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Although my remarks will focus on the United States, I mean no disrespect for our Canadian friends. I'm not an expert on their marketplace -- and even if I were, I'm not sure that they'd welcome my commentary. In fact, I'm not even sure that American municipal lawyers welcome my commentary. But, welcome or not, I believe and hope that some of the ideas I'll discuss will also be of interest to our neighbors from the north.

I have a special link with this audience -- as you may know, my father served for 24 years as New York State Comptroller. What you may not know is that he was a lawyer in active practice for many years prior to becoming Comptroller. These two experiences left him with profound respect for municipal lawyers, and the depth of your responsibility to the local governments and citizens you represent. Some 30 years ago he said to the New York State Bar Association:

> ...municipal law, particularly in the area of local finance, is becoming a specialty -- a mysterious and overly complicated area in which the corporation counsel is expected to be a combination of a constitutional expert, a bond attorney, and a financial adviser. He must pick his way through a maze of calculations known as debt limits, exclusions, periods of probable usefulness, and amortization schedules. Normally, of course, he has the help of outside bond counsel, but the preliminary work is his -- and it is work for which he gets very little compensation. Each year I am in office, my respect for the municipal attorney increases, for without him no sizeable municipality in the state would dare conduct its business. Indeed, he is the court of first and last resort on issues which must be settled between morning and midnight, day in and day out, in hundreds of public offices throughout the nation.

I trace to my father my abiding interest in the integrity of the municipal debt markets, and my concern over recent examples of public money management gone awry. I know these are your concerns as well, and that you've spent many hours thinking about and addressing them.

Of course, I have professional concerns as well. The municipal bond market is now worth about $1.2 trillion. It is of critical importance to our nation's future. And it's undergone a fundamental change in the last decade, from a market dominated by institutional investors, to one in which individual investors hold 70 percent of outstanding securities, directly or indirectly.

If you can put up with advice from an official of a government that is somewhat larger, if not always better managed than your own, I'd like to talk to you today about three key issues: the prudent management of public funds; the preservation of public trust; and the disclosure obligations of public officials.

PRUDENT MANAGEMENT OF PUBLIC FUNDS

The municipal bond market is of critical importance to our nation's future. It represents the schools that teach our children, the water we drink, the power that enhances our lives and drives our economy, the roads that take us where we need to go. American investors trust municipal bonds as they do few other instruments, and this has helped make them a popular investment.

And yet, this has been a tumultuous time for the municipal bond market. The Orange County bankruptcy and default followed the loss of an estimated 1.7 billion dollars in public funds through a risky investment strategy. There have been reports of other losses, fortunately less severe than Orange County.

I know the concern you have over these issues. And surely you know better than most the apprehension felt by local taxpayers.

The public has a right to expect that money will be available when needed to keep the schools open, to police the streets, and to meet the other civic needs for which taxes are paid. Such funds can generate additional revenue in the interim, and that is good.

Care must be taken, however, that the return received does not become a narcotic, inducing dependency by being built into annual budgets as a significant revenue source in and of itself. Such an addiction loses sight of the original purpose for raising the funds, and it courts disaster in the event of sudden market changes. Using the treasury function as a profit center has backfired on some sophisticated corporate managers in recent years; as we saw in Orange County, it is no less risky for public officials.

Our markets have undergone dramatic changes. Complex instruments have been developed that are capable of producing breathtaking returns -- or breathtaking losses. The three basics of public fund management, however, have not changed: safety, liquidity, and yield -- in that order.

In the complex markets of the 1990s, safety is no longer synonymous with credit quality. When investment terms and liquidity needs are mismatched, a volatile market can quickly eviscerate investments with even the most impeccable credit rating.

The harsh lessons of the markets have been visited over the past 18 months upon large corporations and dealers, as well as municipal governments. A factor common in many cases has been an absence or breakdown of internal controls -- the checks and balances of financial management that help provide a measure of safety in complex and rapidly changing markets.

These developments offer an unprecedented opportunity for you to review the adequacy of financial checks and balances, to be sure that proper controls are in place. Every day, more and more treasurers, legislators, municipal attorneys, and government officials are seizing that opportunity. I urge you, when you return home from this gathering, to take a leadership role in reviewing your internal controls, if you're not already doing so.

