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UNDERSTANDING DODD-FRANK'S REACH INTO THE FINANCING OF MAIN STREET

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ABSTRACT. In response to the financial crisis that began in 2007, United States President Barack Obama signed H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act, into law on July 21, 2010. "Dodd-Frank" is intended to correct certain problems in financial markets by federally regulating the activities of independent municipal financial advisors and comprehensively expanding regulatory oversight over credit rating agencies. This article reviews the legislation and its financial management rationale, and discusses its actual and potential impact on the future operations of the municipal securities market and its participants.

INTRODUCTION

In June of 2007, almost a year after several prominent mortgage lenders began filing for bankruptcy protection from massive defaults in their mortgage portfolios, the "Big Three" credit rating agencies began downgrading the sector of residential, so-called 'sub-prime,' mortgage-backed bonds. The initial rating actions focused on subprime loans originated in 2006, including securities rating agencies had rated 'AAA/Aaa'. Once the rating agencies officially "certified' that the mortgage defaults were not an isolated problem, but rather the warning bell of a potential sector-wide catastrophe, financial firms started to fall like a series of dominos.

The event signaling the breadth of the disaster was the failure of the investment banking firm Bear Stearns. On July 31, 2007, Bear Stearns liquidated two hedge funds that invested at least $1.6 billion

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in various types of triple-A rated mortgage-backed securities. The failure of the hedge funds caused the collapse of the $2 trillion subprime mortgage market and the fallout rippled through the entire financial services industry leading to the financial implosion of Bear Stearns, Lehman Brothers, Merrill Lynch and Countrywide Financial Group, the nation's largest mortgage lender.

With financial markets seizing, the Federal Reserve stepped into the breach creating programs to provide liquidity support to banks. Around the same time, the federal government attempted to stimulate the economy by passing the Economic Stimulus Act of 2008 in February. Despite these interventions, short-term financial liquidity continued to dry up, the stock market continued to decline, and the economy was in full blown recession.

In the summer of 2008, the municipal securities market took center stage in the financial crisis. On June 5 Standard and Poor's downgraded the two largest monoline bond issuers, AMBAC and MBIA, to AA from AAA. (Reuters, June 5, 2008) This sent shivers through the financial markets, since 44% percent of the long-term debt sold in the municipal market from 1986-2007, or $2.35 trillion, was insured. The overreliance and ultimate vulnerability of the municipal market on bond insurance, and the short-sighted and perhaps sometimes negligent actions of the financial service providers -rating agencies, underwriters, financial advisors, etc., - led the federal government to probe deeper into the municipal market for problems and potential solutions.

Financial management practices and debt instruments have evolved in the municipal securities market over the years. When faced with tumultuous market conditions in 2007-2009, such practices were placed under extreme stress. The Financial Crisis and Great Recession placed municipal financial mangers under historic financial and economic pressures.

Papers in this symposium analyze the ability of municipal financial managers to weather the storms of financial and economic crises. Papers in this symposium cover several areas involving complex financial transactions and sophisticated financial management practices prior to and during the crises. Luby and Kravchuk (2013) analyze the use of financial derivatives in debt management from 2003-2009. Moldogaziev (2011) analyzes the collapse of the bond insurance industry and Denison and Gibson

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(2013) investigate the collapse of the Jefferson County, Alabama Sewer Authority underneath the weight of their variable rate debt and interest rate swaps. These papers show that endogenous financial management practices, when mingled with the exogenous events of financial and economic crises, can either help or hinder the ability of financial managers to weather the storm and navigate to safety. Financial management practices believed to have been incapable of weathering the storm, or even worst, to have contributed to financial disaster, led to the sweeping financial market reforms embodied in the landmark legislation known as Dodd-Frank.

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

The first major federal legislative response to the nation's recent financial crisis is found in the omnibus bill referred to as "Dodd-Frank." On July 21, 2010, United States President Barack Obama signed H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act, into law. Dodd-Frank has and will continue to fundamentally change the municipal securities market. The implementation rules are still being written, but the impact on credit rating agencies and municipal general government ratings has already been profound.

