III. The Dodd-Frank Act and Municipal Securities Regulation

A. Introduction

In 2009, Theresa Gabaldon described municipal securities as the "antithesis of sexy" with a "powerful soporific effect."[1] Prior to the to the 2009 financial crisis, this description was mostly true. When Congress overhauled securities regulation in response to the stock market crash of 1929, it left the realm of municipal securities untouched, reasoning that something so steady did not require the tightly wound bonds of government regulation.[2] Congress placed only one restriction on the municipal securities market in the Securities Act of1933 and the Securities and Exchange Act of 1934, a general anti-fraud provision.[3] Municipal securities were considered safe, "second only to federal government securities."[4]

Securities professionals maintained an almost unwavering devotion to this view of municipal securities for over forty years until the "New York City bond crisis" caused little slivers of doubt to creep into the perception's foundation.[5] New York City spent 1975 teetering on the edge of bankruptcy[6] and went so far as to declare "a moratorium on payment of debt services on certain note obligations."[7] New suspicions about municipal securities germinated,

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[1] Theresa A. Gabaldon, *Financial Federalism and the Short, Happy Life of Municipal Securities Regulation*, 34 J. CORP. L. 739, 740 (2009).

[2] *See* Steven B. Boehm and Michael B. Koffler, *The MSRB and the Regulatory Structure for Municipal Securities*, FINANCIAL PRODUCT FUNDAMENTALS § 17:5.3 (2010)

[3] *See* Note, *Federal Regulation of Municipal Securities: Disclosure Requirements and Dual Sovereignty*, 86 YALE L.J. 919, 919 n. 2 (1977); Boehm, *supra* note 1.

[4] Mark Edward Laughman, Note, *The Leaning Tower: Do the Proposed Amendments to SEC Rule 15C2-12 Violate the Securities Acts Amendments of 1975?*, 69 NOTRE DAME L. REV. 1167, 1167 (1994).

[5] Gabaldon, *supra* note 1, at 742; Laughman *supra* note 4, at 1168.

[6] *See* Ralph Blumenthal, *Recalling New York at the Brink of Bankruptcy*, N.Y. TIMES, Dec. 5, 2002, http://www.nytimes.com/2002/12/05/nyregion/recalling-new-york-at-the-brink-of-bankruptcy.html.

[7] Roger K. Harris, *Sovereign and Official Immunity Issues in Securities Litigation*, 27 HOUS. L. REV. 147, 147 (1990).

festered and forced Congress to respond to this brief outcry.[8] The Securities Act Amendments of 1975 ("1975 Act"), for the first time, imposed regulations on "brokers and dealers conducting transactions in municipal securities."[9] The 1975 Act also created the Municipal Securities Regulation Board ("MSRB" or "Board").[10] Notably, Congress did not grant the MSRB enforcement powers of its own.[11] Instead, Congress left enforcement of the MSRB's advisory regulations up to the different agencies already supervising the various entities trading in municipal securities.[12] The main aim in establishing the MSRB was to increase disclosure.[13] Under the 1975 Act, the MSRB could create rules requiring brokers and dealers to furnish information and documents to the MSRB and municipal securities consumers.[14] Additionally, the 1975 Act also required brokers and dealers in municipal securities to register as such.[15]

Yet despite its past indiscretion, the municipal security has spent the majority of its adult life viewed by professionals as the veritable nun of investments, hair yanked back beneath a white coif, frown lines etched into her permanently pursed lips. Laws pertaining to municipal securities have remained fairly stable since the 1975 Act. [16] Occasionally, shady dealings and a truly spectacular default would garner media attention and spur Congress, the Securities and Exchange Commission, or the MSRB to create new rules, but the overall structure and philosophy behind municipal securities regulation has remained largely consistent.[17] Investors of the 1980s

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[8] *See* Gabaldon, *supra* note 1, at 472; Comment, *Commercial-Bank Underwriting of Municipal Revenue Bonds: A Self-Regulatory Approach*, 128 U. PA. L. REV. 1201, 1205-06 (1980)

[9] Commercial-Bank, *supra* note 8, at 1206; *see* Laughman, *supra* note 4, at 1171.

[10] *See* Stephen Bradford Lyons, *SEC Registration Requirements for Taxable Municipal Securities*, 21 URB. LAW. 223, 234-35 (1989); *See also* Laughman, *supra* note 3, at 1172

[11] Lyons, *supra* note 10, at 235 ("The MSRB does not possess inspection or enforcement authority, and MSRB rules must . . . be approved by the SEC.")

