

YOUR FINANCIAL ADVISOR,
YOUR UNDERWRITER & YOU:

A NEW MODEL AFTER
DODD-FRANK?

OR, BUSINESS AS USUAL?



2014 Annual Conference

“Playing the Next Round”

Palm Springs, California

Thursday, February 20, 2014

THE NEW RULES PERTAINING TO YOUR UNDERWRITERS AND ADVISORS

A Panel Discussion Moderated by:

Dave Glasser

Administrative Services Director

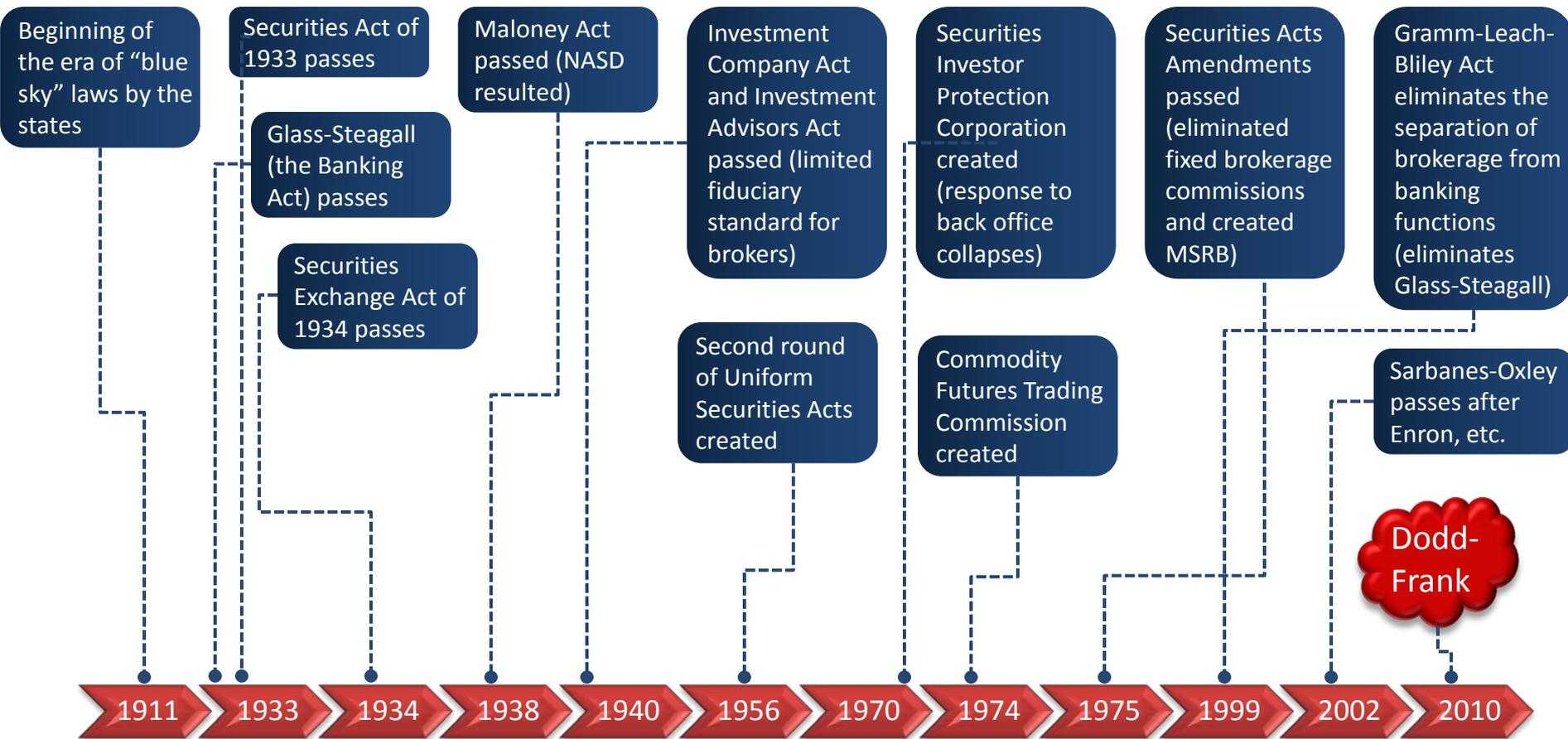
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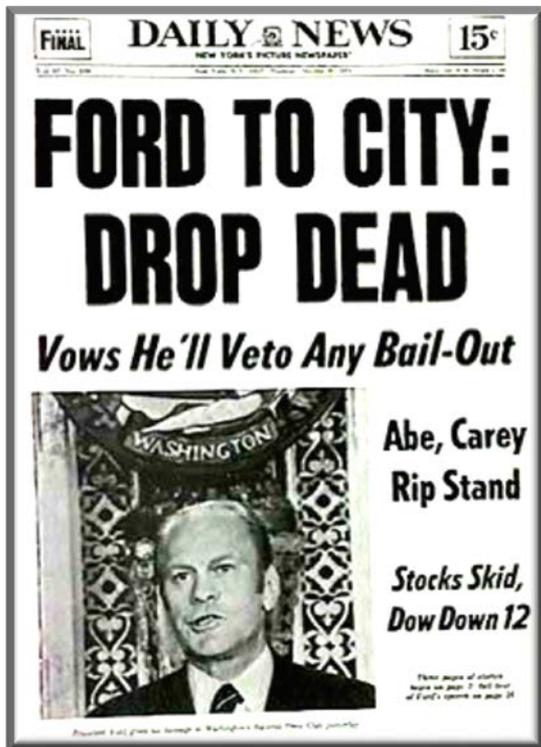
Steve Heaney, Stifel Nicolaus

