

John M. McNally Assumes NABL Presidency

Address by John M. McNally upon becoming President of the National Association of Bond Lawyers

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Thank you, Kathy. And thank you, John Cross, for your kind words. In preparing for these remarks, I consulted with a number of former Presidents. Their collective advice was

- Keep it short
- Remember that there is no one in the audience anyway, except former Presidents, other miscellaneous has-beens, and one's partners
- Remember that nobody will remember what you said
- And no matter how lofty your goals, events will overtake whatever your plans are -- as has occurred over the last few terms with Circular 230, the collapse of mortgage-backed securities, auction rate securities, and the disappearance of the bond insurers

With that cautionary advice in mind, let me nonetheless make a few remarks.

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First, some well-deserved thank-you's. I would like to thank Julie Ebert for her support as NABL President back in 1997, when I chaired the Enforcement Subcommittee. You may recall that we produced a report that analyzed the SEC's initial municipal securities enforcement actions. It was not that many years ago that SEC actions against municipal market participants were sufficiently novel as to merit a special report.

I would like to thank those Presidents on whose Boards I have served these last six years for their support - both of me personally and of the projects with which I was involved - starting with Monty, and continuing with Walt, Carol, Foster, Bill, and Kathy. I have learned from each of them and I am very grateful.

I would like to thank my partners for the support that they have shown for my NABL work and their recognition of its importance to the firm and to the market generally. In particular, I thank Howard Zucker for encouraging me soon after I joined Hawkins in 1992 to become actively involved with NABL.

And finally, I would like to thank Paul Maco and Drew Kintzinger, as friends, neighbors, and trusted advisors over many a lunch and dinner.

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NABL has evolved considerably these last few years. While retaining our primary role as an educational body, and mindful that we are a member-directed and member-focused organization, the NABL ship has slowly turned to achieving the goal set out by Monty and so ably followed through by the Presidents who succeeded him - namely, positioning NABL as the authoritative and objective advisor regarding municipal law and the application of the federal tax law and federal securities law to municipal securities. Our advice and comments are sought by the IRS, Treasury, the SEC, Congressional Committees and Congressional staffers, and the MSRB, and we consult regularly with other industry groups, including the GFOA, SIFMA, NFMA, and the ICI, among others.

As we consider NABL's role today, let me review a few recent events and headlines.

The Regulatory Environment has changed

- The Dodd- Frank Act directed the SEC to establish a separate Office of Municipal Securities with its own Director, who would report directly to the Chairman.
- The Dodd-Frank Act, in the interpretation of the SEC, has given them authority to regulate disclosure by issuers of asset-backed securities, even if those issuers are otherwise exempt from registration as municipal securities issuers
- The SEC has established a municipal SWAT team of 30 attorneys to focus on municipal disclosure and municipal pensions
- Three of the five SEC Commissioners have called for repeal of the Tower Amendment

The Economic Environment has changed

- the Great Recession still lingers
- Jefferson County, Harrisburg, Vallejo - are these unusual cases or the tip of the municipal financial iceberg? I was inclined to think they were isolated instances, each with their own unique financial misadventure - whether it be, for example, mismanaged derivatives or a solid waste treatment plant that was not financially viable.
- But I wonder. The NY TIMES reported recently that 20 cities and smaller communities are participating in Pennsylvania's distressed cities program. Similarly, Michigan has 37 in its program; and New Jersey has seven. The import was that such programs are common, but in light of financial strains at the state level may not be sustainable.
- And, as we know, there are literally trillions of dollars of unfunded Pension and OPEB liabilities at both the municipal and state levels

Public Perceptions have changed

- Not only are SEC Commissioners and NFMA representatives calling for repeal of Tower, but a recent WALL STREET JOURNAL editorial by the Journal's own staff, entitled "Ending the Muni Madness" complained "Issuers in the \$2.8 trillion muni-bond market have never had to play by the same disclosure rules as private firms, and it's past time for reform." [Although this ignores the application of 10b-5 to munis, it is eye-opening that even the WSJ would now call for direct federal regulation of the muni market.]

Finally, the Market Composition has changed

- Approximately 70% of muni bonds are in retail hands - 35% by retail directly and 35% indirectly through mutual funds and other similar vehicles

With the new regulatory regime, the stagnant economic environment, and the continued misperception that the market is not transparent, it is time to take a fresh look at current municipal disclosure practices.