[12] *See* Commercial-Bank, *supra* note 8, at 1207.

[13] *See* Laughman, *supra* note 4, at 1173 (discussing increased disclosure after the 1975 Act).

[14] Laughman, *supra* note 4, at 1172.

[15] *See* Gabaldon, *supra* note 1, at 742.

[16] *See generally id.* at 472-73.

[17] *See id.* at 472-73.

and 1990s did not suspect the tie-dyed socks "Municipal Security" kept hidden beneath her habit.

Despite the relatively stable state of municipal securities regulation, municipal securities underwent a radical transformation during the second-half of the twentieth century.[18] First, a more diverse group of investors began collecting municipal securities.[19] Second, municipalities moved away from offering only general obligations to hawking increasingly arcane financial structures.[20] Finally and perhaps most importantly, the amount of municipal securities skyrocketed, growing from $49 billion in outstanding municipal securities to $2.4 trillion between 1975 and 2009.[21] This increased market meant that, by the mid-1990s, municipal securities rivaled their corporate twins in size.[22] Yet regulation of municipal securities continued to be far less than that of their like-structured, private counterparts.[23] This discrepancy is particular troublesome because investors in municipal bonds bought into this myth of stability and "typically [seek] a steady stream of income payments, and compared to stock investors, they may be more risk-averse and more focused on preserving rather than accumulating wealth."[24]

Yet this concept of municipal securities may not square with the "apparent trend in the municipal bond market away from the issuance of general obligation bonds toward revenue bonds."[25] This

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[18] *See* Lisa M. Fairchild & Nan S. Ellis, *Rule 15C2-12: A Flawed Regulatory Framework Creates Pitfalls for Municipal Issuers*, 2 WASH. U. J.L. & POL'Y 587, 587 (2000) (listing how municipals securities changed).

[19] *See id.*

[20] *See id.* at 587-88 (first revenue bonds and then bonds with "increased use of derivative features")

[21] Gabaldon, *supra* note 1, at 740 (stating that "$25 to $49 billion of municipal securities were outstanding" in 1975 and 2.4 trillion in 2009).

[22] *See* Laughman, *supra* note 4, at 1167 ("Investors held a total of $1038.2 billion in state and local obligations at the end of the third quarter of 1993, compared to $1203.0 billion in corporate obligations.").

[23] Joshua P. Fershee, *SEC Hearing on Municipal Securities Market*, BUSINESS LAW PROF BLOG, Nov. 26, 2010, http://lawprofessors.typepad.com/business_law/2010/11/sec-hearing-on-municipal-securities-markets.html.

[24] *Investor Bulletin: Focus on Municipal Bonds*, U.S. SECURITIES AND EXCHANGE COMMISSION (Sep. 20, 2010) http://www.sec.gov/investor/alerts/municipal.htm ("Individual investors hold about two-thirds of the roughly $2.8 trillion of U.S. municipal bonds outstanding . . . .").

[25] OVERSIGHT PLAN OF THE COMMITTEE ON FINANCIAL SERVICES FOR THE ONE HUNDRED TWELFTH CONGRESS 4 (Comm. Print 2011) *available at*

lax attitude about the booming municipal securities market continued until 2008 when the subprime mortgage crisis caused "tremors" in the municipal securities market.[26] Municipal bonds began to default at a "record" pace.[27] In 2009, municipal issuers defaulted on "almost $7 billion in bonds."[28] One municipal security fiasco was the Auction Rate Security ("ARS"), [29] whose constant reset button caused this market to "collapse" in 2008.[30] Additionally, what was once a cause for comfort began to inspire fear; the monoline insurers backing municipal securities also provided insurance for subprime mortgages.[31] Fear that the insurers would not be able to fulfill their promises caused an "arctic freeze" in municipal securities trading.[32]

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http://financialservices.house.gov/pdf/112thovplanrev.pdf (speculating as to the increased "possibility of defaults").

[26] Galabdon, *supra* note 1, at 743.

[27] Tesia Nicole Stanley, *Narrowing the Disclosure Gap: Is Emma Edgar for the Municipal Securities Market?*, 7 J.L. ECON. & POLICY 91, 96 (2010) ("In 2008, 136 defaults were recorded, totaling a record high of $7.5 billion."); *see* Lisa Anne Hamilton, *Canary in the Coal Mine: Can the Campaign for Mandatory Climate Risk Disclosure Withstand the Municipal Bond Market's Resistance to Regulatory Reform?*, 36 WM. MITCHELL L. REV. 1014, 1018 (2010).

