



“State Governments, Bonds and Ensuring a Fair Market”

Remarks of Alan Polsky, Chair

Municipal Securities Rulemaking Board

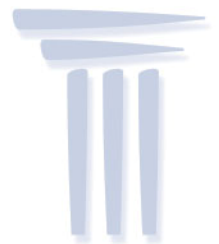
at the

National Association of State Treasurers Legislative Conference

Washington, DC

March 21, 2012

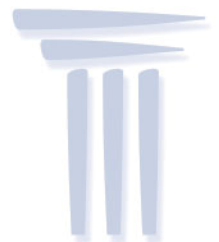
- Good morning, my name is Alan Polsky and I am Chair of the Municipal Securities Rulemaking Board—the MSRB. I am honored to be here today. This gathering hosted by NAST brings together a group of highly influential people with responsibility to oversee the finances of our states.
- In addition to managing state budgets, you provide leadership for jurisdictions within your state on many issues, including use of the bond market.
- Both states and local governments must be able to freely access the bond market to finance their operations, and the role of the MSRB is to ensure that you are able to do so in a manner that is fair and efficient.
- It is also our responsibility to ensure that you and all state and local government officials have the information needed to make informed decisions when it comes to issuing bonds.
- The MSRB of course does not regulate state or local governments, nor do we interfere in any way in their access to the bond market.
- On the contrary, the MSRB seeks to ensure that the municipal bond market operates fairly and efficiently, and that state and local governments have the ability to hire competent financial professionals to assist and advise them in the process.
- The MSRB also provides leadership on issues outside of our jurisdiction but that affect state and local governments. This is important because the MSRB has the ability to elevate issues of critical importance to the municipal market as we did recently with respect to the proposed Volcker Rule.
- As you may know, this is a proposed federal banking rule under development that restricts the ability of banks and their affiliates to engage in proprietary trading.



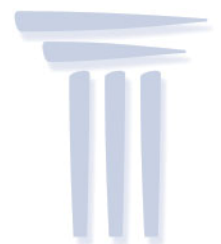
- As written, we believe the rule is detrimental to the municipal securities market and have urged the agencies responsible for implementing the rule to change it.
- The MSRB believes that the agencies need to broaden the “governmental obligations” exemption from the proposed rule’s restriction on proprietary trading to include all “municipal securities” as defined in the Securities Exchange Act of 1934.
- State and local government bonds are of course exempt. However the proposed rule excludes bonds issued by public agencies or authorities, an exclusion that we think would result in a bifurcation of the municipal securities market with no meaningful additional benefit to the safety and soundness of the banking system.
- Without modification, the Volcker proposal will serve as an impediment to a free and open market in municipal securities to the detriment of investors and issuers of municipal securities.
- This is particularly important given the capital needs to rebuild some of our nation’s infrastructure and the already weakened state of some local economies.
- We were gratified to learn that the summer deadline for finalizing the rule has been pushed back and that regulators are open to considering the change we and others in the municipal market have proposed.
- Another area where the MSRB is using its expertise to help bring clarity to the market is in the area of state and local government borrowing from banks.



- We know that state and local governments increasingly are seeking private placements with banks as an alternative to public offerings of municipal securities, especially as letters of credits and standby bond purchase agreements expire.
- Temporary cash flow borrowings that were previously accomplished with revenue anticipation notes also are being replaced with bank loans.
- However some “bank loans” can constitute primary offerings of securities, which means they are subject to federal securities laws.
- But we know that it can be challenging for state and local governments and their financial professionals to know whether or not certain financings are true bank loans or securities.
- Determining whether a “bank loan” is a security is not a straightforward analysis. The SEC and the courts have the authority to interpret the meaning of the term “security” for purposes of the federal securities law.
- However this issue is of concern to the MSRB and we are examining what steps we might take to provide clarity to state and local governments with respect to these financings.
- Since I mentioned the SEC, I’d like to talk briefly about another SEC-related issue, and that is the definition of municipal advisor.
- The SEC is working on putting in place a permanent definition of the municipal advisor, a move that will allow the MSRB to restart our rulemaking for this group of financial professionals.
- We know that there are at least 850 such professionals in the market, and perhaps many more, depending on how municipal advisors are defined by the SEC.

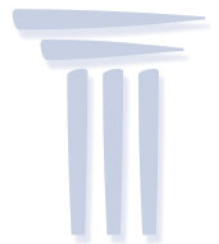


- These municipal advisors provide key services to state and local governments in the issuance of bonds and related activities.
- Like their underwriter counterparts, it is essential that municipal advisors follow a standard set of rules to ensure they treat state and local government clients fairly, that conflicts of interest are minimized, and that they uphold their fiduciary duty to their clients.
- These of course are only some of the outcomes that regulation seeks to address.
- But I want to ensure you that the SEC's delay in defining municipal advisor has not diminished the MSRB's intention to put in place a set of professional rules of conduct for municipal advisors.
- We spent a good deal of time last year developing a set of rules we think will go far in ensuring that the interests of state and local governments are protected. These rules cover activities such as pay to play and other conflicts of interest, fiduciary duty, fair dealing and professional qualifications.
- As soon as the SEC establishes precisely who will be covered under the municipal advisor definition, we will re-review these proposed rules, change them if necessary and then work to put them into effect.
- In the meantime, the MSRB has been focusing on additional aspects of our mission protect state and local governments.
- One project we undertook was to create an electronic toolkit that contains resources directed at small to small and infrequent municipal bond issuers to help them be informed about what they can expect from financial professionals and also about the usefulness of the EMMA[®] website.
- With respect to EMMA, we have made a number of improvements, including providing current municipal credit ratings from Standard & Poor's and Fitch



