
FINRA Facts and Trends: March 2024 - Bracewell

Welcome to the latest issue of Bracewell's FINRA Facts and Trends, a monthly newsletter devoted to condensing and digesting recent FINRA developments in the areas of enforcement, regulation and dispute resolution. This month, we report on FINRA's focus on uses of artificial intelligence as an emerging risk, oral argument in the Alpine Securities case that has broad implications for FINRA, a pair of enforcement matters that shed light on FINRA's concerns with off-channel communications, and much more.

FINRA Proposes Expanding Category of Persons Who May Receive Projections and Targeted Returns

In our December 2023 issue, we discussed a FINRA proposal that would amend Rule 2210 (Communications with the Public), which generally prohibits projections of performance or targeted returns in member communications, subject to certain exceptions. The amendment would allow member firms to provide projected performance or targeted returns in institutional communications and in communications to qualified purchasers.

FINRA has now filed Partial Amendment No. 1, which "marginally expand[s]" the category of persons who can receive projected performance or target returns to include "knowledgeable employees." As defined in Rule 3c-5 of the Investment Company Act, the term "knowledgeable employees" generally includes officers, directors, trustees, general partners and advisory board members, or persons serving in similar capacities of the fund or certain of its affiliates, as well as other employees that participate in the investment activities of the fund or certain of the fund's affiliates. As for why FINRA elected to include "knowledgeable employees," it noted that these employees typically have sufficient knowledge of the operations of the private funds with which they are associated. As a result, they are "less likely not to understand the risks and limitations of projections or targeted returns associated with such funds." Comments on the original amendment and Partial Amendment No. 1 are due by March 20, 2024. Anyone who wishes to file a rebuttal to a comment must do so by April 3, 2024.

FINRA Zeroes in on Vendor Use of Generative AI and Large Language Models

In its 2024 Annual Regulatory Oversight Report, which we reported on earlier, FINRA classified artificial intelligence as an "emerging risk," noting that deploying AI in the industry could affect virtually all aspects of a broker-dealer's operations. Now, in a recent episode of the FINRA podcast "FINRA Unscripted," three prominent executives at FINRA offered further insight into two particular risks: vendor use of generative AI and large language models. Generative AI, which gained popularity with the launch of ChatGPT in November 2022, refers to a category of artificial intelligence systems that are designed to generate new, original content rather than simply analyze existing data. While generative AI has the ability to create new content, including text images and even audio, based on patterns and information that it learns from extensive training data, large language models are specifically designed for tasks revolving around natural language generation

and comprehension. Large language models have been trained on immense amounts of text data that allow them to learn patterns and relationships between words and phrases and generate natural language and other types of content to perform a wide range of tasks.

Generative AI and large language models, while providing efficiencies that help member firms better serve customers, also present serious vendor management questions. From time to time, FINRA has made a point of cautioning firms and their registered representatives on the potential pitfalls when relying on these third-party vendors. During the COVID-19 pandemic, for example, FINRA observed that firms were increasingly leveraging vendors to perform risk management functions and to assist in supervising sales and trading activity and in customer communications. To address this concern, in 2021, FINRA published Regulatory Notice 21-29 on the topic of supervisory obligations related to outsourcing to third parties.

Now, however, vendor use of artificial intelligence presents another, albeit less predictable, layer of concern about accuracy, privacy, bias and intellectual property. According to Andrew McElduff, Vice President with Member Supervision's Risk Monitoring team, when it comes to supervising a vendor's use of these technologies, firms must do their diligence and ask the necessary questions to determine where their information is being stored and whether it is restricted only for the firm's use. When it comes to firms' use of vendors, Haimera Workie, Vice President and head of FINRA's Office of Financial Innovation, cautions firms and their registered representatives: "You can delegate a function, but you can't delegate ultimate responsibility." As a result, firms should make sure to have in place written compliance and operational policies and procedures concerning the supervision of artificial intelligence systems and ensure that all contracts with third-party vendors protect the information of the firm and its clients.

Oral Argument Held in Challenge to Constitutionality of FINRA Enforcement Powers

The landmark case brought by Alpine Securities Corporation against FINRA continues to make its way toward a decision in the DC Circuit Court of Appeals, with an oral argument held last month. As we have reported previously, the case has potentially monumental implications for FINRA's future.

