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MSRB Examining Primary Offering Practices and Rules.

PHOENIX – The Municipal Securities Rulemaking Board is preparing to issue a concept release seeking market feedback on a broad range of primary offering practices, MSRB executive director Lynnette Kelly said Friday.

The concept release, a type of document the MSRB uses to seek input on potential rule changes, is large and should be released sometime in the next two months, Kelly said following the conclusion of the MSRB's recent board meeting of its fiscal year, which ends on Sept. 30.

The MSRB has a number of rules that touch on primary offering practices, Kelly said, such as MSRB Rule G-11, on primary offering practices, MSRB Rule G-32, on disclosures in connection with primary offerings, and the collection of certain data.

MSRB executive director Lynnette Kelly said the MSRB wants to ask a lot of questions about primary offering practices.

Kelly specifically mentioned the Securities and Exchange Commission's August 2015 enforcement case against Edward Jones and whether that might lead to rule changes. In that case, its first on primary market pricing of bonds, the SEC ordered the St. Louis based, retail-oriented dealer to pay more than \$20 million for overcharging retail customers for new munis.

The commission found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

In the wake of that case, SEC staff openly questioned whether industry practices needed to change.

Work on the concept release dates from around that time, or slightly afterwards, according to Kelly.

"This has been in motion 12-18 months," she said.

The announcement of the release came a day after the MSRB reraised decades-old concerns about issuers selecting or influencing the selection of underwriter's counsel prior to primary offerings, an issue Kelly described as a "tangent" to the concept release's aim, as the MSRB has no authority to mandate issuer behavior.

Before adjourning, the board also agreed to file with the SEC changes to its Rule G-34 on CUSIP numbers. If approved by the SEC, the change would, for the first time, require non-dealer municipal advisors to be subject to the CUSIP requirement for new issue securities that are sold in competitive offerings.

Dealers had complained about the MSRB's "clarification" that they are required to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent.

The rule change includes an exception for dealers and municipal advisors from the CUSIP number requirements. Under the exception, CUSIP numbers are not needed for direct purchases by banks, their non-dealer control affiliates and consortiums, where the dealer or municipal advisor reasonably believes the purchaser's intent is to hold the securities to maturity.

Kelly also noted that the deadline for registered MAs to take and pass the Series 50 qualification exam is Sept. 12, but that 128 of the 633 MA firms registered with the MSRB still do not have a single person who has passed the test.

The MSRB has been reaching out to MAs about this and has some concerns about the implications for issuers and for dealers who rely on the independent registered municipal advisor or IRMA exemption from MA registration when they provide advice to issuers. A pilot Series 54 exam for MA principals should be available in 2019, said Kelly.

The board agreed to revise draft amendments to Rule G-21 on dealer advertising, and to file them, along with a proposed new Rule G-40 on municipal advisor advertising, with the SEC. The MSRB said its proposed amendments to Rule G-21 would, among other things, enhance the MSRB's fair-dealing provisions by harmonizing Rule G-21 with certain of FINRA Rule 2210's content standards for advertisements, including testimonials. Similarly, proposed new Rule G-40 would set forth general provisions, address professional advertisements and require principal approval for advertisements by MAs.

Kelly said the board next week will announce new members and officers slated to take their seats on the MSRB's Board when it begins its new fiscal year Oct. 1.

The Bond Buyer

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