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IMMEDIATE RELEASE

GOOD MUNICIPAL MARKETS REQUIRE FULL DISCLOSURE

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Forty-three years ago, Congress enacted the Securities Act of 1933 because of serious problems in our corporate securities markets. Before the Securities Act was adopted, there was considerable debate as to the proper role of the federal government in securities regulation. The administrators of state securities laws, as well as others, advocated that the law should be similar to the various state laws and require a determination by a federal agency that an enterprise was based on sound principles and was in the public interest before its securities could be offered to tne public. This qualitative approach was rejected and the principle of full and fair disclosure of the charcter of securities was established as the cornerstone of investor protection in the offering of securities to the public. This decision was based on the belief that the disclosure of all important facts about an issuer and its securities would inhibit manipulations and fraudulent or deceptive practices. Moreover, it was believed that such disclosure would make it possible for investors to make informed investment decisions.

The Securities Act requires that issuers file registration statements with the Securities and Exchange

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Commission, that such statements be declared effective prior to a public offering and sale of securities, and that a prospectus, which contains the essential information in the registration statement, be transmitted to investors purchasing in the offering. Although the registration statement is declared effective after processing by the Commission's staff, it is unlawful to represent that the SEC has approved the merits of the offering or passed upon the accruacy or adequacy of the information contained in registration statements or prospectuses.

In addition to the disclosure requirements in connection with securities offerings, the Securities Exchange Act of 1934 requires all public corporations of significant size to file current and periodic reports disclosing material corporate financial and operational facts, so that investors in the secondary markets may also make informed investment decisions.

When this pattern of securities regulation was established in the early 1930's, the antifraud provisions were made applicable to all persons participating in securities transactions in interstate commerce. This means that such persons may be subject to civil liability, Commission injunctive actions, and criminal proceedings, if they are responsible for the use of

false or misleading information in connection with the purchase or sale of a security.

However, securities issued by State or local governments were exempted from the registration and reporting requirements of the securities laws, and thus issuers of municipal securities are not required to comply with such requirements. Moreover, until the Exchange Act was amended by the '75 Amendments, persons who engaged solely in the business of underwriting or dealing in municipal securities were not subject to inspections, examinations, or the ethical business standards developed by the Commission or the self-regulatory bodies, such as exchanges and national securities associations. As you know, the '75 Amendments extended the Commission's regulatory jurisdiction to include such persons.

It appears that the exemptions for municipal securities from the disclosure requirements of the securities acts were provided because investors in municipal securities were almost entirely financial institutions and wealthy individuals in high tax brackets who were able to protect their own interests,

and because municipal securities were not subject to the type and degree of misrepresentations and abuses which had occurred in corporate securities.

Despite the absence of regulation during the intervening years, municipal securities markets have been remarkably free of abuses, but the character of these markets has changed significantly. Because of increasing income taxes, individuals with moderate incomes found that tax exempt municipal securities became attractive investment vehicles. As relatively unsophisticated individuals became more interested in municipal securities, abusive sales practices such as unconscionable markups, outlandish misrepresentations, complete disregard of suitability standards, and high pressure sales techniques, similar to those which had brought about the regulation of persons dealing in corporate securities, began to occur in municipal securities markets.

After several enforcement actions based upon the antifraud provisions of the securities laws were brought by the Commission, there was concern that failure to provide protections to investors in municipal securities would result in a loss of confidence in

municipal obligations and adversely affect the ability of State and local governments to obtain capital, and, as I indicated previously, legislation was enacted last June to provide for the regulation of professionals engaged in the business of underwriting and trading municipal securities.

When that legislation was being considered, municipal finance officials were concerned that it would eventually lead to federal government encroachment on their access to public investors. At the Congressional hearings, I made it very clear that it was not the Commission's intent to regulate issuers of municipal securities or to require them to file any type of documents or other informational materials with the Commission prior to an offering of their securities, and the legislation, as enacted, did not impose any preoffering procedures upon municipal securities issuers. In fact, it contained a specific provision protecting municipal issuers from such requirements.