Alpine, a firm that was expelled from FINRA membership following a 19-day hearing by an extended FINRA hearing panel, has sought to enjoin this so-called "corporate death penalty" by challenging the constitutionality of FINRA's enforcement powers based on an argument that FINRA wields those powers in violation of the Appointments Clause of the US Constitution. This argument was applied by the US Supreme Court, in *Lucia v. Securities and Exchange Commission*, decided in 2018, to hold that the SEC's Administrative Law Judges (ALJs) are subject to the Appointments Clause. In its briefs, FINRA has characterized the challenge to its own powers as an "existential threat."

While there is always danger in attempting to read into a court's comments at oral argument, the three-judge panel of the DC Circuit expressed a fair degree of skepticism concerning the constitutional challenge brought by Alpine.

Counsel for Alpine argued that the "existential threat" runs both ways, and that the remedy Alpine seeks is the "ability to continue to run its business, while it pursues its claims, free from summary imposition of the corporate death penalty by an unaccountable enforcer of federal law."

But Judge Millett pushed back on the phrase "corporate death penalty," pointing out that FINRA cannot actually close Alpine's (or any firm's) business, but only expel Alpine from its private organization. Still, Judge Millett acknowledged that "the consequence of that, thanks to Congressional statute, may be that it's going to be very hard to stay in business." Chief Judge Srinivasan also provided some clarification as to whether FINRA is truly "unaccountable," asserting

that any FINRA decision is immediately appealable to the SEC, which has the authority to issue a stay, such that the decision does not “irrevocably take effect immediately.” Judge Millett, however, leveled the harshest criticism of Alpine’s position, stating: “I think it would be the first time . . . that a court would be declaring someone an officer of the United States when they are hired by, employed by, and paid by a private entity.”

Counsel for FINRA took up this argument, telling the Court that: “No court in any jurisdiction has ever held that the Appointments Clause applies to employees of a private corporation. Alpine has not identified any reason for this Court to be the first to reach that unprecedented conclusion.”

The judges had difficult questions for FINRA’s counsel too. Chief Judge Srinivasan appeared concerned that FINRA’s position was overly formalistic, and would allow the SEC to avoid the Appointments Clause problem identified in *Lucia* by doing nothing more than retaining a private contractor to perform the function of its ALJs. Judge Millett, however, argued that “historically, that was how the federal government did prosecutions It would contract out lawyers to prosecute cases. . . . Lincoln prosecuted cases for the federal government.” Of the three-judge panel, Judge Walker appeared most troubled by the implications of FINRA’s arguments, telling FINRA’s counsel, “I think where we part ways is that you . . . disagree with this statement: significant executive power cannot be exercised by private citizens at all.”

Bracewell continues to monitor this case and will report on its progress and potential implications for FINRA.

Notable Enforcement Matters and Disciplinary Actions

Off-Channel Communications. In its 2024 Annual Regulatory Oversight Report (which we highlighted in our January newsletter), FINRA emphasized its growing concern surrounding off-channel communications — those that occur on non-firm platforms or devices. FINRA has backed up its warning with a series of fines and suspensions stemming from brokers’ engagement in such off-channel communications. In a recent enforcement action in February, FINRA imposed a \$75,000 fine on a brokerage firm, alleging that it failed to adequately supervise employees’ use of personal email for business-related communications. The firm also allegedly failed to retain these emails, contravening both Securities Exchange Act and FINRA rules. Despite being alerted to at least one representative regularly using personal email for business purposes, the firm took insufficient action and merely issued automated warnings with respect to some of the off-channel communications. As a result, correspondence between representatives’ personal email addresses and customers remained unpreserved. In a separate enforcement action, a broker agreed to fines and a two-month suspension from the industry for allegedly exchanging hundreds of securities-related text messages with 14 firm customers via his personal cell phone. Since the device was not sanctioned by his firm, none of these messages were captured or maintained, as required by the Exchange Act and FINRA rules. These actions, and others, underscore FINRA’s continuing commitment to enforce its rules concerning off-channel communications.

