



THE CHAIRMAN

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20540

December 10, 1990

The Honorable John D. Dingell
Chairman
U.S. House of Representatives
Committee on Energy and Commerce
Room 2123
Rayburn House Office Building
Washington, D.C. 20515

Re: Municipal Securities Information Library

Dear Chairman Dingell:

Thank you for your letter, dated August 17, 1990, requesting a report on progress toward the creation of a central source for municipal disclosure documents that provides equal access to documents to any interested person in a non-discriminatory, cost-effective, flexible and efficient manner. You asked that the report include the status of and schedule, if any, for Commission consideration of the Municipal Securities Rulemaking Board's ("MSRB") proposals to, among other things, build an electronic facility for the storage and dissemination of municipal securities information. Finally, you requested an evaluation of the activities of Nationally Recognized Municipal Securities Information Repositories. In response to your request, I have attached a memorandum that describes recent and pending action intended to enhance municipal securities disclosure prepared by the Division of Market Regulation, which has primary responsibility for monitoring developments in this area.

I appreciate your interest in municipal securities disclosure and I share your concern for promoting the integrity and efficiency of both the primary and secondary municipal securities markets. The Commission is currently conducting a careful review and analysis of three proposals from the MSRB, File Nos. SR-MSRB-90-2, SR-MSRB-90-3 and SR-MSRB-90-4, which, collectively, would authorize the creation of an electronic storage facility for both official statements and advance refunding documents and an electronic system for the receipt and

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dissemination of continuing disclosure information. The comment period for the proposals closed on September 24, 1990, and the staff of the Commission is in the process of summarizing the letters received.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Breeden". The signature is fluid and cursive, with a large initial "R" and "B".

Richard C. Breeden
Chairman

Enclosure

MEMORANDUM

November 27, 1990

To: Richard C. Breedon
Chairman

From: Richard G. Ketchum,
Director, Division of Market Regulation

Re: Report on Progress Toward the Creation of a Central
Source for Municipal Disclosure Documents

This memorandum is intended to respond to Chairman John D. Dingell's letter, dated August 17, 1990, in which Chairman Dingell requested a report on "progress toward the creation of a central source for municipal disclosure documents that provides equal access to documents to any interested person in a non-discriminatory manner, in a cost-effective manner, and in a flexible and efficient manner that contributes to the integrity and efficiency of both the primary and secondary markets." The report was to include the status of and schedule, if any, for Commission consideration of the Municipal Securities Rulemaking Board's ("MSRB") proposals to, among other things, build an electronic facility for the storage and dissemination of municipal securities information. Finally, Chairman Dingell requested an evaluation of the activities of Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs").

In the past year, the Commission and the municipal securities industry have taken a number of significant steps to facilitate equal, non-discriminatory access to municipal disclosure documents for any interested person in a cost-effective, flexible and efficient manner. These initiatives are outlined below.

As you know, the Commission adopted Rule 15c2-12, on June 28, 1989, and the rule became effective on January 1, 1990. The rule encourages the dissemination of municipal disclosure documents. Among other things, it requires underwriters to deliver to any potential customer upon request a copy of the final official statement from the time it becomes available until 90 days from the end of the underwriting period. This delivery obligation ceases when the final official statement is available to any person upon request from certain municipal securities

¹ Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 ("Adopting Release").

information vendors, referred to as NRMSIRs,² but in no case less than 25 days following the end of the underwriting period. In January, 1990 the Division issued letters to J.J. Kenny Co., Inc., the American Banker-Bond Buyer, and Bloomberg L.P., recognizing these entities as NRMSIRs.³

On May 31, 1990, the Commission approved MSRB Rule G-36.⁴ Rule G-36 requires underwriters to submit copies of final official statements ("OS") and other documents to the MSRB for certain new-issue municipal securities. In addition, as part of its proposal, the MSRB established a public access facility for copying documents. In approving the rule filing, the Commission concluded that the rule change was consistent with section 15B(b)(2)(C) of the Securities Exchange Act of 1934, since Rule G-36 would enable the Board to develop a comprehensive collection of OSs for all new municipal securities issues, in turn enhancing the level of information dissemination.

On June 22, 1990, the MSRB filed three new proposed rule changes to supplement Rule G-36. The first proposal, File No. SR-MSRB-90-2, would permit the Board to establish and operate a central electronic facility, the Municipal Securities Information Library ("MSIL"), through which information about municipal securities and their issuers would be made available to market

² In the Adopting Release, the Commission stated that in determining whether a particular entity is a NRMSIR, the Commission would consider, among other things, whether the repository: (1) is national in scope; (2) maintains current, accurate information about municipal offerings in the form of official statements; (3) has effective retrieval and dissemination systems; (4) places no limits on the issuers from which it will accept official statements or related information; (5) provides access to the documents deposited with it to anyone willing and able to pay the applicable fees; and (6) charges reasonable fees. See Adopting Release, 54 FR at 26808 n.65.