Dodd-Frank incorporates 2,319 pages of new laws intended to correct the perceived financial management problems in the market and fundamentally change how financial markets and financial service providers operate. Dodd-Frank's preamble hardly understates its ambitions. The law's intention is to:

> promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial service practices, and for other purposes" (H.R. 4173).

Dodd-Frank is the latest effort to federally regulate municipal financial intermediaries, and for the first time federal regulation includes the activities of independent (non-broker dealer) municipal financial advisors and comprehensively expands regulatory oversight over credit rating agencies.

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Title IX of Dodd-Frank is entitled the “Investor Protection and Improvements to the Regulation of Securities.” Subtitle C of Title IX sets up a comprehensive framework for regulating credit rating agencies (CRAs). The laws’ intention with respect to CRAs is clear: it is intended to strengthen the regulation, accountability and transparency of CRAs.

Dodd-Frank also takes direct aim at municipal financial advisors, an industry previously not regulated by the SEC. Subtitle H of Title IX states that municipal financial advisors have a fiduciary duty now recognized in federal law and that municipal advisors must be registered with the federal government.

This article reviews two sections of Dodd-Frank that are likely to weigh heavily on the municipal securities market - Subtitle’s C and H of Title IX.[1,2] We describe the legislation, discuss its rationale in financial management terms, and discuss its actual and potential impact on the future operations of the municipal securities market and its participants.

MUNICIPAL FINANCIAL ADVISORS: PRACTICE, THEORY, EVIDENCE, AND LAW

Subtitle H of Title IX provides the first federal regulation of independent, municipal financial advisors. Political momentum for Subtitle H comes from the financial crisis, however, aspects of the nascent industry that might lend itself to regulatory oversight had been long known, but it took time and the right circumstances for the knowledge to be codified in law. Indeed, the path to Subtitle H is a case of law following professional practice, theoretical development and empirical research.

When issuers began to unbundle the financial advice component from the traditional origination services provided by underwriters and contract it out to an independent, non-underwriting, financial advisory firm, the academic community took notice and began to study independent financial advisory firms. A team from the School of Business and Nelson A. Rockefeller Graduate School of Public Affairs at the University at Albany, State University of New York, were the first scholars to research independent financial advisors as a distinct industry in the late 1980s and early 1990s.

Building on the exploratory research found in Petersen and Watt’s *The Price of Advice: Choosing and Using Financial Advisors*, published

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by the Government Finance Officers Association (GFOA) in 1986, the first academic work to provide a theory on the role of independent financial advisors was the Forbes, Leonard and Johnson article published in 1992 and a doctoral dissertation by Johnson published in 1993. Both works posited an important advisory role for independent financial advisors, arguing that they could "be viewed as supplying both certification and (underwriter) monitoring services. The joint supply of these services (it was argued) is a consequence of the unique characteristics of the tax-exempt market and the informational asymmetries between issuers and investors on the one hand, and between issuers and their investment bankers on the other." This led to two distinct theories on the role of independent financial advisors:

1. Certification; and
2. Monitoring.

Financial Advisor Certification Hypothesis

The certification hypothesis states that financial advisors are employed to provide certification services to municipal debt issuers. Advisor certification services are designed to resolve potential informational asymmetries between issuers and investors or other outside parties. The major certification activity, common to most advisory contracts, is preparation of the official statement (prospectus).

Underwriters are not able to categorically certify that the issuer has revealed all material information in competitive bid sales, since they do not provide origination services (Johnson, 1993). As a result, underwriter certification in competitive bid sales is incomplete and investors may possess substantial uncertainty regarding the quality of the debt issue. As a consequence, underwriters may rely on the credibility of the financial advisor for certification of the information disclosed on a new issue and issuers may contract with a financial advisor to certify the quality of the information provided about the new issue to potential investors.