However, the legislation did indicate that underwriters and dealers in municipal securities had potential

responsibility for material misstatements or omissions made to investors. It was thought that federal regulation of municipal broker-dealers and municipal securities trading, combined with the regulatory efforts of some states and municipalities and the Municipal Finance Officers Association, would provide improved disclosure by issuers and would be sufficient to maintain investor confidence in municipal securities.

Unfortunately, however, the New York experience, as well as publicized problems in other jurisdictions, apparently has resulted in a serious erosion of investor confidence in municipal obligations. Moreover, underwriters have also become concerned and have not bid on issues where they have believed that sufficient information with respect to proposed securities offerings was not available in order for them to fulfill their responsibilities to investors.

Thus, it appears that additional measures necessary to assure that States and municipalities will be able to obtain needed funds from the public at reasonable interest rates, and that investors in municipal securities are given the facts on which informed investment decisions can be made.

There are several proposed alternatives to achieve those purposes ranging from improved disclosure on a voluntary basis to federal legislation, which would remove exemption for municipal securities from the Securities Act, and thus require States and municipalities to register their securities with the Securities and Exchange Commission.

Although the present situation with respect to municipal securities may be quite serious, we should be careful not to over react and impose burdens on municipal issuers which are neither necessary or appropriate. I personally believe that it is important that States and municipalities retain independence from the federal government. Perhaps the most important way to preserve this independence is to preserve their ability to offer securities to the public without first being required to register them with a federal government agency or process their prosectuses, offering circulars or other selling documents through such an agency. Therefore, I oppose legislation that would simply withdraw the exemption for municipal securities from the registration and disclosure requirements of the Securities Act of 1933.

On the other hand, efforts to obtain satisfactory voluntary disclosure have obviously not been completely successful. As early as mid-1974, the Municipal Finance Officers Association recognized that disclosure in the offering of municipal bonds needed to be improved and realized that the failure to provide greater disclosure would likely bring additional federal legislation. The development of such standards was begun and arrangements were made for the research and drafting expenses to be partially borne by grants from the National Science Foundation. Guidelines were developed and were circulated for comment in November of 1975 to various interested groups, such as the Securities Industry Association, the Dealer Bank Association, American Bar Association, the National Council on Governmental Accounting, the AICPA, and the Commission.

The proposed guides were broad and comprehensive, and, given time, it is likely that the guides would provide a satisfactory source of disclosure guidance for municipal issuers. However, the guidelines state clearly that they are suggestions only and "are not intended to create disclosure requirements or legal obligation to disclose any or all items of informations

suggested." While this may be an attractive arrangement because of its voluntary nature, it should also be noted that the guidelines do not provide certainty with respect to disclosure burdens or responsibilities. In the absence of standards having the force of law or sanctions for noncompliance, the guidelines may not be a satisfactory response to the serious liability and disclosure issues that presently confront the municipal securities markets.

I believe that, if the "Disclosure Guidelines for Offerings of Securities by State and Local Governments" proposed by the Municipal Finance Officers Association had been adopted and complied with by all States and municipalities, the pressure for further federal action would probably not exist. But the fact is that there has not been such compliance. Although the overwhelming majority of municipal issues now coming to market may be following the guidelines, and although it is clear to me that market forces are beginning to require more adequate disclosure, it is unlikely that Congress will refrain from acting on the basis of such considerations.

Another alternative approach to provide effective disclosure is to enact federal legislation pursuant to which uniform disclosure requirements similar to those proposed by the MFOA could be established, for all State and local government entities which have outstanding securities or desire to issue securities in amounts above specified minimums, but not require that municipal securities be registered with or that selling documents be processed or declared effective by a federal agency.

