

# **Bond Case Briefs**

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## **MSRB Holds Quarterly Board Meeting.**

**Washington, DC** – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 27-28, 2016 where it advanced several substantive rulemaking proposals and engaged in corporate and financial oversight matters in preparation for the start of the MSRB's upcoming fiscal year.

### **Operating Plan and Budget**

The Board discussed and approved the organization's operating plan and budget for the fiscal year that begins October 1, 2016. The plan includes numerous objectives consistent with the MSRB's [strategic goals](#) and its mission to protect investors, state and local government issuers, other municipal entities, obligated persons and the public interest. The Board's discussion of the MSRB's budget included an extensive analysis of the MSRB's organizational reserves, resulting in the approval of a \$5.5 million rebate distribution of excess reserves to brokers and dealers who paid any underwriting, transaction or technology fees during the first nine months of FY 2016. The excess reserves result from underwriting and trading volumes exceeding budgeted levels as well as careful management of expenses. The rebate will be distributed proportionately in September, relative to the fees paid. Details of the MSRB's operating plan will be announced at the start of its fiscal year.

### **Mark-Up Disclosure**

At its meeting, the Board acted on multiple initiatives related to improving transparency in the municipal bond market and the activities of dealers and municipal advisors. It voted to file with the Securities and Exchange Commission (SEC) a rule proposal that would require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of same-day principal transactions. The proposal is also to include related guidance on the establishment of the prevailing market price used to calculate mark-ups. The mark-up disclosure proposal, which has been under development for several years, seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market. The MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on its parallel confirmation disclosure initiative for transactions in corporate bonds.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this Board for several years," said MSRB Chair Nat Singer. "Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making."

### **Bank Loan Disclosure**

In another transparency-related issue, the Board discussed [comments received](#) on a concept release to improve disclosure to investors of direct purchases and bank loans by municipal securities issuers. The Board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness and evaluating the impact of these financings on existing and potential investors. However, in light of comments received in response to the concept proposal, the Board will not pursue rulemaking at this time but will continue to raise awareness about the issue among regulators and market participants, and encourage industry-led initiatives

that support voluntary disclosure best practices. In order to facilitate the filing of bank loan disclosures on EMMA, the MSRB has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process by issuers and also enhances the ability of investors to locate available bank loan disclosures.

“Our concerns about the need for improved disclosure of bank loans and other financings by municipal entities and obligated persons has not diminished whatsoever,” Singer said. “While we acknowledge that MSRB rulemaking is not the best approach at this time, we continue to urge market participants to consider this shortcoming in our market.”

### **Customer and Client Complaints**

As part of its effort to update certain MSRB rules, the Board agreed to file with the SEC amendments to MSRB Rules G-8 and G-9, on recordkeeping and retention, and to MSRB Rule G-10, on delivery of the investor brochure. The changes modernize requirements for dealers’ handling of complaints by customers and simplify the process by which dealers provide customers with regulatory information. The amendments also establish requirements for municipal advisors’ handling of client complaints and establish a process for municipal advisors to provide municipal entity and obligated person clients with regulatory information. Separately, the Board agreed to extend, as relevant, to municipal advisors [existing guidance](#) for dealers under MSRB Rule G-32, on the use of electronic media to deliver to and receive information from customers.

### **ABLE Programs**

In other municipal advisor rulemaking, the Board agreed to file with the SEC for immediate effectiveness two rule interpretations related to municipal advisors that provide advisory services to sponsors or trustees of Achieving a Better Life Experience (ABLE) programs. The proposed interpretation to MSRB Rule G-42, on duties of non-solicitor municipal advisors, will explicitly provide that current guidance applicable to 529 college savings plans and local government investment pools is equally applicable to interests in ABLE programs. The interpretation to MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, will clarify that municipal advisors to sponsors or trustees of 529 plans or ABLE programs and other municipal fund securities are subject to Rule G-44’s supervision requirements. The Board also agreed to file with the SEC for immediate effectiveness a proposed change to MSRB Rule G-45, on reporting of information on municipal fund securities, to delay until the reporting period ending June 30, 2018 the date submissions are due from underwriters of ABLE programs.

### **Definition of Underwriter**

In its final regulatory action, the Board agreed to file an amendment to MSRB Rule G-34, which details when underwriters and financial advisors must apply for the assignment of a CUSIP number for a new issue of municipal securities. If approved by the SEC, the amendment would harmonize the definition of underwriter in Rule G-34 with that of MSRB Rule G-32, which defines underwriter as “a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering.” The MSRB has historically interpreted the underwriter definition in Rule G-34 to include placement agents and dealers that purchase securities from an issuer as principal, and the proposed amendment codifies the rule’s original intent.

### **EMMA and Market Transparency**

The Board discussed an update to its 2012 Long-Range Plan for Market Transparency Products and agreed to defer until its strategic planning session in January 2017 action on an updated plan. The Board did address the potential addition of third-party market indicators, including yield curves, to the MSRB’s Electronic Municipal Market Access (EMMA®) website and agreed that the associated

benefits for investors and issuers warrant adding such yield curves to EMMA.

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