In negotiated offerings, the financial advisor may provide additional certification regarding the "true" value of a new securities issue (Forbes, et. al., 1992). Financial advisors, like underwriters, may build-up a stock of non-salvageable reputational capital over

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time that serves to certify the true equilibrium price of the debt issue. Since official bond documents in the tax-exempt market are not subject to the same registration requirements as in the corporate market, underwriters might be viewed as not carrying out the same level of "due diligence" investigations as that in the corporate market. Therefore, the certification activities of a financial advisor in the tax-exempt market may have significant additional value to investors and issuers.

Financial Advisor Underwriter-Monitoring Hypothesis

Another reason for employing financial advisors in negotiated sales is based on the assumption of the monopsony (a situation in which a product or service is only bought and used by one customer) power of underwriters. According to this hypothesis, negotiated underwriters have private information on the demand for an issuer's securities and on the level of effort needed to distribute them. Because of this informational asymmetry, underwriters have an incentive to misstate the level of effort needed to distribute the securities and overcharge for their service. According to this reasoning, contracting with advisors to monitor the terms of a bond sale should result in more favorable terms to the issuer.

Empirical Analysis and Results

Using the best data available in the 1990's,[3] researchers began to test the effect of using an independent financial advisor on issuer borrowing costs, reoffering yields to the investor, and underwriter spreads. Researchers performed statistical analysis to test the models they developed to understand the overall effect of financial advisors in the municipal market. Using this scientific research, market participants and other stakeholders would therefore not have to rely on sensational anecdotes for their understanding of the new industry.

Forbes, Leonard, and Johnson (1992) used a sample of 495 negotiated bonds sold from the second half of 1989 through the first half of 1990 to empirically analyze the effect of financial advisors on reoffering yields. They found no statistical evidence to support the advisor certification hypothesis. The use of a financial advisor did not, statistically, result in lower reoffering yields.

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Johnson (1994), however, found some support for the FA certification hypothesis. In his empirical study of the determinants of the use of financial advisors, he found that issuers facing more ex ante uncertainty were more likely to use a financial advisor. Financial advisors were more likely to be used on smaller, low or unrated issues, sold by infrequent issuers. The results indicate that in competitive bid bond sales the use of a financial advisor is related to the issuer's demand for external certification.

Forbes, Leonard, and Johnson (1992) tested the underwriting monitoring hypothesis by estimating the effect of the use of a financial advisor on gross underwriter spreads. They found only weak support of the monitoring hypothesis, not enough to empirically support the theory that financial advisors are effective at extracting rents from underwriters on behalf of issuers in the form of lower gross underwriter spreads when an advisor is used on the bond issue.

Vijayakumar and Daniels (V & D) (2006) provided a direct test of both the financial advisor certification and monitoring hypotheses. Using a large sample of 9,493 tax-exempt municipal bonds sold from 1990-1999, they found that revenue bond issues with financial advisors have lower TICs, lower reoffering yields and lower underwriter spreads than issues without financial advisors. They also found an additional benefit on revenue bonds sold through negotiated offerings rather than competitive bid, and refunding rather than new bond issues. For GO bonds, they found significantly lower underwriter spreads (but not TICs or reoffering yields), and an even greater impact for negotiated offerings and refunding bonds.

The authors interpreted these results as supporting the theory that financial advisors reduce asymmetric information in the sale of municipal revenue bonds, and provide valuable underwriter monitoring services that help issuers "counteract the monopsony power of underwriters in circumstances such as when issues are negotiated with underwriters." The fact that they found no direct evidence to support either the certification or monitoring hypotheses for competitive bid bond sales is somewhat disconcerting, however, since financial advisors are much more frequently employed on competitive bid sales than negotiated sales.

A subsequent study by Allen and Dudney (2010) tested the affect of financial advisor quality on reoffering yields for data on new issues sold by local governments from 1984-2002. They found higher quality

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advisors associated with lower reoffering yields. They also found a greater affect for revenue, negotiated and opaque (insured or rated A or higher) bonds.[4]

Finally, a 2010 study by Martin Luby (2010) used 2002-2009 data and found no empirical evidence to support the theory that the monitoring activities provided by financial advisors are countering the negative influence of underwriters and that financial advisors are disproportionately involved in the use of inefficient and imprudent bond refinancings (such as synthetic fixed rate refinancings) that "exacerbate (a government's) future financial problems." The Luby study is particularly troubling because it implies that not only are financial advisors not providing good advice, they are actually providing harmful advice to issuers, which would be in complete contravention of their fiduciary responsibilities.