There are three important steps that can help assure safety: a written investment policy, independent oversight, and periodic valuation or marking-to-market. A written and publicly available investment policy, coupled with current internal portfolio information, reinforces accountability. But without an independent review of actual performance on a frequent basis, a written policy can quickly be reduced to mere words on a piece of paper.

Surprising investment gains should set off alarms every bit as loudly as surprising losses. At the same time, let's not be seduced by easy cures, such as narrowing lists of permitted investments to only the safest. Instead of eliminating investment tools, we should be ensuring that they are well understood and wisely employed.

Some have called on the federal government to intervene. I said in my testimony before the Congress last year that I believe the regulation of state and local investment practices is the responsibility of the states. If there's a role for the federal government in all this, it is to offer our support and to share any knowledge and experience we have that may be of use to you.

Treasury Secretary Rubin and I have been actively pursuing such a dialogue for the past eight months. We've met with state and local government officials throughout the country in an intensive outreach effort. It's in everyone's interest to publicize successful techniques for risk management, and to discuss the various approaches to protecting public funds.

The Commission is especially concerned because what is at stake here is not just the fate of one or two municipalities -- it is the entire mechanism of public finance, which is based on the public's trust. That trust has been eroded by the events of the last year, and that's the second item I'd like to talk to you about.

PUBLIC TRUST AND THE GENERAL OBLIGATION BOND

Americans trust municipal bonds as they do few other instruments. This has worked to keep costs low for issuers. The Orange County bankruptcy filing and default may therefore impose costs on public finance that will be felt for years to come, by issuers miles from Southern California. No one understands that better than the people in this room.

There may be another cost imposed as well -- one associated with the phrase "willingness to pay," which has at its roots financing structures that avoid constitutional debt limits -- it is a reality of municipal finance in almost every state, and has been for a long time. You'll forgive me if I again refer to my father.

In 1974, he released a study that examined New York State's debt obligations. The report emphasized the enormous power that governments wield when they issue debt, in effect committing taxpayers' dollars for years into the future. It stressed the tremendous ethical responsibility borne by issuers of municipal securities. And it concluded that "debt is at the same time one of the most important of the fiscal mechanisms available to government -- and one of the most vulnerable to misuse." He raised special concerns about the propensity of his state to avoid constitutional limits on debt through the proliferation of debt-issuing agencies.

Recent headlines of actual or looming default because of citizens or legislatures no longer willing to support debt service made me recall my father's warnings. The financing practices that were of such concern to him have become a mainstay for many communities. And, in Orange County, a large issuer has publicly put in question the validity of its own debts. Whether sincere or a negotiating ploy, these expressions of uncertainty may have added a new premium for legal risk.

Corporate debt and equity markets have had to cope with broken contracts time and again. But municipal bonds are different. Local government bonds typically carry the "full faith and credit" of the issuer -- a pledge that investors will be repaid before anyone else. So strong is this obligation that even during the Depression, virtually all the debt that defaulted was repaid with interest, and with interest on the interest.

Since the Depression, no general obligation bond of a major issuer has ever defaulted, until now. The consequences have been heavy for Orange County, but a default also severely unsettles a group just as important to local government as taxpayers -- the bondholders who lend it money, whether as individuals or through mutual funds -- hardworking women and men throughout America looking for a decent, secure investment for their savings, whether for their children's schooling; or to start a business someday; or perhaps for retirement.

This time of difficulty in municipal finance will doubtless produce lessons for all of us. One lesson we should not draw, however, is the wrongheaded notion that Chapter 9 may be an alternative to responsible but unpopular decisions to fulfill the obligations incurred by local governments. Chapter 9 should be a last resort -- not an easy way to avoid debts, or a safe haven for fainthearted officials.

It's been said that trust is won with difficulty and easily lost. Municipal bonds -- and the municipal bond market -- have enjoyed a solid reputation because of the valiant efforts of many in the past. We must all work to maintain and enhance public faith in the market.