The SEC has been conducting a series of Field Hearings. Whether you view these hearings to be simply a pretext to establish support for further direct regulation, or whether you view them as a genuine attempt to solicit input from market participants, a few themes and questions have emerged:

1. Can municipal financial disclosure be more timely?
 - a. Issuers commonly release annual financial information as much as 270 days after the end of the fiscal year

- b. The deadlines for continuing disclosure filings are often missed or overlooked.
 - c. Most municipal issuers do not release audited (or even unaudited) quarterly financial information.
2. On the other hand, many municipal issuers produce budgetary information on a monthly basis
3. Should such information be provided to investor's? To analysts? What of the SEC's 1994 Interpretive Release to the effect that any information reasonably expected to reach investors will be subject to potential 10b-5 liability?
4. Is the failure to provide annual financial information within, for example, 90 days after the close of the fiscal year (the standard for registered companies being 60-90 days) a matter of sufficient manpower and expense, or is there something inherent in governmental modified accrual accounting that results in the extended production delays?
5. If the SEC were to get legislative authority to establish minimal disclosure guidelines, as they have indicated they may seek, in light of the great diversity of issuers in the municipal market, would any such guidelines be helpful? What guidelines would apply across-the-board to a general obligation issuer with unlimited taxing authority, a water authority with the power to raise rates, a 501(c)(3) hospital financing, and an airport authority with bonds secured by airline lease rentals?

Is it possible to reach an industry consensus on the answers to these questions?

There are excellent sources of disclosure guidance, including:

1. the GFOA Disclosure Guidelines
2. the NFMA's RECOMMENDED BEST PRACTICES
3. Dean Pope's MAKING GOOD DISCLOSURE, sponsored by the GFOA
4. And the work described by THE NEW YORK TIMES as the "new disclosure bible for municipal bond lawyers", namely the DISCLOSURE ROLES OF COUNSEL (that will be my only infomercial, at least for today)

With these excellent sources, can we not find common ground to answer some of these questions regarding the timeliness and quality of disclosure?

At this time, we need to temper the heated exchanges, with each constituency clinging to its favorite phrases, whether it be "Repeal Tower," "10th Amendment," or "Second Class Investors." We must find a way to move past these entrenched positions for the vitality of the municipal market.

I spoke on behalf of NABL at the SEC's inaugural field hearing in San Francisco a few weeks ago. And although such phrases as "Repeal Tower" and "Second Class Investors" were thrown about, it struck me that all parties, including the SEC, the analysts, the issuers, and the investors were sincerely interested in improving the transparency of the municipal market. With that common goal, we should be able to work together towards that objective.

When the municipal market was confronted with the need for a centralized disclosure filing designation, it convened the Municipal Council and selected the Texas depository, Texas MAC, to serve as a Central Post Office, the predecessor to EMMA. Granted, that was a very discrete action, but it showed that the industry could act collectively to address a need.

If the Palestinians and the Israelis can come to the peace table, if the Taliban and the Afghan government can come to the peace table, then we should be able to bring together the various municipal market participants to move forward and achieve a consensus on the timeliness and quality of municipal disclosure.

The time is right for NABL to facilitate this dialogue.

1. With respect to the analysts, we appreciate their concerns for more timely information. We would ask them - if you were to receive audited financials annually, together with monthly reports that compare actuals to budget, would that be helpful? would that be sufficient?
2. With respect to the issuers, we would ask them - if you are requested to provide to analysts only that financial information that you otherwise produce for the benefit of the members of the city council, for example, would that be a concern?
3. The SEC has advised that it is preparing a new interpretive release to address municipal disclosure. The SEC would be asked to facilitate improved secondary market disclosure by providing guidance to issuers, as to how, with appropriate disclaimers, they can be assured that they would not be subject to an SEC enforcement action for releasing monthly budgetary data that later proved to be inaccurate (absent, of course, extreme recklessness or intentional deceit).

Secondary market disclosure is an excellent example where all parties have sincere concerns with timeliness on the one hand and potential liability on the other, yet the elements of a workable consensus appear to exist.

In summary, the municipal market has evolved, the regulatory scheme has changed and continues to change, and the financial problems confronting municipal and State governments are daunting. It is now time to listen carefully to each other, to respect each other's positions, and to work cooperatively towards transparent and timely municipal financial disclosure that will redound to everyone's benefit.

Thank you again for entrusting me with leading the Board over the next year, and I look forward to the challenges.