Municipal Securities. FINRA recently concluded what appears to be its first disciplinary case involving the close-out requirements outlined in the Municipal Securities Rulemaking Board (MSRB) rules. An investment bank was fined \$1.6 million for its failure to promptly close out failed inter-dealer municipal securities transactions. According to FINRA, the bank had neglected to cancel or close out 239 failed inter-dealer municipal transactions — amounting to approximately \$9 million — within the mandated 20-calendar-day period following the settlement date. In fact, some transactions remained unresolved for nearly three years. Moreover, the bank allegedly failed to take necessary steps to acquire timely possession or control over 247 short positions in municipal securities valued at approximately \$9.4 million. It remains to be seen whether this enforcement

action resulted from the severity of FINRA's allegations in this particular case, or whether it signifies a heightened focus on enforcement efforts within the municipal securities market.

Municipal Securities. In another municipal bonds case, FINRA expelled an underwriter and barred its principals from the industry for making fraudulent misrepresentations in the sale of municipal bonds. In a comprehensive 133-page decision, the OHO found that the underwriter made fraudulent misrepresentations concerning a \$6 million municipal bond offering in Alabama, and negligent misrepresentations with respect to separate \$2.2 million bond offering in Illinois. Both offerings failed shortly after closing, and the bondholders — many of whom were elderly — lost most of their investments. As a result of their misconduct, the underwriter and its principals (who had previously run afoul of FINRA rules) were barred indefinitely from the industry and were ordered to pay more than \$4.7 million in restitution, plus interest and costs.

Securities Lending. In separate actions, four broker-dealer firms agreed to pay a combined \$2.6 million in fines and restitution to settle claims that they failed to properly supervise fully paid securities lending programs. The Letters of Acceptance, Waiver, and Consent (AWCs) detailing FINRA's findings in these matters are available [here](#), [here](#), [here](#) and [here](#). Fully paid securities lending programs permit investors to lend out securities they already own to clearing firms, which in turn lend the securities to third parties for a fee. The fee is generally shared among the various participants: the customer, the broker-dealer and the clearing firm. When the investor chooses to sell the borrowed securities, the clearing firm is responsible for recalling them from the borrower. In each of the four cases, FINRA alleges that the broker-dealers automatically enrolled new customers in fully paid securities lending programs upon account opening, irrespective of suitability, and then pocketed the revenue they received from the clearing firms, in violation of written disclosures. Additionally, some customers who received cash payments in lieu of dividends allegedly suffered adverse tax consequences, for which the companies agreed to pay more than \$1 million in restitution.

FINRA Notices and Rule Filings

Regulatory Notice 24-02 – FINRA has adopted new FINRA Rules 3110.19 (Residential Supervisory Location) and 3110.18 (Remote Inspections Pilot Program). FINRA also announced the end of the pandemic-era relief issued under Regulatory Notice 20-08. Rule 3110.19, which will become effective on June 1, 2024, establishes a new framework for inspections of private residences at which an associated person engages in specified supervisory activities. These private residences will be treated as non-branch locations — defined as “residential supervisory locations (or RSLs)” — and will be subject to inspections at least every three years, instead of the annual inspections currently required for a supervisory branch office. Firms must meet specified conditions to qualify for an RSL designation, including conducting and documenting a risk assessment. Rule 3110.18, which will become effective on July 1, 2024, establishes a voluntary, three-year remote inspections pilot program, which will allow member firms to fulfill their inspection obligations for qualified branch offices remotely (without an on-site visit). Firms must meet certain specified terms to participate, and must opt in to the pilot program no later than June 26, 2024. Finally, FINRA ended the relief provided under Regulatory Notice 20-08. A measure extended during the COVID-19 pandemic, Regulatory Notice 20-08 temporarily suspended the requirements for member firms to maintain updated U4 information with respect to the employment address for certain employees who temporarily relocated during the pandemic. The Notice also suspended the requirement to report newly opened temporary office locations or space-sharing arrangements. FINRA announced that these relief measures will expire on May 31, 2024.

