

Bond Case Briefs

Municipal Finance Law Since 1971

MSRB Floats Proposal to Streamline Disclosure Process.

WASHINGTON — The disclosures underwriters provide to issuers at the beginning of a deal could become shorter under a proposal to revise interpretive guidance on the Municipal Securities Rulemaking Board's fair dealing rule.

The MSRB on Friday asked the market for comment on proposed amendments to interpretive guidance it issued in 2012 on the application of its Rule G-17.

The MSRB asked for comment on the guidance back in June, and market participants subsequently provided it. That 2012 guidance established obligations for underwriters to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. But those disclosures have in many cases become too lengthy and boilerplate to be as useful as intended, according to many in the market.

The MSRB's proposal is part of an ongoing retrospective review of its rules and their interpretations, and in this case is aimed at making the so-called "G-17 letters" more useful to issuers and less burdensome for underwriters.

The proposal would make several key changes, both in what disclosures are provided and in who must provide them. The current interpretive guidance requires that underwriters provide disclosure of both actual and potential conflicts of interest, but under the new proposal they would need to disclose only actual conflicts. Potential conflicts would be disclosable only if the dealer believed it likely that they would become actual conflicts during the term of the transaction.

Another change would shift responsibility for providing disclosures on behalf of an underwriting syndicate onto the shoulders of the syndicate manager. Under the current guidance, a syndicate manager may provide the disclosures on behalf of the group. Under the new proposal, the syndicate manager would be responsible for providing both standard and transaction-specific disclosures on behalf of the syndicate.

The MSRB is also proposing to allow an alternate method for providing the standard disclosures that do not vary from transaction to transaction. Under the proposal, once the standard disclosures have been made in a transaction the syndicate manager could simply reference and reconfirm those prior standard disclosures for subsequent deals with that issuer.

This means that a firm that participated in the previous syndicate and is now manager on a new transaction would could benefit from the disclosures made by the manager on the previous issuance. Further, that syndicate manager could reference back to the disclosures on behalf of new members of the syndicate which did not participate in the prior one.

Issuers could choose, however, to require the standard disclosures be provided to them again. In either case, the transaction-specific disclosures would need to be made anew each time.

The MSRB's proposal would also allow an email receipt to serve as confirmation that the disclosures

had been provided to the issuer. Some underwriters have complained that obtaining confirmation of receipt as provided by the 2012 guidance is sometimes challenging because issuers are not responsive.

The MSRB chose not to touch some possibilities raised in comments, such as allowing issuers to opt out of receiving the disclosures or creating a system of disclosure “tiers” based on the size or other aspects of the issuer.

“The concepts covered in our G-17 interpretive guidance are fundamental to the underwriter/issuer relationship,” said MSRB Chair Gary Hall. “We think the proposed changes will enhance operational fairness and efficiency in the market, and our effort to solicit comments is connected with our retrospective rule review, which is a key focus for the MSRB this year.”

The board is asking for comments by Jan. 15.

After the comment period the board could choose to alter the proposal or could ask the Securities and Exchange Commission to approve it.

The Bond Buyer

By Kyle Glazier

November 16 2018, 4:31pm EST