[28] Elisse B. Walter, Speech by SEC Commissioner: Statement at SEC Field Hearing on the State of Municipal Securities Market, U.S. SECURITIES AND EXCHANGE COMMISSION (Sep. 21, 2010) (*available at* http://www.sec.gov/news/speech/2010/spch092110ebw.htm)

[29] Song Han & Dan Li, *Liquidity Crisis, Runs, and Security Design: Lessons from the Collapse of the Auction Rate Municipal Bond Market*, 1 (2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1325702 ([T]he auction rate securities . . . market collapsed.").

[30] MSRB, *Municipal Auction Rate Securities and Variable Rate Demand Obligations: Interest Rate and Trading Trends* 2 (2010), *available at* http://208.49.166.138/News-and-Events/Press-Releases/Press-Releases/2010/~/media/Files/Special-Publications/MSRBARSandVRDOReportSeptember2010.ashx.

[31] *See* Steven L. Schwacz and Adam D. Ford, *Regulating Complexity in the Financial Markets*, P.L.I., STRUCTURED FIN. APPENDIX C-16 (2010). ("[P]ayment of many mortgage-backed securities was guaranteed by 'monoline' insurers . . . specialized financial insurance companies that guarantee principal and interest payments to investors on certain structured-finance and municipal securities.").

[32] Gabaldon, *supra* note 1, at 744; *see* Schwacz, *supra* note 19, at C-16 to C-17 ("In February 2008, however, investors were able to find few buyers for their notes because potential buyers feared that monoclines, which also were

As a result of this crisis, experts reexamined the government's previously hands-off approach to municipal securities and wondered whether the market had grown too complex for such an attitude.[33] Consequently, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") sets forth new regulations for municipal securities in order to protect not just investors but municipalities as well.[34]

B. Municipal Advisors

One of the Dodd-Frank Act's more influential changes to the municipal securities market is the new regulation of municipal advisors. [35] Three main types of previously unregulated individuals qualify as municipal advisors: 1) "financial advisors to states and local governments," 2) "swap advisors to municipal issuers and conduit advisors," and 3) "third-party solicitors" of municipal securities products.[36] These individuals advise municipalities on a variety of securities issues including "how to structure a bond issue, how to sell it, how to market it, [and] what type of securities to sell . . . ."[37] Despite this sweeping language, the Dodd-Frank Act explicitly exempts municipalities or employees of municipalities from qualifying as advisors under Section 78o-4(1)(B).[38]

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insuring large amounts of securities backed by subprime mortgages, would default.").

[33] *See* Hamilton, *supra* note 27, at 1019.

[34] Transcript of Field Hearing on the State of the Municipal Securities Market Panel III, IV, & V, 2 (2010), *available at* http://www.sec.gov/spotlight/municipal securities/munifieldhearing120710-transcript2.pdf ("To our knowledge, this is the first time a securities regulator has been charged with protecting the issuer of securities.").

[35] *See* 15 U.S.C. § 78o-4 (requiring advisors to register before they provide "advice to or on behalf of a municipal entity" about municipal securities or solicits the municipality).

[36] *Dodd-Frank Act Rulemaking: Municipal Securities*, U.S. SECURITIES AND EXCHANGE COMMISSION (Feb. 2, 2011) http://www.sec.gov/spotlight/dodd-frank/ municipalsecurities.shtml, last visited Feb. 17, 2011.

[37] Oral Testimony of Municipal Securities Rulemaking Board Ronald Stack, Chair to the United States Senate Committee on Banking, Housing, & Urban Affairs (Mar. 26, 2009) http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission3_081710-msrb-2.pdf.

[38] 15 U.S.C. § 78o-4(1)(B).

New registration requirements make up one of the most substantial regulatory changes under the Dodd-Frank Act.[39] For the first time, these advisors must register with the MSRB before they offer cities and states advice on municipal financial services.[40] To register as a municipal advisor, the party must pay a $100 fee and "provide identifying information to the MSRB" such as a contact person's email.[41] After the initial registration, the MSRB requires the advisor to pay an annual fee of $500.[42] Although these requirements seem minimal, concern has emerged over their imposition.