Dodd-Frank and Municipal FA's

With the passage of the Dodd-Frank Wall Street Reform Act, finding answers to several questions regarding the role and impact of financial advisors (FA's) in the municipal market, including, but not limited to their certification and underwriter monitoring functions, is especially important and timely. Dodd-Frank officially enshrines in law the "certification" role of financial advisors by requiring municipal advisors to register with the federal government.

In order to provide advisory services to municipal governments, Subtitle H requires municipal financial advisors to register with the federal government, by stating that:

> It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.

Subtitle H defines a "municipal advisor" as a "person who provides advice to or on behalf of a municipal entity…with respect to financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issue…"

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Regarding the financial advisors official fiduciary duty, Subtitle H states:

> A municipal advisor … shall be deemed to have a fiduciary duty to any municipal entity for whom such advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.

While the new registration requirements may help weed out charlatans, they may also constrain the supply and quality of advisory services in a time when good financial advice is sorely needed. Federal regulatory hurdles should not be implemented to unnecessarily burden small, local independent municipal advisors such that new firms are prohibited from entering the business or practicing firms are forced to exit from the business. Otherwise, municipal debt issuers could end up facing an oligopolistic financial advisory market with only a few, large providers.

In addition, while the "fiduciary" duties of municipal advisors are straight forward in theory, they may not always be in practice in our democratic system of government. Often, elected representatives make what many finance professionals would view as a bad fiscal decision, but using a political calculus, such decisions may be viewed by politicians as being rational and appropriate, even demanded by their constituents. What is an advisor to do when, for example, a mayor or governor requests the advisor to engage in a refunding transaction that provides some immediate budgetary relief, but at the expense of over-burdening future taxpayers? Hopefully, future research will help inform such important, long-lasting decisions.

An advisors' fiduciary duty, and perhaps more importantly the legal violation thereof, needs to be carefully thought through with an appreciation for the various economic, management and political currents that are the waters of modern day public finance. While the fraud and abuse engaged in by government officials and financial service providers in the Jefferson County, Alabama (Denison & Gibson, 2013) financing and financial management fiasco generate a lot of heated regulatory activity, they are not the basis on which financial advisors should be judged and future law and policy should be made.

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Dodd-Frank mandates the Comptroller General of the United States conduct research studies and report to Congress on several matters of concern to participants in the municipal securities market. One area that needs further study is on understanding and clarifying the fiduciary role of municipal financial advisors. Appendix 1 provides a description of the studies required by Dodd-Frank. An example of the sweeping topics and potential impact of the research and reporting agenda is a required report that must make recommendations "on the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) (commonly known as the "Tower Amendment")."[5]

Dodd-Frank goes beyond mere clerical registration of municipal advisors and places them side-by-side with municipal securities broker dealers. Much of the language of Subtitle H inserts the term "municipal advisors" right alongside broker dealer firms in Section 15(B) of the Securities and Exchange Act of 1934. The role of the municipal advisor has been at once further established, legitimized, and federally regulated. Dodd-Frank requires the MSRB to develop professional standards for municipal advisors. Similar to the requirements for broker dealers engaged in the municipal securities business, independent municipal advisors will be subject to federal professional qualification standards and continuing education requirements.

The requirements represent new, non-trivial costs for financial advisors (a portion of which will be passed on to municipal issuers). Dodd-Frank authorizes the MSRB to impose "reasonable fees and charges" on advisors to cover certain expenses of the MSRB, and impose financial penalties on financial advisors for lack of compliance. Clearly, Dodd-Frank contains a vision of a fundamentally different independent financial advisory industry.

