

Sent: Friday, September 17, 2010
To: Walter, Elisse
Subject: Municipal Securities Registration

Commissioner Walter:

I've read that you are leading the effort to cause municipalities to register prospective municipal securities offerings. Bravo!

Thirty-five years ago, I was Special Counsel with the NYRO of the SEC. It was 1975, and New York City had just defaulted in the repayment of its maturing municipal securities. I remember going into Bill Moran's office (who was, then, the Regional Administrator of the NYRO), and recommending that we begin a formal investigation of New York City's municipal securities practices. He reluctantly agreed ("You're going after New York City?"). For the next three years, I spearheaded the formal investigation, that encompassed New York City's elected and appointed officials; Bond Counsel for NYC; the Rating Agencies; the Selling Syndicates; and the Lead Underwriters for NYC's municipal securities offerings.

While municipalities were exempt from the registration requirements of the '33 Act, they were not exempt from the reach of Section 10(b) of the '34 Act. As lead counsel, I personally took the depositions of scores of City Officials, Bond Counsel Attorneys, Bank CEO's, etc. in search of the fraud that NYC had surely committed by failing to make full disclosure of its twisted accounting system. At the end of my investigation, Stanley Sporkin threw in the support of many Division of Enforcement attorneys to help me write the final Report to the U.S. Congress as to my findings and conclusions. Those were heady times.

New York City's Mayor (Abraham Beame) was incensed that the SEC was investigating the City's finances. Mayor Beame was a former accountant. As I later learned, the Mayor and the Comptroller had put in place, *inter alia*, an accounting system that treated revenues on an accrual basis, and expenses on a cash basis. When each of the City's fiscal years ended with huge cash deficits, the City just "rolled over" its maturing short term "Anticipation Notes" (BANs, RANs, TANs and BNs). The Mayor knew, as did Comptroller Golden and Budget Director Lechner, that there were insufficient revenues behind each Anticipation Note offering to repay them as the Notes matured. So did the Underwriters, and Bond Counsel. But not the public!

And why not the public? Because municipalities were not obligated to issue prospectuses in advance of each offering. Instead, cities made simple announcements of prospective offerings that were just One Page Flyers, similar to RFP's. Nothing more. There was no way that anyone, other than close

insiders, could appraise the City's financial condition prior to each offering. And so many investors were severely burned by this fraud.

I was stunned to learn this. After all, I had cut my teeth as a Staff Attorney with the Division of Corporation Finance (like you), and learned to understand and appreciate Registration Statements and Prospectuses. I didn't like the fact that municipalities were exempt from registration. My feeling at the time was that Municipalities would one day be hit by declining tax revenues, and would try to issue municipal securities at a time when they were unable to repay such securities, to the detriment of public investors.

I recommended to the Commission at the time that municipalities should no longer be exempt from the registration requirements of the '33 Act; that investors needed to look at a City's finances before assuming that its securities were a safe investment. But that was 1977-8 and, except for NYC, no one was looking at municipalities as an area of securities problems. I was. But I was ahead of my time.

So, Bravo for picking up the gauntlet and running with it. If I can help you in winning this race, please do call upon me. I still have the drafts of my original Investigation Report to the Commission regarding NYC's financial debacle. Despite the passage of time, the lapses of municipalities insofar as financial full disclosure is concerned, are still fresh in my mind. I'd like to put all that quiescent knowledge to work. It's time.

Cordially,

Richard A. Freeman, Esq.
Division of Corporate Finance 1969-71
Division of Enforcement, NYRO 1975-78