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New Guidance Would Streamline Underwriter Disclosures.

WASHINGTON _ Issuers will soon see more concise disclosures from underwriters as the Municipal Securities Rulemaking Board prepares to file amendments to interpretive guidance on its fair dealing rule.

The new amendments to be filed to the Securities and Exchange Commission, which the MSRB said were “generally articulated” in its request for comment in November 2018, will give responsibility to the lead underwriter to make certain disclosures on behalf of the syndicate rather than each firm providing very similar disclosures. The board made the decision to file for SEC approval during its quarterly meeting last week. If approved the amendments would be effective at least six months after the filing.

?We?ve worked diligently through the comment process and additional stakeholder outreach to arrive at a set of improvements that preserve the intent of the rule in protecting issuers,? said MSRB Chair Gary Hall.

The MSRB’s 2012 guidance on Rule G-17 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 disclosures include both actual and potential conflicts of interest.

?We looked at the requirements and streamlined them, made them more efficient, gave responsibility to the lead underwriter to make the disclosures so that the deal specific and underwriter specific disclosures that go to the issuer are much more meaningful,? said MSRB President and CEO Lynnette Kelly.

The board?s intent was to make sure an issuer understood any potential conflicts of interest and that they received appropriate disclosure from the syndicate, Kelly said.

The MSRB is seeking to amend the standard of potential conflicts of interest by underwriters to include those most relevant to the transaction. The objective is to provide a reasonable balance between reducing the volume of disclosures and ensuring issuers receive essential information.

In the past, dealers said that the MSRB should amend existing the Rule G-17 guidance to require that only actual rather than potential conflicts of interest be disclosed to issuers before a new issuance. The new guidance, if approved, will narrow the required conflict disclosures, according to the MSRB.

During the meeting, the board also decided not to take any action related to the timeliness of issuer financial disclosures at this time. Late last year, SEC Chair Jay Clayton said he has asked the commission?s Office of Municipal Securities to work with the MSRB to improve transparency about the timeliness of that information.

The board is continuing to have discussions about the age of the disclosure and possible implications for investors. Talk swirled around leveraging EMMA to highlight when financial disclosures are made available, Hall said, but the board is not taking any action at this time.

?The board is going to continue discussing the issues around the age of issuer financial statements,? Kelly said.

The board also approved the publication of a “compliance resource” for its Rule G-20, on gifts and gratuities.

?We believe this resource will supplement existing FAQ?s on G-20 and include supervisory considerations for complying with the limited exclusion for business entertainment,? Hall said.

The board discussed comments received from a draft interpretive guidance published in September about the potential harms of ?pennying.? Pennying occurs when a dealer places a retail client?s bid-wanted out to the market and determines the winning bid, but then rather than executing the trade with the winning bidder marginally outbids the high bid and buys the bonds for its own account.

Dealer groups and individual firms weighed in, in November in comment letters, emphasizing that the seller?s intent was important in deciding if a firm is being abusive.

The board is continuing to discuss pennying and prearranged trading in the future, Hall said. Dealer groups have said the MSRB cast too wide a net with its draft January guidance on prearranged trading, and want clarification on what conduct constitutes a violation of its fair dealing rule.

The board also previewed the application of a new algorithm on EMMA that would create predictive searching. Users could type a few characters in the search box on the home page and get a drop-down list of suggested items. It will be available in May.

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