What It Means for Munis

Provisions of the Wall Street Reform and Consumer Protection Act

	CURRENT LAW	SENATE BILL *	HOUSE BILL **	DODD-FRANK CONFERENCE REPORT ***
Muni Financial Advisers	Only broker-dealer and bank financial advisers are subject to federal regulation.	Requires non-broker-dealer financial advisers, guaranteed investment contract brokers, solicitors, finders, third party marketers and placement agents to register with the SEC. Subjects them and dealers providing advice to issuers on muni financial products, including muni derivatives, to MSRB rules. SEC would enforce the rules.	Requires muni financial advisers for bond issuance, investments of proceeds and swaps or other products to hedge risks, to be registered with, and regulated by, the SEC. Would exclude broker-dealers acting as underwriters. SEC would enforce its rules.	Requires non-broker-dealer financial advisers, guaranteed investment contract brokers, solicitors, finders, third party marketers and placement agents to register with the SEC. Subjects them and dealers providing advice to borrowers on muni financial products, including muni derivatives, to MSRB rules. SEC would enforce the rules.
Fiduciary Duty For Advisers	Muni advisers are not subject to a federal fiduciary duty standard.	No provision.	Would subject muni advisers to a federal fiduciary duty standard.	Subjects muni advisers to a fiduciary duty rule written by the MSRB, as well as exams, continuing education requirements and professional standards.
Municipal Securities Rulemaking Board Members	The MSRB must have 15 members: five from securities firms, five from banks and five from the public, including at least one representative of an issuer and one of an investor.	At least eight of the MSRB's 15 members must be public, including at least one institutional or retail investor, one issuer and one muni expert. The remaining seven must include at least one representative from a securities firm, one from a bank and one from a non-dealer adviser.	A majority of the MSRB's 15 members must be public, with at least one representative of an issuer and one representative of an investor. The remaining members must include one representative of a securities firm and one from a bank.	A majority of the MSRB's members must be public – and the board will have to draft guidelines ensuring their independence from dealers and advisers. At least one public member must be a representative of institutional or retail investors, one must be a representative of issuers and one must be a muni expert. The board can expand to more than 15 members as long as a majority of the seats are held by public representatives.
Enforcement of Muni Rules	The SEC and Financial Industry Regulatory Authority enforce MSRB rules.	Authorizes the MSRB to assist the SEC and FINRA in examinations and enforcement of its rules and permits the MSRB to obtain a portion of any penalties collected in such actions. Authorizes the MSRB to impose fees for violations of its rules. MSRB can also assist bank regulators in enforcing rules for munis but cannot share the related fines.	No provision.	Authorizes the MSRB to assist the SEC and FINRA in examinations and enforcement of its rules and permits the MSRB to obtain half of any penalties collected by the SEC and one third or another portion of any FINRA collections. Authorizes the MSRB to impose fines on dealers and advisers that fail to submit in a timely manner information or documents required by its rules.
Muni Information Systems	The MSRB operates muni disclosure, trade reporting and other information systems.	Allows the MSRB to develop additional information systems not limited to munis and to impose fees for submissions.	No provision.	Allows the MSRB to develop additional information systems not limited to munis and to impose fees However, the board may not charge issuers or borrowers fees to submit documents or information and may not charge any persons fees to obtain individual documents from the board's website.
Governmental Accounting Standards Board	GASB is funded through voluntary contributions from state and local governments.	Within 270 days, the SEC must submit a study that evaluates the role and importance of the Governmental Accounting Standards Board, its funding and whether legislative or other changes are needed.	No provision.	Would authorize, but not require, the SEC to direct FINRA to collect assessments from dealers to fund GASB. Also would require the Government Accountability Office to report to congressional committees on the role and importance of GASB within 180 days of the bill's enactment.
GAO Study on Muni Disclosure	No provision.	Within one year, the GAO must submit a study that compares muni and corporate disclosure requirements and evaluates the costs and benefits to issuers of requiring them to improve disclosure. The report also must recommend whether the Tower Amendment should be repealed.	No provision.	Within two years, the GAO must submit a study that compares muni and corporate disclosure requirements and evaluates the costs and benefits to issuers of requiring them to improve disclosure. The report also must recommend whether the Tower Amendment should be repealed.