and Tim Schaefer, Magis Advisors

MAJOR SECURITIES LAWS AREN'T NEW



BUT, REGULATION OF THE MUNICIPAL MARKET CAME LATE TO THE PARTY



Before 1975 – There was essentially no regulation of municipal securities.

1975 – New York City’s moratorium on payment of short-term debt, and especially the events leading up to the moratorium, changed that. The Securities Acts Amendments were adopted, including the “Tower Amendment,” which specifically exempted regulation of issuers and created the Municipal Securities Rulemaking Board.

November 1975: the MSRB establishes the foundation of the current regulatory framework that focuses on

Registration of the people instead of the securities

1976 – 1978 the MSRB establishes foundational rules for governing certain practices and behaviors of those people, including:

1. Standards of professional qualifications (G- 2)
2. Fair practice rules (G-17)

THIRTY-FIVE YEARS LATER, WE'VE GOT MORE RULES



1989 – SEC adopts Rule 15c2-12, the “reasonable basis” rule, requiring underwriter to obtain agreement from issuer to furnish official statement.

1993 – SEC releases staff report with recommendations for improving the municipal securities market in general.

1994 – MSRB adopts Rule G-37 – the “pay-to-play” rule following what SEC Chair described as “the continuing problem of political influence and patronage.”

1994 – SEC expands Rule 15c2-12 to require continuing disclosure “to deter fraud and manipulation in the municipal securities market.”

2010 – Rule G-37 expanded to include reporting of financial support to ballot campaigns.

2012 – Revisions to Rule G-17 requiring underwriters to disclose to issuers certain information about the underwriter’s duties to the issuer.

2013 – SEC releases municipal advisor rule, defining what is a “municipal advisor.”

2014 – The MSRB proposes Rule G-42, applicable to the duties and standards of care expected of municipal advisors (financial advisors).

WHAT'S DIFFERENT AFTER DODD-FRANK?



Dodd-Frank law tries to “fix” some problems:

- ✓ MSRB membership altered
- ✓ Registers financial advisors
- ✓ Creates fiduciary standard for advisors

But, leaves other important issues unresolved:

- Improvements to disclosure protocols
- Fiduciary standards for others involved in the financing
- Qualifications standards for municipal advisors

MAKING SENSE OF IT

1

How should you, as a municipal issuer, analyze, then implement good “hiring” practices for your underwriter, advisor, and others in order to reconcile the process with “good” public policy and standards of prudence? Are your advisors up to the job you’ve asked them to perform? Does your advisor have the expertise and the temperament to fulfill its duty to you? Is your advisor conflicted without you even knowing it? How do these changes affect your underwriter?



2

The municipal advisory community will have to learn to “go big” or “go home.” Many wanted the “legitimacy” implicit in governmental registration. Now they’ve got it. The question is: ***“What will they do with it?” And, how will that affect you?*** Is the “contingent fee” arrangement dead? If so, how will you respond?



3

How will you determine that your advisor’s fiduciary duty has been fulfilled? How will you discern “duties of loyalty” owed by the various members of your financial team? How will you discover potential problems with those loyalties? How will you determine whether the advisor has the expertise and the skill to meet the “standard of care” test? Does this mean you cannot rely on your underwriter the way you used to?



WHAT CAN YOU DO TO HELP?

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“What this all means is,
it depends.”

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Get involved. . .

Offer comments on the MSRB's
proposed Rule G-42.

Public comment period ends
March 10, 2014

Submit comments electronically
or by mail

All comment letters received are
published on the MSRB website

To contact the MSRB

Online msrb.org

emma.msrb.org

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