Regulatory Notice 24-03 – FINRA has amended its Code of Arbitration Procedure to reflect changes to the arbitrator list selection process. The changes include:

- Randomly generated lists of arbitrators for each proceeding will now incorporate a manual review for conflicts of interest that are not identified in the list selection algorithm, with the Director empowered to exclude arbitrators from lists based on its review of current conflicts of interest;
- The Director is now required to provide a written explanation with respect to any decision to grant or deny a party's request to remove an arbitrator; and
- The time for a party to request removal of an arbitrator for conflict of interest or bias (or for the Director to remove an arbitrator on its own initiative) will be from when arbitrator ranking lists are generated, to no later than the date on which the first hearing session begins.

FINRA also amended its Codes of Arbitration Procedure to make numerous clarifying and technical changes to the requirements for holding prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record.

Regulatory Notice 24-04 – FINRA has adopted amendments to its rules pertaining to securities settlement including by shortening the timeframes for delivery or settlement, consistent with the SEC's recent adoption of final rules that changes the settlement cycle for most U.S. securities transactions from T+2 to T+1. The Regulatory Notice also amends 17 related FINRA rules with respect to transaction reporting, trade report processing, dates of delivery, and other similar matters.

Regulatory Notice 24-05 – FINRA announced the adoption of new Rule 6151 (Disclosure of Order Routing Information to NMS Securities). The new rule will go into effect on June 30, 2024, and will require member firms to submit to FINRA order routing reports for NMS securities, as required under SEC Rule 606(a). The reports will be required on a quarterly basis and will be publicly reported on a free website for at least three years.

Regulatory Notice 24-06 – In consultation with the Department of the Treasury, FINRA announced that, on March 25, 2024, it will begin disseminating an end-of-day file that includes information on individual transactions in US Treasury securities that are “on-the-run nominal coupons.” FINRA will also provide a new Historic TRACE data set for Treasury securities, which will contain transaction information on a six-month delayed basis. These reports will be publicly available and free of charge on FINRA's website for non-professionals' personal, non-commercial purposes, on a next-day basis.

SR-FINRA-2024-004 – FINRA has proposed a rule change that would amend FINRA Rule 6730 to reduce the 15-minute TRACE reporting timeframe to one minute, with exceptions for member firms with de minimis reporting activity and for manual trades.

Bracewell LLP – Joshua Klein, Keith Blackman and Russell W. Gallaro

March 19 2024

[Issuers On Notice For Climate Risks.](#)

Municipal issuers who've yet to make a habit of disclosing material climate-related risks may be at risk of violating the Securities and Exchange Commission's antifraud provisions, following the rollout of its newly updated climate rule last week.

The SEC's new climate rules, reviled by many on both sides of the aisle for either doing too much or not doing enough, represent a compromise from the original 2022 proposal and drops that initial provision requiring corporate issuers to disclose emissions from supply chains. Now, registered companies are on the hook for reporting emissions from their operations and energy purchases, or

Stage 1 and Stage 2, respectively.

The rule does not directly touch the municipal bond market but some have long feared that this model will eventually be applied to the muni market, either directly or through enforcement and could eventually see Rule 15c2-12 (which lays out specific material events that need to be disclosed) include climate risk events.

“The regulation assumes that investors want more robust and consistent information to assess climate-related risks to make informed investment decisions and price securities,” wrote Lisa Washburn, chief credit officer at Municipal Market Analytics. “This may render such climate-related information ‘material’ under its definition for purposes of the antifraud law.”

“Municipal participants should expect that, over time, many of the disclosures outlined in the new rule will be expected from municipal issuers too,” Washburn added, expecting that climate related enforcement will follow in the footsteps of issues such as the disclosure of bank loans and enforcement related to MCDC as the Commission’s new enforcement strategy du jour.

“Given the keen interest in addressing climate-related disclosure gaps and the rising effects of both acute and chronic climate perils, MMA expects that one of the enforcement approaches is likely to be its first course of action,” Washburn wrote.

The disclosures the SEC generally expects from corporate issuers can generally be put into such buckets as the disclosure of climate-related risks and impact on business strategy, financial condition and outlook; governance and risk management of climate-related risks, mitigation and adaptation strategies; scope 1 and scope 2 greenhouse gas emissions; climate goals or targets and the related impact on expenditures; financial impacts from severe weather events or the use of carbon offsets.

The rule also states that the Commission will provide a safe harbor that all information, except for historical fact, will be treated as forward looking.