On last Tuesday, February 17th, a Bill, S.2969, incorporating such a philosophy was introduced by Senators Harrison Williams and John Tower, after consultation with and drafting assistance from the Commission. I believe that, on the assumption that Congress will not be content to wait for States or market forces to resolve problems in the municipal securities markets, the Williams-Tower Bill is the best alternative yet proposed. Congressional hearings are scheduled to begin tomorrow on this and related bills pending before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs.

The proposed legislation would require municipal issuers to prepare a distribution statement containing specified information to be circulated in connection with public offerings of municipal securities in amounts exceeding $5 million. The required information would include, among other things, a description of the offering, the characteristics of the security itself, the use of the proceeds, counsel's opinion, and such other information as the Commission may require. This statement would be made available by the issuer to all municipal brokers and dealers for delivery to prospective purchasers.

The Bill would also require municipal issuers with outstanding securities in principal amount exceeding $50 million to prepare for each fiscal year, and to provide upon request to security holders without charge, and to others at their expense, an annual report containing such information as the identification and description of the issuer, debt limitations, contingent liabilities, and any defaults or postponed payments on securities, taxing authority, major taxpayers, federal assistance programs, and financial statements

of the issuer audited by an independent public or certified accountant. In addition, reports of events of default would be required.

The minimum amounts of securities outstanding and offered which determine the preparation of disclosure documents would be subject to adjustment by the SEC in the public interest on the basis of economic conditions, costs involved, and the nature of the distribution system. The liability of underwriters similarly situated is limited to the total amount of the offering, but it should be noted that there are no specific limitations regarding the amount of damages for material misstatements and omissions under the antifraud provisions of the Exchange Act.

A potentially very important provision of the Bill would exempt municipal issuers from the Bill's distribution statement requirements, if an authorized state agency, other than the issuer of the securities, determines that the disclosure with respect to an issue is adequate for investor protection and approves the disclosure.

A number of states have already developed regulatory approaches and financing arrangements to facilitate the

offer and sale of municipal securities. Some require that a particular state agency approve the issuance of state or local bonds as a prerequisite to an offering. North Carolina has pioneered an even more pervasive approach in which a state agency, the Local Government Commission, actually conducts the sales of bonds for municipalities, counties, and local school districts. Sales of municipal bonds issues are held individually on an offer and bid basis. The State Commission prepares statements of financial operations and other important information for each issue including a copy of the formal sale and details concerning the offering along with the bid form. This system enables North Carolina to supervise closely, and provide for, local funding plans, the form and type of information provided, the planning of bond issues, regular bond offerings, centralized bidding, and sufficient offering packages to attract underwriting syndicates.

Various municipal advisory councils have also been established by the industry in various States, such as Texas, Michigan, and Ohio, to provide informational and reporting services, Generally, these councils do not perform rating services, but engage

in transmitting periodic information regarding new issues, credit information, legislative developments, bond election results, and outstanding debt information.

The only hope I can see to avoid federal disclosure legislation for municipal securities issues, and I believe it is only a glimmer, is for all States to take immediate action to assure that the type of disclosure which would be required under the Williams-Tower proposal is provided by issuers of municipal securities. I would like to stress, however, that State efforts should continue on an expedited basis even if such a proposal is enacted because it is limited in scope and does not resolve all the problems presently confronting the municipal securities industry.

Moreover, because the disclosure documents required by the Williams-Tower Bill would not be filed with the Commission or reviewed by our staff, whatever credibility is obtained for securities, or whatever comfort is obtained by issuers, underwriters, and other securities professionals through such an SEC review, would not be available to municipal securities or those

connected with the offer and sale of municipal securities. Therefore, I believe it would be in the best interests of every State to have a state agency which would perform the review process for disclosure documents in connection with securities offerings issued by the State and its municipalities and which would also certify the accuracy and adequacy of such documents in order to encourage greater confidence and trust in municipal securities offerings by underwriters and investors.