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MSRB to Discuss SEC's Concerns on Disclosure at Quarterly Meeting.

WASHINGTON — The Municipal Securities Rulemaking Board will begin preliminary conversations to address Securities and Exchange Commission Chair Jay Clayton's comments about improving the timeliness of issuer disclosures at the board's quarterly meeting next week.

The MSRB announced the meeting's agenda Thursday in advance of the meeting, which will be held Jan. 29-31 at the board's Washington headquarters.

The impetus for the discussion comes at least in part from Clayton's statement at a December 2018 SEC conference that the SEC may be interested in taking additional regulatory action to improve municipal market disclosure.

Clayton said in prepared remarks that he has asked the commission's Office of Municipal Securities to work with the MSRB to improve transparency and improve the timeliness of the filing of issuer financial information under continuing disclosure agreements.

The SEC does not have the authority to force issuers to file annual financial information or other continuing disclosure documents more quickly, but Clayton has said he believes there are steps the SEC can take to at least make investors aware that information filed on EMMA might be stale.

"The first step in improving it is to make sure that investors understand that the financial statements they are looking at in some cases are 18 months old," Clayton told a Senate panel last month.

The quarterly meeting will be the first time the board will have met with the SEC since December.

"There's a lot of conversation around the best way to bring more transparency to this issue," said Lynnette Kelly, MSRB CEO and president. "There's certainly a lot of very interested constituencies in the municipal market who care a lot about this issue, so very preliminary discussions at this point."

At the meeting, Kelly said MSRB staff will present data to the board illustrating the difference between when issuers promise to file their financial statements on EMMA to when they're actually filed.

The board will also discuss next steps on the issue of pennying. Pennying occurs when a dealer places a retail client's bid-wanted out to the market and determines the winning bid, but rather than executing the trade with the winning bidder marginally outbids the high bid and buys the bonds for its own account.

The board has expressed concern that widespread pennying could disincentive participating in the bid-wanted process, discourage bidders from giving their best price in a bid-wanted and "may impact the efficiency of the market." The board last year requested comment on interpretive guidance that stated that using the bid-wanted process solely for the purposes of price discovery, whether via a brokers' broker or an alternative trading system, could be a violation of the board's Rule G-17 on fair dealing.

The board could decide not to take next steps or could direct staff to get more information, do more economic analysis or decide to move and issue guidance, Kelly said.

As for Rule G-17, the board will address comment letters received earlier this month regarding proposed amendments to the 2012 interpretive guidance of the rule.

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 has proposed amending the guidance to among other things require dealers to disclose only actual rather than potential conflicts of interest. Dealers said in comment letters to the board that they supported that idea. But the MSRB hasn't had much time to mull all the comments, as market groups submitted them fewer than two weeks ago.

"We've not had the sufficient time to do an in-depth analysis of the comment letters, we've had no time to go back to the commentators so that we really understand what their concerns are," Kelly said.

She added more outreach needs to happen and afterwards expects to go back to the board in the next three to four months with a firmer recommendation on next steps.

At the meeting, the board will meet with members of the Securities Industry and Financial Markets Association, National Association of Municipal Advisors and Government Finance Officers Association to discuss engagement and future outreach events in 2019. This is part of a new initiative to expand the board's stakeholder engagement efforts.

Other items on the agenda include the board's ongoing retrospective review of its existing rules, an update on the MSRB's data plan, and a discussion of the MSRB's financial management.

Also this week, the board released its Series 54 Examination Guide for municipal advisor principals, who must eventually pass the exam to be qualified. The 13-page guide has sample multiple choice questions and a "road map" with links to rules and concepts.

The permanent exam will be available in the fall, and at that time municipal advisor principals will have a one-year grace period to become qualified. Municipal advisor principals can take a voluntary Series 54 pilot, offered from March to July 2019.

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