

Statement of Richard Y. Roberts

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SEC Field Hearing

The State of the Municipal Securities Market

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INTRODUCTION

Commissioner Walter and Commission staff, my name is Rick Roberts, and I am with Roberts, Raheb, & Gradler, a legislative/regulatory consulting firm located in Washington, DC. It is a privilege to participate in this hearing today and to offer my perspective regarding the issue of trade price transparency.

I commend Chairman Bachus, Chairman Schapiro and Commissioner Walter for their leadership in holding this hearing. I had the honor of serving as a Commissioner of the SEC from 1990 – 1995. Even way back then, both Chairman (then Commissioner) Schapiro and Commissioner (then Deputy Director of the Corporation Finance Division) Walter were quite active and interested in municipal securities public policy issues.

ENHANCED SEC AUTHORITY

Over the last 25 years, the Commission has taken many steps that have improved considerably the quality of municipal securities disclosure. These steps were thoroughly set forth in a speech delivered by Commissioner Walter in the fall of 2009 so I will not repeat them for purposes of this statement. In my view, it is remarkable what the Commission, working with the MSRB and others, has been able to accomplish in the way of improvements to municipal securities market disclosure, especially given its limited authority. While there may be a few more steps that the Commission could take under its current statutory authority, I agree with Commissioner Walter that municipal securities market reform cannot be addressed adequately without congressional action. Although I have a few suggestions, I am not wedded to any specific legislative action; and I do believe that this is a topic that is ripe for congressional consideration.

Unfortunately, the Commission's significant improvements in municipal securities market disclosure have been accomplished primarily on the backs of dealers because that is where the SEC's current authority lies. That needs to change in my view. Municipal securities market investors deserve higher quality and more timely information.

It does seem to me that Congress should permit the SEC to apply the registration and disclosure standards to non-governmental conduit borrowers that would apply if they issued their securities directly without using municipal issuers as conduits. Further, municipal issuers should be required to use generally accepted governmental accounting standards. Uniform accounting standards make financial statements much easier for investors to understand and compare. Finally, I believe that Congress should seriously consider combining the enforcement and regulatory authority over the municipal market into one SRO. Regulatory efficiency just makes more sense to me. Since they have the substantive expertise in the municipal securities area, my preference would be for the MSRB to serve as that SRO.

I made these same legislative suggestions, among others, on several occasions some twenty years ago. So, while a lot has changed in the municipal securities market over the last couple of decades, a lot has not. Once in awhile, I think it is Groundhog Day every day in muni world.

RETAIL INVESTOR PARTICIPATION

Stepping back and surveying the overall landscape, the municipal securities market is huge; and the individual investor interest in the market is huge as well. The amount of municipal bonds outstanding approaches \$3 trillion, and individual investors hold more than two-thirds of these bonds directly or indirectly.

Yet, the municipal securities market continues to lack many of the basic investor protections that exist in most of the other capital market areas. I continue to remain troubled by the fact that financial reporting can take up to 270 days to reach an investor. An enhanced disclosure requirement system that would close this information lag and improve access to information about municipal securities would surely boost investor confidence and investor interest.

TRADE PRICE TRANSPARENCY

One very positive step toward improving the transparency, efficiency and fairness of the municipal market that I wish to specifically note is the creation of the EMMA (Electronic Municipal Market Access) System by the SEC and MSRB in 2009. EMMA has enabled retail investors to have access to the kind of key data and disclosure information that was routinely accessed by market professionals, and I believe that EMMA has been a tremendous success. While an enhancement to EMMA is in the works with the addition of ratings, I believe that even more can be done with EMMA. I would like to comment on that more in a few minutes.

The most significant problem that exists in the municipal market, in my opinion, is when a municipal investor tries to sell a bond. At that time, they often encounter an expensive and opaque process. This problem is the focus of our panel today.

There have been several suggestions offered to alleviate this problem. One is to create a limit order mechanism for the municipal market that resembles what exists in the equity market. The Order Handling Rules that the SEC issued in 1997 enable a retail equity investor to place a limit order to buy or sell a security and have that order set the best price in the marketplace. These rules were quite successful, in my judgment. Although it would be nice for the municipal market to have a mechanism whereby a retail investor could place a limit order that is displayed to the marketplace, I have concerns that such a system may be prohibitively expensive for the municipal market at this time.

Another suggestion is that broker/dealers should be required to publish how they have marked their own inventory for capital purposes. Of course, this valuation is only a good faith estimate, and the valuation is probably only sound for frequently traded bonds. Moreover, the valuation is fleeting too since the municipal bond inventory usually turns over after three weeks. So, I am not persuaded that this suggestion, if implemented, would solve much.

Even another suggestion is to make available to retail investors more of the information that is available on the various private sector trading platforms which are not now accessible to retail investors. I acknowledge that there is a variance between institutional and retail pricing, which could limit the usefulness of this approach as well. However, there may be something to the notion that limited, additional inter-broker information, beyond that which is now available on EMMA, may be useful and should be made available to retail investors. I am a little murky as to what that information should be, and I am not prepared to recommend any specifics. I just think that this may be a suggestion that deserves greater exploration.

The final suggestion that I will mention this afternoon involves EMMA. Some retail investors already rely on existing data for pricing information on active issues. Why not go a step further and have an index compiled from the last sale data available on EMMA published by the MSRB? EMMA already discloses actual trade data that is close to real time. Such an index could be very helpful to investors in my judgment, and I ask my fellow panelists for their reaction to such a suggestion.

I am confident that there will be other suggestions flowing from the study currently being undertaken by Dr. Sirri on behalf of the MSRB. I look forward to reviewing the report resulting from his study once it is made available.

CONCLUSION

Retail municipal investors are an increasingly self-reliant bunch. While important steps have been taken by the SEC and the MSRB to help them and while the private sector has helped immensely too by developing online and other research resources, more needs to be done. Investors need to be able to count on accurate, timely and complete information in making decisions on what to buy, what to hold and what to sell. I am confident that new information resources can be developed through the combination of heightened regulatory attention and market forces that will provide clearer, easily accessible and comparable information in the municipal market to retail investors.