³ See Letters from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to: J. Kevin Kenny, President & Chief Executive Officer, J.J. Kenny Co., Inc., dated January 4, 1990; Joseph V. Riccobono, Executive Vice President, Municipal, American Banker-Bond Buyer, dated January 4, 1990; and Michael R. Bloomberg, President, Bloomberg L.P., dated January 11, 1990.

⁴ Securities Exchange Act Release No. 26081 (June 1, 1990), 55 FR 23323.

participants and information vendors. The MSRB has proposed to store electronically the OSs collected pursuant to Rule G-36 in MSIL, as well as advanced refunding documents. The second proposal, File No. SR-MSRB-90-3, would amend Rule G-36 to require underwriters to deliver advance refunding documents to the MSRB.⁵ The third proposal, File No. SR-MSRB-90-4, would establish a central facility to accept voluntary submissions of continuing disclosure information electronically.

The proposals have elicited substantial comment among industry participants as to the appropriate role of the MSRB in creating a facility for collecting and disseminating such information. As of October 31, 1990, the Commission had received 135 comment letters. The majority of the letters have supported the MSIL because they believe that there is a lack of available and accessible information in the municipal market. They believe that by offering one central, public source for information, the MSIL system will increase and ensure access to complete and accurate information in a fair and non-discriminatory manner, and will result in fairer prices in both primary and secondary markets. The commentators that favored the proposal generally noted that problems with the quality, timing and dissemination of municipal securities information that have characterized the market for some time necessitated the development of better disclosure mechanisms in the market and they welcomed the MSRB's efforts. Twenty-two commentators have submitted comments in opposition.⁶ The commentators that opposed the proposal generally objected to the proposal on the grounds that it would impose an unacceptable burden on competition among information vendors and disadvantage issuers by raising their costs with few or no offsetting benefits. In addition, several commentators questioned whether the MSRB has the authority to establish and operate the MSIL. Some comments expressed concern that development of the MSIL would lead to the MSRB, in the future, attempting to dictate the content of municipal securities

⁵ The proposed rule change defines "advance refunding documents" as refunding escrow trust agreements or their equivalent.

⁶ Of the 135 comment letters, 109 express support for the MSIL proposal, 22 oppose it, and 4 oppose the proposal as drafted but provide specific comments for its improvement. Two issuer associations, the Government Officers Finance Association and the National Association of State Auditors, Comptrollers and Treasurers, have commented in opposition.

disclosure documents.⁷ All of the comments are now being carefully reviewed and are receiving the highest priority. I hope to have a recommendation on the proposals in the near future.

In the Rule 15c2-12 Adopting Release, the Commission stated that it strongly supports the development of one or more central repositories for municipal disclosure documents.⁸ The Commission also stated that it recognized "the benefits that may accrue from the creation of competing private repositories."⁹ As noted above, several information vendors have begun operating as NRMSIRs. I believe that the three NRMSIRs are operating successfully. While I understand that they have received few requests for copies of documents in their collections, I have received no substantive complaints or comments with regard to their operations.

In his letter to you, Chairman Dingell also indicated that his office had received reports of discrimination in access to municipal securities information against some users, in particular, brokers' brokers, perceived to be competitors of a "certain private repository," presumably J.J. Kenny Co., Inc. ("Kenny"). Our review of the issue indicates that J.J. Kenny has not discriminated with respect to access to its NRMSIR. Indeed, as noted above, a basic condition for recognition as a NRMSIR is that the information vendor provide access to the documents deposited with it to anyone willing and able to pay the applicable fees.¹⁰ Kenny has informed us, however, that it terminated several contracts for access to its KENNYBASE municipal securities database, a separate service available by subscription. The contracts terminated were with brokers' brokers who, according to Kenny, had been redistributing the information to customers in violation of the subscription contract¹¹ and were terminated prior to Kenny's designation as a NRMSIR. We believe that the termination of these contracts in no

⁷ It should be noted that the Tower Amendment prohibits the MSRB from imposing requirements on issuers. See 15 U.S.C. § 155(d)(2).

⁸ See Adopting Release at 28808.

⁹ Id.

¹⁰ The Kenny NRMSIR provides individual OSs upon request for a ten dollar fee.

¹¹ See Letter from David Francescani, Executive Vice President and General Counsel, J.J. Kenny Co., Inc. to the Honorable John D. Dingell, dated August 21, 1990 (attached).

way affects access to the Kenny NRMSIR. I also would note that, with the exception of the operation of its NRMSIR facility, Kenny, as an information vendor, is not subject to the oversight of the Commission.

In sum, I believe that Rule 15c2-12 has improved the distribution of municipal securities disclosure documents and that NRMSIRs have benefitted the market. We will promptly consider whether the further steps proposed by the MSRB are necessary and appropriate within the statutory and regulatory framework applicable to municipal securities.