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GAO Study on Transparency of Muni Trading	No provision.	Within 180 days, the GAO must submit a report that provides an analysis of trading, the needs of the markets and investors and recommendations for how to improve the transparency, efficiency, fairness and liquidity of muni trading.	No provision.	Within 18 months, the GAO must submit a report to Congress that provides an analysis of trading, the needs of the markets and investors and recommendations for how to improve the transparency, efficiency, fairness and liquidity of muni trading The SEC must respond to the report within 180 days.
Muni-Related Derivatives	Unregulated	State and local governments that have discretionary investments of less than $50 million could not be eligible contract participants in derivatives transactions unless their counterparties are banks or broker-dealers. A separate provision would require firms to spin off their derivatives units, meaning issuers with less than $50 million could not be ECPs. Swap dealers would have a fiduciary duty when they advise, pitch or enter into swaps with public entities. Transactions involving non-ECPs must be exchange-traded.	State and local governments would not be eligible contract participants if they have less than $50 million of discretionary investments or if their counterparty is not a broker-dealer or bank. Transactions involving a non-ECP must be exchange-traded.	State and local governments that have discretionary investments of less than $50 million –including bond proceeds — could not be eligible contract participants in derivatives transactions unless their counterparties are banks or broker-dealers. Within one year, the Commodity Futures Trading Commission must write registration rules and business conduct standards for swap dealers and major swap participants, as well as a code of conduct for dealers that enter into swaps with "special entities," which include states, localities, and pension funds. The CFTC also must establish a system under which qualified end users that want to be exempt from central clearing can notify it of how they are meeting their financial obligations associated with entering into non-cleared swaps.
SEC Office of Municipal Securities	Currently housed within the SEC's division of trading and markets.	Mandates that the office be staffed "sufficiently" to administer rules on dealer and adviser practices. Director would report directly to the chairman.	No provision.	Mandates that the office be staffed "sufficiently" to administer rules on dealer and adviser practices. Director would report directly to the chairman.
Credit Rating Agencies	SEC currently has oversight over rating agencies designated as nationally recognized statistical rating organizations.	SEC could suspend or revoke the registration of a rating agency under certain circumstances. Investors could bring private rights of action against agencies for a knowing or reckless failure to conduct a reasonable investigation of facts or to obtain analysis from an independent source. Rating agencies would have to disclose: their methodologies; use of third parties for due diligence efforts; and ratings track record. They would have to have written policies to assess the probability that an issue of a security will default or fail to make timely payments. Northing would prohibit a NRSRO from using distinct symbols to denote ratings for different types of securities. Would establish an Office of Credit Ratings in the SEC.	Would require rating agencies to rate securities on the likelihood of loss to investors and apply ratings consistently across all asset classes. Would bar the SEC from adopting rules that prohibit rating agencies from considering credit factors "that are unique to municipal securities" or establishing "complementary" ratings to measure a discrete aspect of a security's risk. Would clarify the ability of individuals to sue NRSROs. SEC would be required to create an office to administer rules for rating agencies. SEC would set up an independent advisory board to oversee its regulation and enforcement of rating agencies but it would appoint board members.	SEC would be required to create an office to administer rules for rating agencies and would have to adopt rules requiring each NRSRO to establish, maintain and enforce policies and procedures that clearly define and disclose the meaning of any ratings symbol and that apply this symbol consistently for all instruments for which the symbol is used. The rules would require the rating agencies to "assess" the probability that an issuer will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of a security. But the NRSROs would be able to use special symbols to denote different types of securities. The SEC would be allowed to suspend or revoke the registration of a NRSRO with respect to a particular class or subclass of securities if it lacks adequate financial or managerial resources or fails to produce accurate ratings over a sustained period. Would make it easier for investors to bring private rights of action against NRSROs.
Proprietary Trading	No provision	Federal banking regulators are required to issue rules within nine months that bar financial institutions from engaging in proprietary trading or investing in, or sponsoring, hedge funds or private equity funds. However, trading of debt issued by states and localities would be exempt. The systemic risk council would be required to conduct a study of the issue within six months.	Authorizes, but does not require, the Federal Reserve Board to prohibit banks from proprietary trading if such activity is deemed a threat to the safety and soundness of firms or the overall financial system. The Fed is given broad discretion to exempt certain firms from any future prohibition.	With limited exceptions, would prohibit banks from engaging in proprietary trading, or sponsoring or investing in a hedge fund or private equity fund. Includes proprietary trading carve out for "state or municipal" obligations. Financial Stability Oversight Council must conduct a study and issue recommendations on implementation of the Rule's provisions within six months of enactment.

*Provisions from substitute amendment to the Senate's Wall Street Reform Bill, S.3217, which the Senate approved by a vote of 59 to 39 on May 20.
** Provisions from the Investor Protection Act of 2009, HR 3817, that was approved by the House by a vote of 223 to 202 on Dec. 11.
*** Provisions from Dodd-Frank Wall Street Reform Act, passed by the House by a vote of 237 to 192 on June 30 and in the Senate by a vote of 60 to 39 yesterday.