MMA recommends that municipal issuers begin disclosing information on climate-related risks that have a material impact on finance or operations, a discussion of mitigation or adaptation efforts and related material costs, as well as if and how climate-related risks are identified, assessed and managed.

But there is a chance that the final rules will never be rolled out as proposed. A coalition of states including West Virginia, Georgia, Alabama, Alaska, Indiana, New Hampshire, Oklahoma, South Carolina, Wyoming and Virginia have already sued the Commission, in hopes of showing that the final rule “exceeds the agency’s statutory authority and otherwise is arbitrary, capricious, an abuse of discretion and not in accordance with the law,” the lawsuit said.

“Although not directly applicable, it is an exemplar potentially in our sector,” said Chuck Samuels, member at Mintz Levin and counsel to the National Association of Health & Educational Facilities Finance Authorities. “It’s considerably less burdensome than as proposed. But, there is a substantial possibility this will never be effective between court challenges, the Congressional Review Act, and possible change in Administrations.”

The rule will become effective sixty days after publication in the federal register and compliance dates differ depending on the size of the firm, with the earliest date for large accelerated filers beginning in 2025.

By Connor Hussey

Cybersecurity Disclosure Considerations for Municipal Issuers.

In the Closing Remarks of a Compliance Conference on Dec. 7, the Director of the Office of Municipal Securities of the U.S. Securities and Exchange Commission noted the SEC recently finalized its cybersecurity rule for public companies.

The Director then suggested that “everyone take a minute to review the Adopting Release for the rule because there are some good points on how corporations can handle cybersecurity disclosures that may be useful for municipal market participants.”

While the Commission’s cybersecurity rule does not apply to municipal issuers, below we summarize a few points discussed in the Adopting Release that may be useful for municipal market participants.

If a municipal issuer chooses to voluntarily disclose a material cybersecurity incident, it should consider various factors.

First, the municipal issuer should consider disclosing the nature, scope, and timing of the material cybersecurity incident. Municipal issuers should avoid specific or technical information about a planned response to the incident, its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail that it would impede a response or remediation of the incident.

Second, the municipal issuer should consider disclosing the material impact or reasonably likely material impact of the incident (e.g., impact on the financial condition or operations of the municipal issuer), as opposed to the details regarding the incident itself.

Third, the municipal issuer should consider timing of any voluntarily disclosure. Municipal issuers should consider disclosing after it determines the incident is material, as opposed to immediately after the incident occurred.

Fourth, the materiality determination of the incident should be made without unreasonable delay. That said, a reasonable delay could occur, for example, if an incident poses a substantial risk to national security or public safety.

Lastly, the materiality analysis should take into consideration all relevant facts and circumstances surrounding the cybersecurity incident, including both quantitative and qualitative factors. The materiality standard is the traditional notion of materiality that has been articulated by the Supreme Court, as well as in Commission rules (e.g., information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision).

If a municipal issuer chooses to disclose cybersecurity information in connection with an offering, it should consider disclosing certain matters.

First, the municipal issuer should consider disclosing the process that it may have for assessing, identifying and managing material risk from cybersecurity threats, as opposed to the specifics on how a cyberattack will be remediated.

Second, the municipal issuer should consider disclosing risks from cybersecurity threats, including

those resulting from previous incidents, that may have materially affected or are reasonably likely to materially affect the municipal issuer (e.g., operations or financial condition).

Lastly, the municipal issuer should consider whether to disclose consultants or other third parties that may assist with cybersecurity and who is responsible for oversight of risks from cybersecurity threats.

Any cybersecurity disclosure should allow for a reasonable investor to ascertain the cybersecurity practices of the municipal issuer with sufficient detail to understand the municipal issuer's cybersecurity risk profile. Municipal issuers should tailor disclosures so that they provide meaningful cybersecurity information, as opposed to overly descriptive or boilerplate disclosure.

The SEC recognizes that public companies will have differing approaches to cybersecurity disclosure based on their particular facts and circumstances. We hope such recognition will also extend to municipal issuers.