<u>THE DISCLOSURE OBLIGATIONS OF PUBLIC OFFICIALS</u>

The third and final subject I'd like to discuss with you today has to do with the Commission's enforcement activities in the municipal market. I've mentioned the Orange County bankruptcy several times. Local government officials who authorize the issuance of municipal securities have serious responsibilities under the federal securities laws. For almost 20 years now, the Commission has been stressing the critical role such officials play with respect to the representations contained in the official statements for those securities. You are in an excellent position to make sure this message gets through to officials in your governments.

While Orange County has received the lion's share of attention, it has not been our only municipal case. Over the past 3 years, our Division of Enforcement has brought 20 cases involving the municipal securities markets -- and in fact, only the Orange County matter names the issuer. Many of the enforcement actions we've brought actually concern fraud <u>against</u> an issuer. These actions have involved virtually every market participant: national and regional underwriting firms, national and local financial advisory firms, employees of those firms, bond counsel, underwriters counsel, and consultants as well as elected officials.

These cases are all based on failures to disclose, whether issuer financial problems, facts and associated risks relating to the tax-exempt status of the obligations, or conflicts of interest, including pay-to-play. Virtually all involve violations of the basic antifraud sections -- Section 17(a) of the Securities Act and Section 10 and rule 10b-5 of the Exchange Act. In more than a few instances, there have also been parallel criminal proceedings, which should be a pretty good signal that the conduct involved was not "borderline."

This weeding-out process doesn't mean that the entire garden has gone bad. To the contrary, the vast majority of market participants have been playing by the rules. Weeding can only make the garden healthier, and these cases make it clear to any observer that discipline is being maintained.

The SEC's actions have led to a renewed interest in the securities law obligations of state and local governments. This is a message we've been stressing for 20 years, and I welcome the opportunity to repeat it.

Issuers of municipal securities are not subject to the same registration and reporting provisions of securities laws as those on the corporate side. The complex set of rules known as line item disclosure do not apply. However, the antifraud provisions most certainly do apply.

They are really quite simple at their core. They call for full disclosure of information material to investors making an investment decision.

And materiality, the Supreme Court tells us, is determined by what a hypothetical reasonable investor would want to know in order to decide whether to sell, buy, or hold.

What does that mean for a local government official? The Commission's report on the conduct of members of the Orange County Board of Supervisors points out that:

> In authorizing the issuance of securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may a public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclosure may be misleading.

Does this mean that local government officials can't rely on experts, lawyers and financial advisors?

Of course they can rely on experts, lawyers and financial advisers -- just as officials of public companies do. That reliance, however, must be reasonable. You should also keep in mind the Commission's 1989 admonition that:

> Because they are ultimately liable for the content of their disclosure, issuers should insist that any persons retained to assist in the preparation of their disclosure documents have a professional understanding of the disclosure requirements under federal securities laws.

Public officials who authorize the issuance of securities by a municipal government are not guarantors of such investments. Their responsibilities, however, do include some reasonable attention to providing accurate disclosure to the investors who buy their bonds and notes.

This is not overly complex; it requires neither an MBA nor a Ph.D. When, as in Orange County, a public official has knowledge of facts bringing into question the issuer's ability to repay the securities, it is reckless for that official to approve disclosure to investors without taking steps, appropriate under the circumstances, to prevent the dissemination of materially false or misleading information.

I hope my talk today has helped clarify the SEC's recent actions in the municipal market.

As recently as a few years ago, for most Americans, municipal finance was a kind of sleepy backwater, misunderstood and underappreciated. The three subjects I've discussed today -- the prudent management of public funds; the need to maintain and enhance public trust; and the disclosure obligations of public officials -- would hardly have raised a stir.

Today, they've been catapulted into the headlines. Citizens have worked hard to pay their taxes, only to see them swept away like a losing bet on a roulette wheel. Investors have loaned their savings to municipalities in need of cash, only to see the very obligation to repay brought into question.

You and I can change these things -- but we can't do it alone.

For the sake of our cities, our states, and our nation, let's continue to work together to create a municipal market that's worthy of the 21st century.

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