so that anyone viewing information about your state's bonds can see how they are rated.

- We also are in the process of developing a service for state and local governments that will permit them to easily extract trade data about their bonds from EMMA.
- We see this as a way to assist state and local governments in monitoring their secondary market trading and better understand how their bonds are being bought and sold.
- At least one state is harnessing the power of EMMA to ensure that local governments within its jurisdiction are complying with their continuing disclosure obligations.
- Please see me afterwards to discuss how the MSRB may be able to help you use EMMA data in your oversight activities.
- The MSRB continues to make enhancements to EMMA aimed at improving market transparency in ways that will benefit all participants in the municipal market. State and local governments can voluntarily provide the public with information about the timing and preparation of annual financial disclosures through EMMA.
- You also can voluntarily post preliminary official statements, on a pre-sale basis, and provide direct hyperlinks to your investor relations websites on EMMA.
- I know that many of you are interested in 529 college savings plans, and what the MSRB is doing that relates to them.
- In the past, the MSRB and NAST worked closely to standardize disclosures on 529 college savings plans. This partnership resulted in improvements for 529 plan participants and the public as a whole. The College Savings Plan

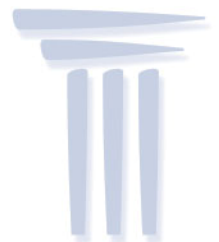


Network, an affiliate of NAST, operates the website CollegeSavings.org. CollegeSavings.org provides detailed information about 529 plans across the country to help investors find the plan that best fits their needs.

- One of the priorities for the MSRB is – if there is market and SEC support – is to provide a centralized, electronic database that makes 529 plan documents immediately and widely available.
- We are requesting public comment on the effectiveness of making 529 plan disclosures to investors through the internet, and on the concept of implementing such a system as part of the EMMA website.
- We are collecting comments on this concept release until April 2 and I encourage you to provide us with any information you think would be helpful.
- I want to emphasize that this proposal is still very much in the research phase.
- We also continue to evaluate a proposal to collect data from the firms that distribute 529 plans on your behalf. We believe that providing a central database with information such as such as total plan assets, quarterly contributions and withdrawals, total number of active accounts and total rollover distributions, would be valuable to investors and other market participants. This centralized database would complement the resources and information available on CollegeSavings.org.
- As with the all-electronic access concept, the data collection concept has not yet been proposed in any formal way.
- The MSRB goes to great lengths to ensure that there is widespread input on its proposals and you may be interested to know that we recently published a long-range plan for all of the MSRB's market transparency products.



- This plan lays out a road map for the evolution of EMMA and we are encouraging market participants to read it, and provide us with feedback they think might be helpful.
- On the regulatory front, we continue to seek ways to ensure that the interests of state and local governments are protected, and we recently published a request for comment on a proposal to address concerns about how underwriters fulfill state and local governments' intention with regard to retail investors.
- Over the last two years, the MSRB has been concerned about disregard by certain dealers of terms and conditions required by issuers for retail order periods and the failure of syndicate managers to disseminate timely notice of issuer terms and conditions regarding retail order periods to all dealers.
- We want to ensure that your interests are both respected and protected when issuing bonds, and that your bonds are sold to the investors that you so designate.
- Our proposal makes it clear it that it is your responsibility to define what you mean by "retail investor," but that any underwriter would be required to document that purchase of securities during a retail order period meet the your definition of retail, among other requirements.
- The initiatives and challenges I have described today are closely related to the borrowing costs of states, to the retirement security of former state employees, to the college savings capability of your citizens and to the overall service of the public interest.
- It is important that state treasurers help to set the standard for debt management and disclosure policies of state and local governments. The



MSRB is eager to work with issuers and provide tools and resources for the market as a whole.

- If there are ways you believe the MSRB could improve its regulatory initiatives, we would like to hear from you. As an organization, the MSRB is dedicated to a thoughtful, thorough rulemaking process that involves significant input from municipal market participants.
- As a self-regulatory organization, we depend on input from state and local governments, financial professionals, investors and the public to ensure MSRB rules are timely and appropriate. We believe that this widespread participation in rulemaking makes both the process and the product at the MSRB as balanced as possible and in the best interests of investors and state and local governments.
- I appreciate the opportunity to speak to you today and can respond to any questions you might have.