Many of the issues with the new advisor regulations stem from its broad application. One of the most basic problems with its language is that the definition of municipal advisor sweeps so broadly that it is impossible to find every municipal advisor, let alone regulate them.[43] The SEC can also deny registration—and thus the ability to act as an advisor—after notice and an opportunity to be heard, allowing the government to determine who can play in the municipal securities market.[44] Additionally, even if MSRB effectively regulates who can become a municipal securities advisor, there are questions as to whether a one-size-fits-all approach to regulating municipal advisors could possibly be effective in such a diverse market. [45] The Dodd-Frank Act covers a very broad group under its definition of municipal advisors, and any new regulation imposed on municipal advisors must be sufficiently tailored to this reality if it is to justly impact each individual advisor.[46] "[L]aw firms, engineering firms, [and] accounting" firms could all qualify as municipal advisors, and perhaps regulations that would be feasible for a large accounting firm would stifle the advisory activities of a small law

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[39] *See* 15 U.S.C. § 78o-4

[40] *See* Municipal Advisor News, MSRB, http://www.msrb.org/MSRB-For/Municipal-Advisors/Municipal-Advisor-News.aspx (last visited Feb. 13, 2011) (explaining the new requirements under the Dodd-Frank Act).

[41] MSRB Registration, MSRB, http://www.msrb.org/Rules-and-Interpretations/MSRB-Registration.aspx (last visited Mar. 21, 2011).

[42] MSRB, MSRB Rule A-14 Annual Fee, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Administrative/Rule-A-14.aspx (last visited Feb. 13, 2011).

[43] Transcript, *supra* note 26, at 11 ("I think it's going to be a real challenge to uncover every entity that meets this definition . . . .").

[44] 15 U.S.C. § 78o-4(a)(2)(B).

[45] *See* Transcript *supra* note 26, at 5.

[46] *Id.*

firm.[47] There are, however, other ways in which the requirements for municipal advisors also might not go far enough, allowing municipal advisors to structure their companies to avoid additional enforcement while performing essentially "the same types of business activities."[48]

Obtaining a precise definition of "municipal advisor" would not seem as crucial without the Dodd-Frank Act's significant change to the advisors' relationship with municipalities. No longer can the municipal advisor play the role of the nomadic spiritualist, wandering from town to town, offering obscure wisdom in exchange for a pint. In addition to registering, municipal advisors now owe a fiduciary duty to any municipality to which they offer advice.[49] In the MSRB's proposed rule regulating this fiduciary duty, the MSRB targets disclosure requirements.[50] The potential regulation would require the entity to disclose conflicts of interest before assisting with municipal securities and obtain informed consent from the municipality in writing.[51] This consent must be in writing, signed by the parties, and sufficiently explain the "nature and implications" of the conflict to the municipality.[52] Additionally, any advice the advisor provides must be competent and only occur "after inquiry into reasonably feasible alternatives to financings or products proposed."[53] The MSRB has not, however, defined a standard for evaluating competency.[54]

Although these new requirements would arguably lead to increased protection for issuers, a key goal of the Dodd-Frank Act,[55] it could also potentially chill involvement in the municipal securities

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[47] Transcript, *supra* note 26, at 10.
[48] Transcript, *supra* 26, at 6 (suggesting that regulatory arbitrage can still be used to avoid fees and enforcement exams that dealers must face).
[49] 15 U.S.C. § 78o-4(c)(1)
[50] MSRB Notice Feb. 14, 2011, Request for Comment on Draft MSRB Rule G-36 and Draft Interpretive Notice, http://www.msrb.org/Rules-and-Interpretations/ Regulatory-Notices/2011/2011-14.aspx (last visited Feb. 19, 2011) ("It requires a municipal advisor to make clear, written disclosure of all material conflicts of interest. . . .").
[51] *See id.*
[52] *Id.*
[53] *Id.*
[54] *See generally id.*
[55] *See generally* 15 U.S.C. § 78o-4 (stating repeatedly that the Commission should regulate so as to protect investors, municipalities, and obligated persons).

market. Indeed, experts fear that this new duty "may cause market participants to rethink certain business activities."[56] Not only would potential advisors need to edit their exchanges with municipalities, certain subject matters such as "the mere provision of quotes or trading ideas" might require a firm to register as an advisor.[57] Municipalities may suddenly find competent advice hard to come by as advisors flee from their increased duty of care. Additionally, this new fiduciary duty not only applies to an array of subjects but also appears to reach several surprising types of entities.[58] The new regulations conceivably impose a fiduciary relationship on state foundations, such as "board members of nonprofit organizations, including hospitals, nursing homes, colleges . . . " and pension boards.[59] This regulation of charitable positions on municipal boards could force board members to choose between retaining their position or exposing themselves to liability as a fiduciary on a subject beyond their expertise.[60] However, the Dodd-Frank Act also requires the MSRB to balance the burdens it places on "small municipal advisors" so that only regulations necessary for the "public interest" are implemented.[61] Thus, the application of this provision and its potential protection for municipal boards remains unclear.