DODD-FRANK AND THE CREDIT RATINGAGENCIES

For a fee, credit rating firms provide a rating of most bond issues sold in the municipal market. The rating is a measure of the credit quality of the bond issue, and is used by investors to distinguish quality. Ratings are also used to regulate the debt purchases of institutional buyers. Institutional buyers, such as mutual funds or banks, are often limited to purchasing only highly rated debt.

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Prior to Dodd-Frank the internal procedures of credit rating agencies or the performance of the ratings themselves' were not regulated by the SEC. But 2010 was not the first time rating agencies found themselves in the cross-hairs of federal regulators. The first major set of federal regulations directly aimed at the credit rating industry was the "Credit Rating Agency Reform Act of 2006," which gave the SEC authority to regulate the industry.

The 2006 Act created the special legal designation "Nationally Recognized Statistical Rating Organization (NRSRO)," and asked rating agencies to apply to the SEC for registration as an NRSRO. Rather than just being rating agencies, they were asked to become official NRSROs. The penalty of not being an NRSRO was that buyers – especially institutional buyers – would likely place significantly less value on a non-NRSRO credit rating. The NRSRO designation would likely be used to regulate the debt purchases of institutional buyers, just as rating categories were used. Effectively to remain in the rating business firms had to conform to the new rules.

Dodd-Frank builds on the 2006 Credit Rating Agency Reform Act and transforms the regulatory relationship from clerical registration to ongoing federal oversight of governance policies, internal operations, procedures and methodologies, and ratings performance. It pointedly cuts to the intellectual heart of the rating agencies – the rating itself. Section 938(a) of Subtitle C, entitled "Improvements to the Regulation of Credit Ratings," describes detailed requirements for rating agencies to produce "Universal Ratings Symbols." The section states:

> The (Securities and Exchange) Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures that— (1) **assess the probability that an issuer** of a security or money market instrument **will default**, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument; (2) clearly define and disclose the meaning of any symbol used by the nationally recognized statistical rating organization to denote a credit rating; and (3) **apply any symbol** described in paragraph (2) **in a manner that is consistent for all types of securities** and money market

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instruments for which the symbol is used.[6] (Emphasis added by the author.)

Section 938(a) redefines how rating agencies determine municipal credit ratings – fundamentally. First, they must assess default for each issuer. Not that the rating agencies didn't determine in some general sense the likelihood of an issuer defaulting on its debt prior to Dodd-Frank, but it must now do so in a way that enables the direct comparison of issuers, and that is objective, justifiable, tractable and public.

Moreover, the rating symbols must be applied in a consistent, universal manner – they were not.[7] Moody's ratings were described in their own publications as universal, with universal definitions of rating categories across sectors going back decades, but they were not applied to the sectors uniformly.[8, 9]

Confirmation that ratings were not consistently applied "uniformly" across sectors was provided in April, 2010 when the rating agencies provided evidence confirming what many had known for a while – that rating agencies underrated municipal debt. In one broad stroke Fitch, one of the "Big Three" credit rating agencies, recalibrated the credit ratings on "more than 38,000 municipal bond issues." While the result of the "recalibration" is tens-of-thousands of higher ratings for municipal issuers, according to Fitch the recalibration should be viewed more as a ratings "re-alignment" rather than an improvement in credit quality or a sector upgrade. (Seymour, April 6, 2010) One can understand why Fitch would not want to officially admit that the rise in ratings was an upgrade, because to do so for 38,000 ratings would be to admit that they underrated municipal debt.[10]

A few days later Moody's Investors Service announced its own rating "recalibration" by lifting the rating of 34 states and Puerto Rico. (Seymour, April 20, 2010) The state G.O. rating recalibration is only the first of many Moody's recalibrations to follow. Moody's stated that it will "move about 70,000 municipal ratings" to the new global scale overtime. (Lambert, 2010) The result will be a quantum leap in the ratings quality of municipal governments throughout the nation.[11] The rating "recalibrations" should be seen as what they are: a definitive statement by the rating agencies that they have systematically underrated municipal credits for decades.

