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NABL: Looking Again at Rule 15c2-12.

Earlier this week SEC Commissioner Luis Aguilar addressed the American Retirement Initiative's Winter 2015 Summit. The Summit, which was held at SEC headquarters in Washington, is a forum that focuses on how advisors can improve retirement outcomes for Americans. Commissioner Aguilar's remarks were entitled "Advocating for Investors Saving for Retirement" and he took the opportunity to focus on two areas where he believes improvements are necessary for investors to make informed decisions, one of which was disclosure in the municipal market.

Commissioner Aguilar acknowledges that the SEC has limited authority to regulate the municipal market and that situation will continue, as he puts it, "short of a Congressional fix to repeal the Tower Amendment." While he does not directly say so, his remarks seem to indicate that he believes such a fix is unlikely. However, he does say that "more things can be done to enhance disclosure practices in the municipal securities market" and that the SEC should "carefully consider" moving forward using the authorities that it has - regulating underwriters to ensure that investors have "certain limited disclosures" (i.e., 17 CFR 240.15c2-12, "15c2-12") and enforcing the antifraud provisions.

Although he acknowledged improvements in recent years through industry efforts and the introduction of the MSRB's EMMA system, his negative characterizations of the current situation were strong. He spoke of "the entrenched practice among issuers of municipal securities to provide inadequate disclosures" and "pervasive problems" in providing timely and complete continuing disclosures. He cited the enforcement actions against Kansas, Illinois, New Jersey and Kings Canyon Unified School District as support for the proposition that serious problems remain in municipal disclosure.

Among the specific concerns he mentioned were the "absence of detailed information" about an issuer's outstanding debt - specifically liens and collateral pledges - and the disclosure of bank loans.

Commissioner Aguilar mentioned in particular four of the recommendations that were made in the SEC's 2012 [Report on the Municipal Securities Market](#):

- Require fuller, and more specific types of disclosures in the initial offering documents, including the final terms of the offering and the price to be paid for the municipal securities in the initial issuance;
- Mandate more specific types of ongoing disclosures, including disclosures concerning the issuance of new debt;
- Provide a method to address noncompliance with continuing disclosure requirements; and
- Make disclosures easier to understand.

The MSRB recently submitted [comments](#) to the SEC calling for a review of 15c2-12 and mentioned some of the same concerns that Commissioner Aguilar raised. SIFMA also filed [comments](#) saying that SIFMA and its members "welcome a full and complete review of [15c2-12]", though saying that "fundamental flaws exist with regard to the structure" of 15c2-12 and that SIFMA and its members

“are concerned that responsibility for compliance under [15c2-12] is not placed with those who have the best access to issuer information.”

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