”), effective July 1, 2009, which established the EMMA continuing disclosure system, providing for receipt and public availability of continuing disclosure documents and related information submitted by issuers, obligated persons and their agents; and (ii) changes to MSRB Rule G-36, relating to the delivery of official statements, and MSRB Rule G-32, governing disclosures in connection with new issues, which went into effect June 1, 2009. RN 09-35 also encourages firms to review the overall adequacy and effectiveness of their current policies and procedures

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<sup>1</sup> See “FINRA Takes Sweeping Action to Protect Muni Bond Investors,” FINRA News Release (<http://www.finra.org/Newsroom/NewsReleases/2009/P119064>).

for municipal securities activities generally, particularly those relating to compliance with MSRB Rules G-17, G-19 and G-27, which relate to the disclosure of material information, the suitability of recommendations to retail customers, and the general supervision of municipal securities activities.<sup>2</sup>

## Legislative Proposal

- *The Municipal Advisers Regulation Act.* Congress is currently considering an amendment to the Securities Exchange Act of 1934, as amended, to require the registration of municipal financial advisers and their associated persons.<sup>3</sup> As proposed, the act would enable the Securities and Exchange Commission (“SEC”) to require applicants for registration as municipal

financial advisers to have written policies and procedures and to meet certain standards of training, experience, competence and such other qualifications as the SEC finds necessary for the protection of investors, including testing requirements. Municipal financial advisers would be deemed to have a fiduciary duty to the municipal issuers that they advise. The SEC is supporting this legislation in order to be better able to regulate the practices of municipal financial advisers that are not registered broker-dealers, in such areas as “pay to play” practices, undisclosed conflicts of interest, qualifications, and training.<sup>4</sup>

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<sup>2</sup> See FINRA Regulatory Notice 09-25 “FINRA Recommends Review of Municipal Securities Activities,” (<http://www.finra.org/Industry/Regulation/Notices/2009/P119053>).

<sup>3</sup> H.R. 2550 (<http://www.govtrack.us/congress/billtext.xpd?bill=h111-2550>).

<sup>4</sup> See “Testimony Concerning Legislative Proposals to Improve the Efficiency and Oversight of Municipal Finance,” Martha Mahan Haines, before the U.S. House of Representatives Committee on Financial Services, May 21, 2009, (<http://www.sec.gov/news/testimony/2009/ts052109mmh.htm>).

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Winston & Strawn LLP represents a broad range of financial institutions on all regulatory matters. If you have any questions regarding how the matters discussed in this briefing might apply to your situation, or if you would like assistance in making your views known in Washington as any new legislation or rulemaking develops, please contact any of the Winston & Strawn attorneys listed below or your usual Winston & Strawn contact:

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