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Section 938(a) is the reason behind the municipal credit rating recalibrations. There is no basis on which to assume that without the impetus provided by Dodd-Frank that Fitch and Moody's would have ever made sector-wide "recalibrations," and the extraordinary uplifting of municipal government credit quality would have never taken place. But the fact remains that for decades' municipal securities, especially general obligation-backed (GO) securities ratings were biased downward in relation to other sectors. Municipal ratings, especially GO bonded debt, should have received higher ratings. The downward bias may have inflated GO borrowing costs. What the actual empirical effect has been, and will be, will only be known after empirical testing. But over half a century of credit ratings-borrowing cost research consistently finds higher borrowing costs associated with lower credit ratings.

CONCLUSION

Dodd-Frank has and will continue to fundamentally change the municipal securities market. The implementation rules are still being written, but the impact on credit rating agencies and municipal general government ratings has already been profound. While municipal financial advisors have escaped government regulation far too long, the jury is still out as to whether the approach taken in Dodd-Frank is the best way to ensure that state and local governments are provided the best advice. After all, if state and local governments believed that financial advisors were not providing good financial advice they could have stepped up and regulated the industry. Be that as it may, the rules are likely here to stay, so the federal government should work in collaboration with municipal finance stakeholders to implement and enforce Dodd-Frank in a way that improves the quality and increases the quantity of services provided, rather than reducing the quality and supply of municipal financial advice.

Finally, implicit in Dodd-Frank is a call to scholars of debt management and municipal finance to produce high quality research that informs the decisions of market participants, including public administrators, and helps them implement the landmark legislation in a manner that makes the municipal securities markets better – more efficient, more effective, more transparent, more accountable - and not merely more regulated.

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NOTES

1. In this article, we cover only the credit rating and municipal financial advisor sections of Dodd-Frank. But among other areas of municipal finance addressed by Dodd-Frank, it also creates the Office of Municipal Securities in the SEC, and makes changes to the board composition of the MSRB.

2. The swap market is another area of municipal financial management addressed by Dodd-Frank. Problems with interest rate swaps have been highlighted in the media over the last several years. Many areas of Dodd-Frank cover various aspects of different types of swap transactions. Subtitle A of Title VII directly and broadly regulates the OTC swap market. Luby and Kravchuk (2013) provides an excellent descriptive review of the recent use of swaps by state governments.

3. Academics began to test these theories by gathering data and employing econometric methods and statistical techniques. While the improvement in statistical software packages has made estimating models much quicker and easier than in the early 1990s, data availability still has far to go. While the creation of EMMA has significantly improved data availability and accessibility, and made it easier to create databases from official statements, data across all the primary and secondary municipal market variables needed to conduct academic research is still not available at a low enough cost to encourage the amount and quality of research needed to shed enough light on many of the critical decisions that need to be made going forward. In order to make the marketplace more efficient and transparent, and debt issuers and their intermediaries more accountable, data improvements need to be made.

4. While the Vijayakumar and Daniels (2006) and Allen and Dudney (2010) studies make important contributions to the municipal financial advisor literature they need to be updated using rigorous analyses and large data samples to answer the most relevant and timely questions in our new, post-2007 financial crisis world.

5. Section 976(b)(5) of Public Law 111-203.

6. In addition, 938(b) reads that "nothing in this section shall prohibit a nationally recognized statistical rating organization

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from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments."

7. The controversy over municipal issuers with substantially lower default rates being given lower ratings than their corporate counterparts came to a head in early 2008. On March 12, 2008 the Committee on Financial Services of the U.S. House of Representatives held a hearing on "Municipal Bond Turmoil: Impact on Cities, Towns, and States." In the hearing several state treasurers testified that the rating agencies had a "dual" rating system between municipal and corporate sectors that discriminated against municipal issuers. (Committee on Financial Services, March 12, 2008, pp. 94 & 132). On July 30, 2008 the State of Connecticut sued the rating agencies for "allegedly giving municipalities artificially low credit ratings, costing taxpayers millions of dollars in unnecessary bond insurance and higher interest rates" (Connecticut Attorney General's Office, July 30, 2008). The lawsuits were settled out of court on October 14, 2011.

