

OFFICE OF MUNICIPAL SECURITIES

EXECUTIVE SUMMARY

We found that the Office of Municipal Securities (OMS) has generally carried out its mission effectively: to provide a core of expertise and coordination on urgent and ongoing municipal securities issues. The office currently exists on a provisional basis, with a renewal decision made annually since its creation in 1995. We are recommending that the Commission consider its status in light of the existing and anticipated municipal securities environment. Our other recommendations relate to office resources (turnover among the attorney fellow and the office automation clerk positions) and enhancing awareness of the office.

OMS, the Office of the Chairman, the Office of Administrative and Personnel Management, and the Office of Investor Education and Assistance provided comments on the draft report. We modified the report as appropriate to reflect the comments.

BACKGROUND

On March 22, 1995, the Chairman announced the creation of the Office of Municipal Securities to provide coordination and expertise on the varied initiatives related to the municipal securities market. The news release stated that with the creation of OMS, the Commission's many debt market initiatives--including those related to enforcement, market regulation, disclosure and transparency proposals--would be enhanced by an increased expert focus.

OMS provides expertise on municipal securities issues to the Division of Enforcement, serves as a clearing house throughout the Commission on initiatives related to municipal debt, and provides assistance in developing Commission initiatives in response to this expanding municipal debt market. OMS has helped further Commission efforts to rid the market of pay-to-play practices in the award of municipal securities business and to bring increased disclosure and transparency to the market.

Since its creation, OMS has had one Director, at the GS-15 level (plus a retention allowance). Its staff consists of two attorney fellows (on two year term appointments), three attorneys, one paralegal, and one temporary office automation clerk. According to the Office of Administrative and Personnel Management, OMS had an Assistant Director position (GS-14) from May 1995 to May 1997.

SCOPE AND OBJECTIVES

Our objective was to evaluate the goals and operations of the office, and to identify potential improvements. We reviewed available documentation about the office, and interviewed officials from organizations inside and outside of the Commission.

We did not evaluate the propriety of specific judgments made by OMS concerning municipal securities matters. Our review was performed between December 1999 and May 2000, in accordance with generally accepted government auditing standards.

AUDIT RESULTS

Based on our interviews and review of documentation, we found that OMS has generally carried out its mission effectively. It has established good working relationships with other Commission divisions and offices, and its expertise is requested and provided as appropriate on municipal securities matters.

OMS's Director provided a summary of OMS's accomplishments for calendar year 1999 to his staff, including the following:

- Compiled all known Commission actions in the municipal market into a 500 page volume that has been widely distributed;
- Presented to numerous groups guidance provided by the Commission to the municipal market;
- Initiated outreach to small issuers;
- Organized and hosted the first annual municipal market roundtable at the Commission;
- Provided commentary and analysis to the American Bar Association (ABA) regarding a proposed ethics rule against pay-to-play, which the ABA adopted at its February 2000 meeting;
- Provided guidance on new municipal products;
- Produced and delivered speeches on numerous topics, including dirt bond financings;
- Continued to provide detailed assistance to the Division of Enforcement in numerous actions;
- Initiated an overseas technical assistance program in coordination with the Office of International Affairs;
- Conducted a training program for the Office of Compliance Inspections and Examinations on municipal matters and provided continued assistance on exam templates;
- Worked closely with the Division of Investment Management in preparing the pay-to-play proposal for investment advisers;

- Reviewed numerous Municipal Securities Rulemaking Board rule changes and successfully corrected proposed rule amendments that would have been detrimental to OMS program goals;
- Provided technical assistance on proposed legislation in the Congress;
- Provided testimony to the New York City Campaign Finance Board; and
- Provided assistance to the public in responding to numerous inquiries.

In informal comments to a prior draft of this report, the Director of OMS noted that the above list does not represent all of OMS's accomplishments. He mentioned that OMS has provided the Commission with supplemental memoranda on a variety of enforcement actions relating to municipal securities market participants; coordinated Orange County bankruptcy matters; assisted market participants in preparation of compliance guidance; and prompted the voluntary ban on pay-to-play activities by independent financial advisers.

He further mentioned that some of the office's recent ongoing activity includes assistance to the Boston office with the "Big Dig" inquiry, as well as assistance to other regional offices with other municipal enforcement inquiries underway; preparation of a staff legal bulletin together with the Division of Investment Management regarding independent financial advisers; review of MSRB proposals to alter reporting requirements under Rules G-37 and G-38; assistance to the trial counsel on the City of Miami matter in preparing post trial memoranda; organization of seminars targeting small local issuers of municipal securities in the various states; and preparation for the second annual municipal roundtable.

Presented below are several recommendations to enhance OMS's operations.

STATUS OF OMS

As a provisional office subject to annual renewal, OMS's status appears to be in some doubt. Since five years has passed since its creation, consideration of its status seems appropriate, in light of the existing and anticipated municipal securities environment.

Options to consider include making the office permanent; folding the office into another Division (*e.g.*, the Division of Market Regulation), or leaving the office as provisional for now, while setting a deadline for a final decision. We are not endorsing any particular option.

If the office were made permanent, its status would need to be formalized, through communications to the Congress, publication in the Code of Federal Regulations, and modification of Commission organization codes.

Recommendation A

The Office of the Executive Director, in consultation with the Chairman's Office, OMS, and other offices and divisions, should consider the status of OMS, as discussed above.

OFFICE RESOURCES

Attorney Fellows

OMS has two attorney fellows, who serve on two-year terms. According to OMS's Director, recruitment and retention of fellows can be difficult. Candidates with extensive experience in municipal securities are understandably reluctant to leave private law practice for a short-term appointment at the federal government's salary structure. Moreover, because OMS does not have a permanent GS-15 position, it does not have a Deputy to assist the Director in managing the Office.

Office Automation Clerk

OMS has a temporary office automation clerk to perform administrative duties. This position suffers frequent turnover. Also, because of the relatively low pay of the position, strong candidates are difficult to obtain.

Recommendation B

OMS should consult with the Office of Administrative and Personnel Management (OAPM) and the Office of the Executive Director (OED) on whether one of OMS's attorney fellow positions can be converted to a GS-15 Deputy Director position. Another option to consider would be reestablishing the former GS-14 Assistant Director position (see Background).

Recommendation C

OMS should consult with OAPM and OED on whether the office automation clerk position can be made permanent, and/or upgrading the position.

OFFICE AWARENESS

Some industry organizations do not think the roles of OMS and the Division of Market Regulation have been clearly distinguished, *i.e.*, what each organization is responsible for and what each does. Also, some less senior Commission staff appear to be unclear as to OMS's mission and responsibilities.

One way to enhance awareness of the office is through electronic media. Information about OMS on the Commission's Internet site is scattered and needs to be consolidated. OMS is aware of this issue, but is awaiting action by the Office of Information Technology (OIT) to reconfigure the web site. Also, OMS is not currently represented on the Commission's Intranet.

Recommendation D

OMS should consult with OIT about the most expeditious way to consolidate OMS's information on the Commission's web site. It should also prepare a description of its activities for the Intranet. In addition, OMS should consider other alternatives to enhance understanding of its mission (*e.g.*, a presentation in the Commission's lunch and learn series).