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Lawyers Critical of MSRB Guidance.

CARLSBAD,CALIF. – The Municipal Securities Rulemaking Board should be focusing its time and resources on being more efficient, rather than commenting on issues over which it has no authority, lawyers said Monday.

Their comments came during a panel discussion on market disclosure and pricing transparency at The Bond Buyer's California Public Finance Conference.

The panel discussion turned to recent MSRB activities and the board's associate general counsel Margaret "Peggy" Blake was among the speakers.

Her fellow panelists took some issue with the MSRB's recent issuance of a notice aimed at issuers, urging them not to selectively disclose information only to certain investors. While the MSRB does have a federal mandate to protect issuers, it has no authority to regulate their activities.

The notice, published on Sept. 13, warned that issuers face the potential for fraud charges if known material information is omitted from required public disclosures. Information generally has been deemed to be material under case law if there is a substantial likelihood that it would be considered important by a reasonable investor making an investment decision.

Dave Sanchez, a senior counsel at Norton Rose Fulbright, said he applauded the MSRB for its efforts to evaluate the efficiency of its current rulebook, a project the board began this year after finally finishing a lengthy list of federally-mandated rulemaking.

But Sanchez added that the board shouldn't be collecting fees from regulated broker-dealers and municipal advisors and then spending time and money talking about issuer behavior rather than undertaking the comprehensive review of its rules that the board has underway.

"If you have a kitchen renovation in progress, you shouldn't be out mowing the neighbor's yard," Sanchez said.

Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association reacted to that statement with an "Amen."

The directive coming down from the Trump administration emphasizes evaluating current rules for ways to make them more efficient, she said, adding, SIFMA supports those efforts. "We applaud any push toward efficiency," said Norwood.

Bill Oliver, the industry and media liaison for the National Federation of Municipal Analysts, expressed a less forceful opinion of the MSRB notice. But he noted that warning issuers against disclosure can have negative impacts.

"Anytime you tell people they should be careful about what they tell investors, it always leads to less information," he said.

Blake said that the MSRB's notice was merely guidance and in no way prescriptive, and had actually been well-received.

"Believe it or not, we have gotten a lot of positive feedback," she said.

Panelists also discussed other disclosure issues, including the SEC's proposal to amend its Rule 15c2-12 in a way that would require issuers to file material event notices to EMMA when they incur a material financial obligation such as a bank loan, as well as when debt becomes subject to certain provisions such as one that calls for an acceleration of payments.

Norwood reiterated dealer concerns that such information is sometimes difficult for underwriters to find, leaving them potentially liable if they underwrite bonds with shoddy disclosure.

Oliver said such information clearly needs to be disclosed.

By Kyle Glazier

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