8. As an example, Moody's on Municipals: An Introduction to Issuing Debt, published in 1989 by Moody's Public Finance Department, provides definitions for bond ratings that are the same as those provided for other sectors. Therefore, the rating definitions were the same, but they were applied differently across sectors.

9. Standard and Poor's has taken the stance that they always used universal symbols comparable across sectors, and therefore, there is no need to "recalibrate" ratings. While, ultimately this may be found to be a true or untrue statement, it may prove to be more justifiable than the re-writing of history Moody's is attempting.

10. Fitch officials stated that they are not upgrades but rather an acknowledgement that municipal debt issuers were being held to a different standard than corporate, sovereign, and structured finance debt issuers.

11. According to Michael Rowan, Global Managing Director, Commercial Group, Moody's Investors Service, "Moody's has recalibrated, formally recalibrated, all the U.S. public finance ratings to move them on to a scale that is comparable to

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corporate ratings, financial institutions…" (SEC Wire. July 27, 2011.)

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APPENDIX 1
Research Studies Required by Dodd-Frank

Dodd-Frank requires the Comptroller General of the United States, who is head of the General Accountability Office (GAO), to conduct three sets of studies under Sections 976, 977 and 978 of Subtitle H. All statements in quotations in this Appendix are from Public Law 111-203, dated July 21, 2010.

"SEC. 976 GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF INCREASED DISCLOSURE TO INVESTORS."

Section 976 requires the Comptroller General of the United States conduct a study that reviews disclosures required to be made by issuers of municipal securities. The study must include a general or broad description of "the size of the municipal securities markets and the issuers and investors; and the disclosures provided by issuers to investors."

The study must directly compare the level and quality of disclosure of municipal issuers to corporate issuers. Section 976(2) states that the study must "compare the amount, frequency, and quality of disclosures that issuers of municipal securities are required by law to provide..., including the amount of and frequency of disclosures actually provided by issuers of municipal securities, with the amount of and frequency of disclosures that issuers of corporate

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securities provide for the benefit of corporate securities holders, taking into account the differences between issuers of municipal securities and issuers of corporate securities."

The study must compare the net benefits of additional financial disclosure across different types of issuers by evaluating "the costs and benefits to various types of issuers of municipal securities of requiring issuers of municipal bonds to provide additional financial disclosures for the benefit of investors; and evaluate the potential benefit to investors from additional financial disclosures by issuers…"

Section 976 also requires the GAO to review limitations on the federal governments' authority to regulate issuer disclosure practices. The study must contain "recommendations relating to disclosure requirements for municipal issuers, including the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(d)) (commonly known as the ''Tower Amendment'')." The "Tower Amendment" refers to restrictions on how the MSRB and SEC can regulate the disclosure practices of municipal issuers described in subsection (d) of Section 15B of the Exchange Act. (Stack, March 26, 2009) The GAO must submit Section 976 studies to the Congress by August 2012, "including recommendations for how to improve disclosure by issuers of municipal securities."

"SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE MUNICIPAL SECURITIES MARKETS."

Section 977 requires the GAO to conduct a study primarily focused on the secondary market for municipal securities. It is required to analyze the needs of investors and the impact of recent innovations in the market. Specifically, the report must contain an analysis of the "mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement clearing, and credit enhancements, and recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities markets, …and potential uses of derivatives."

On January 17, 2012 GAO submitted the report "Municipal Securities: Overview of Market Structure, Pricing, and Regulation" (GAO-12-265), to Congress in response to the requirements of Section 977.

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"SECTION 978. STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD."

The GAO is also required to conduct a study that evaluates the role, importance, and funding of the Governmental Accounting Standards Board in the municipal securities market. The GSO is required to consult with "principal organizations" representing state and local government officials. The report is due to Congress "not later than 180 days after the date of enactment of this Act."

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