By Sarah Tahir

BY SOURCEMEDIA | MUNICIPAL | 03/14/24 09:39 AM EDT

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Bracewell LLP – Edward Fierro and Sarah Tahir

March 14 2024

[A Refresher on Selective Disclosure and Anti-Fraud Rules: Frost Brown Todd](#)

What Is Selective Disclosure?

The desire of investors to obtain additional information regarding issuers and conduit borrowers of municipal securities must be weighed against what can be provided to them without violating the U.S. Securities and Exchange Commission's (SEC) rules. While there is no direct guidance on the application of selective disclosure rules to municipal securities, guidance may be drawn from SEC enforcement actions in this area and how the law is applied to other types of securities.

Selective disclosure may occur when only certain investors are provided material non-public information. Information is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision and view it as having significantly

altered the information currently available. SEC Rule 10b-5 prohibits organizations, including municipalities, from making false statements and omitting material information and applies both during and after the issuance of securities. It is imperative for issuers and conduit borrowers of municipal securities to understand what disclosures could result in selective disclosure or violate the anti-fraud rules.

Selective Disclosure and Violation of Anti-Fraud Rules Scenarios

A violation of the anti-fraud rules occurs when an organization provides inaccurate information about financial conditions to investors with the hope of obtaining favorable results. An organization also violates anti-fraud rules when it fails to provide adequate information to investors and leaves them to rely on potentially inaccurate public statements. The following are examples of violations of anti-fraud rules:

[Continue reading.](#)

Frost Brown Todd LLP - Glorify Batsirai Mandima, Carrie J. Cecil

March 14 2024

[MSRB Research Examines Trading Patterns in the Municipal Securities Market.](#)

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today published a new research report that examines trading patterns in the municipal securities market. The analysis reviews the fragmentation in the market and the depth and breadth of data available to market participants.

“While there are nearly a million securities outstanding in the municipal securities market today, only about 2% of those securities traded on an average day in 2023, while only 1% traded in 2021,” said Marcelo Vieira, MSRB Senior Director of Research and Market Transparency. “This is important information for market participants to be aware of as they navigate this unique market.”

The MSRB’s analysis reviewed municipal securities trade data from two contrasting years, 2023, which had record-high trade count, and 2021, which had a record-low number of trades. The report reveals that about two-thirds of the securities that trade on an average day do so only once or twice. Additionally, almost 40% of the trades that occur on an average day have no prior trades in that security on the same day. This means that investors may have limited information to reference at the time of trade for the security they want to buy or sell.

“With a limited number of trades per individual bond, and a small percentage of outstanding securities trading daily, investors may want to review similar securities to inform their investment decisions,” said Vieira.

In the report, the authors note that the municipal market is heavily reliant upon market tools such as yield curves and evaluated pricing to function efficiently. Often the entities that provide these market tools eliminate trades smaller than \$500,000 or even \$1 million from consideration. This means that many of the market tools market participants may rely upon are based on only 4-6% of the trades reported to the MSRB.

The MSRB offers free access to several municipal yield curves and other investor tools on its MSRB's Electronic Municipal Market Access (EMMA®) website. One of the most used tools is one that allows users to compare different securities.

[Read the report.](#)

Date: March 05, 2024

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In Surprise Move, Rand Paul Targets Fed's Municipal Liquidity Facility.

The Federal Reserve's dormant emergency lending program for state and local governments set up during the COVID-19 pandemic had a surprise return to the spotlight last Friday when Sen. Rand Paul, R-Ky., introduced a measure banning the central bank from reviving the program or buying municipal bonds in the future.

"It was never intended that Congress give the Fed the power, and we should make sure that it is explicit that the Federal Reserve cannot buy the debt of individual states," Paul said Friday from the Senate floor when introducing the provision as an amendment to the fiscal 2024 continuing appropriation.

The measure appears aimed at the Fed's Municipal Liquidity Facility established in spring 2020 at the onset of the COVID-19 pandemic. His office did not return calls for comment. A press release said the measure "would prevent government bailouts of mismanaged states" and "prevents the central bank from circumventing Congress to unilaterally provide a financial bailout of profligate states, the costs of which would be borne by the taxpayers through the form of forced subsidized losses or through the hidden tax of inflation."

Muni advocates including the Government Finance Officers Association were taken by surprise, said GFOA federal liaison Emily Brock.