Finally, although not yet implemented, the MSRB has requested comments on extending pay-to-play regulations to municipal advisors.[62] The MSRB arguably has authority to regulate the political contributions of municipal advisors because the Dodd-Frank Act enables the MSRB "to adopt rules that are designed to prevent

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[56] Latham & Watkins LLP, *The Municipal Advisor Minefield*, FIRM PUBLICATIONS, Feb. 8, 2011 http://www.lw.com/Resources.aspx?page= FirmPublicationDetail& publication=3972

[57] *Id.*

[58] *See generally* Michael Lause et al., *Board Members Beware—SEC Regulatory Authority May Cast Wide Net*, MONDAQ (Jan. 17, 2011), *available at* http://www.mondaq.com/unitedstates/article.asp?articleid= 120466.

[59] *Id.*

[60] *See id.*

[61] MSRB, Municipal Securities Rulemaking Board Annual Review 6, (2010) *available at* http://www.msrb.org/Publications/~/media/Files/ Special-Publications/ MSRB-2010-Annual-Review.ashx.

[62] *See* Stuart Gittleman, *MSRB Considering 'Pay to Play' Rule for Municipal Advisors*, THOMAS REUTERS (Jan. 18, 2011), http://www. complinet.com/dodd-frank/news/articles/article/msrb-considering-pay-to-play-rule-for-municipal-advisors.html.

fraudulent and manipulative acts and practices . . . ."[63] This new rule would prohibit municipal advisors from acting as such for two years after making "political contributions [over $250] to state or local government officials with authority to hire such municipal advisors."[64] The proposed rule G-42 would bring municipal advisors into conformity with brokers and dealers under MSRB regulation.[65] As of yet, it is unclear how broadly this language will sweep, but the rule distinguishes municipal advisors from municipal advisor professionals, such as certain supervisors.[66] But regardless of breadth, the same potential threat of liability that plagues potential advisors regarding the new fiduciary duty also applies to the proposed pay-to-play provision.

C. MSRB Composition

The Dodd-Frank Act also changed the MSRB's composition.[67] Previously, Congress required two-thirds of the Board "to be broker dealer or bank representatives involved in the municipal securities business" in act of deference to their expertise.[68] Now, eight of the Board's fifteen members must be "independent of any municipal securities dealer, or municipal advisor . . . ."[69] The Dodd-Frank Act further requires that three of the eight board members be representatives of: 1) "institutional or retail investors in municipal securities," 2) "municipal entities," and 3) the "public."[70] The Dodd-

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[63] *Id.*

[64] Press Release, MSRB, MSRB Proposes Pay to Play Rule for Municipal Advisors, (Jan. 14, 2011) http://www.msrb.org/News-and-Events/Press-Releases/2011/MSRB-Proposes-Pay-to-Play-Rule-for-Municipal-Advisors.aspx ("Under the proposed rule, individuals who are municipal advisor professionals would be entitled to contribute up to $250 per election to state and local government officials for whom they are entitled to vote.").

[65] MSRB, Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business 3, http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-37.aspx (last visited Feb. 18, 2011).

[66] Frederick Leech et al., *MSRB Antes-Up: Proposes 'Pay to Play' Rule for Municipal Advisors*, 3 (2011) *available at* http://www.reedsmith.com/_db/_documents/alert11031.pdf

[67] Practising Law Institute, *The SEC Speaks in 2011*, 1864 PLI/CORP 397, 427 (2011) (summarizing the new MSRB structure).

[68] Transcript, *supra* note 26, at 5.

[69] 15 U.S.C. § 78o-4 (b)(1).

[70] *Id.*

Frank Act also requires that seven of the board members be associated with the municipal securities industry.[71] This category of associated members is also sub-divided under the Dodd-Frank Act.[72] The associated members must include at least one representative of: 1) "brokers, dealers, or municipal securities dealers that are not banks," 2) "bank municipal securities dealers," and 3) municipal advisors.[73] The MSRB has extended this independent member dominance to even the nominating committee, mandating that six of the eleven-member committee must be independent.[74] This change, in addition to the new regulations on municipal advisors, is meant to ensure that the MSRB protects investors.[75]

Lynette Hotchkiss, Executive Director of the MSRB, felt that the new composition gave the board "many more experiences and perspectives to bear on any particular issue" and that the new composition was advisable "post Sarbanes-Oxley and Enron, and World Com . . . ."[76] However, while the board transitions from its former composition, some believe that the twenty-one member board may prove cumbersome.[77] Indeed, twenty-one distinct perspectives could easily slow down the rule-making process.

D. Protection of Municipalities

Although the MSRB previously protected investors, the Dodd-Frank Act requires the MSRB to protect issuers as well.[78] Under the Dodd-Frank Act, the MSRB's new protective duties are

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[71] *See id.*
[72] *Id.*
[73] *Id.*
[74] *See* MSRB Notice Feb. 02, 2011, SEC Approves Amendments to Rule A-3(c) to Establish New Nominating and Governance Committee, http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/2011-07.aspx.
[75] *See Conference Committee Continues Deliberations on Financial Reform,* SECURITIES LAW PROF BLOG, (June 22, 2010) http://lawprofessors.typepad.com/securities/2010/06/conference-committee-continues-deliberations-on-financial-reform-.html (last visited Feb. 16, 2011) ("Gives investor and public representatives a majority on the MSRB to better protect investors in the municipal securities market where there has been less transparency than in corporate debt markets.").
[76] Transcript, *supra* note 26, at 9.
[77] *See* Transcript, *supra* note 26, at 9.
[78] *See* Transcript, *supra* note 26, at 12.

not only limited to municipalities but also cover universities, hospitals, and public pension plans "whose credit stands behind municipal bonds."[79] This new duty could cause a conflict between investors' interests and issuers' interests.[80] If, for example, increased regulation of municipal advisors would better protect the municipality but also cause investors to pay more, it'd be difficult to discern which group the MSRB would choose to protect. Additionally, the MSRB's shiny new toy could bring the Board into constitutional conflict if it uses protection as an excuse to dictate the securities that sovereign states can offer.[81] Although current precedent indicates that the Federal Government can regulate municipal issuers without violating the Tenth Amendment, this issue has not been completely resolved.[82] At the moment, however, the MSRB seems content to increase the issuer's access to information, instead of fulfilling a more "paternalistic" role.[83]

E. Conclusion

The sudden failure of municipal securities in the wake of the financial crisis undermined academic perception of municipal securities as stalwart investments.[84] Faced with devising regulations for previously "safe" investments, Congress broadened the MSRB's reach but left many new particulars up to the Board's discretion.[85] The MSRB now regulates municipal advisors in addition to brokers and dealers.[86] Although some fear that the new fiduciary duties and pay-to-play rules that the MSRB intends to impose on municipal advisors will stifle the municipal securities market,[87] the rules might not go far enough to even the playing field.[88] The Dodd-Frank Act

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[79] MSRB, Municipal Securities Rulemaking Board Annual Review, 5 (2010), a*vailable at* http://www.msrb.org/Publications/~/media/Files/Special-Publications/ MSRB-2010-Annual-Review.ashx.
[80] *See* Transcript, *supra* note 26, at12.
[81] *See* Thomas G Hilborne, Jr., *Rule g-37: The "Pay to Play" Rule and its Impact on the Municipal Securities Industry*, 26 URB. LAW. 957, 971 (1994).
[82] *See* Gabaldon, *supra* note 1, at 754.
[83] *See* Transcript, *supra* note 26, at 12
[84] Gabaldon, *supra* note 1, at 744.
[85] *See generally* 15 U.S.C. § 78o-4.
[86] *See id.*
[87] *See* Transcript, *supra* note 26, at 5.
[88] Transcript, *supra* note 26, at 6.

also increases rulemaking diversity and investor focus by requiring that a majority of the MSRB's members be independent from the municipal securities industry.[89] Finally, the Dodd-Frank Act gives the MSRB authority to protect not just investors, but issuers, a power that could cause difficulties if used too extensively.[90] Therefore, although much of the rules regarding municipal securities must still be determined, fear that the MSRB could over-regulate and harm the municipal securities market remains.

Ema Clark[91]

[89] *See* Transcript, *supra* note 26, at 9.
[90] *See* Hilborne, *supra* note 80, at 971.
[91] Student, Boston University School of Law (J.D. 2012).