"No one in our coalition was aware this would be introduced," Brock said. The amendment failed, but could pop up again, Brock warned. The GFOA has asked to meet with Rand's office to discuss the measure.

"As long as there's a permanent spending bill still lingering out there, I think it will come up again," she said.

The Fed launched the MLF in April 2020 as part of the CARES Act, the first of three rounds of federal rescue aid packages. The emergency program was aimed at bolstering cash-strapped issuers who might have a tough time entering a volatile market that had seen base municipal bond index yields rise by more than 225 basis points in nine trading days.

The MLF was able to purchase up to \$500 billion of three-year notes from states, counties with a population of at least 500,000 residents, and U.S. cities with a population of at least 250,000 residents.

Only Illinois and New York's Metropolitan Transportation Authority ended up tapping the program, with Illinois borrowing \$3.2 billion in two installments and the MTA borrowing \$3.5 billion in two installments.

The MLF expired in December 2020, although former U.S. Treasury Secretary Steven Mnuchin said at the time that the facilities could be reestablished by "having the Federal Reserve request approval from the Secretary of the Treasury and, upon approval, the facilities can be funded with Core ESF (Exchange Stabilization) funds, to the extent permitted by law, or additional funds appropriated by Congress."

Rand's amendment would prohibit the central bank from establishing "any emergency lending program or facility that purchases or sells any security issued by a state or a municipality, including a bond, note, draft or bill of exchange," and block the bank from buying or selling any of the same securities.

Paul - a well-known anti-national debt hawk - reportedly insisted that his amendment be considered before he would support the fiscal 2024 short-term funding bill to avert a government shutdown. Congress this week is set to approve the appropriation legislation and then will take up a second package before March 22.

"We now know that the Federal Reserve is not only buying the federal debt; they are buying the debt of profligate, large-spending states like California, New York, and Illinois," Paul said on the floor when introducing the amendment. "My amendment would make it explicitly illegal for the Federal Reserve to buy the debt of these big-spending, profligate individual states.

Minnesota Democratic Sen. Tina Smith responded that "tying the Fed's hands" would be dangerous.

"Congress has given the Fed the flexibility to transact in state and local bonds because we knew that it could be an important and helpful tool in times of an emergency," Smith said. "Preventing emergency programs outright would be dangerous and unnecessary."

The amendment garnered 37 yes votes, all from Republicans. Supporters included Senate Majority Leader Mitch McConnell, R-Ky., as well as Sen. John Thune, R-S.D., and Sen. John Cornyn, R-Texas. The nays totaled 53, and 10 senators did not vote.

Paul's comments on the Senate floor were "hyperbolic" as well as "curious and disturbing," said Kent Hiteshew, former deputy associate director of the Fed's Division of Financial Stability.

"The Fed has used its emergency statutory authorities to make loans to municipal governments only twice in its more than 100-year history - both back-stopped by Congressional appropriations during COVID," Hiteshew said, noting that both loans were repaid on or before their due dates.

"In my view, it is doubtful that the Fed would use such powers again in the future absent similar existential threats to the economy and capital markets," he said. "Nevertheless having such authority and independence would be crucial in such circumstances."

Issuers groups like the National Association of State Treasurers have in the past advocated for the MLF to become permanent. NAST declined to comment on Paul's amendment, as did the Bond Dealers of America. The GFOA never lobbied for an extension of the program, Brock said, but doesn't want to see the Fed prohibited from emergency lending programs.

"We saw it as an infusion that was necessary at the time that was designed as a temporary stopgap and it was effective - it was very clear that our market has determined it was effective," Brock said.

By Caitlin Devitt

BY SOURCEMEDIA | ECONOMIC | 03/06/24 10:17 AM EST

Sen. Rand Paul Proposes Ban on Federal Reserve's Municipal Bond Purchases, Sparking Debate

Sen. Rand Paul introduces a measure to ban the Federal Reserve's municipal bond emergency lending, igniting debate on its economic role.

On a recent Friday, Sen. Rand Paul, R-Ky., introduced a controversial measure that could significantly impact the Federal Reserve's ability to support state and local governments during financial crises. Paul's amendment seeks to ban the central bank from reviving its emergency lending program for municipal bonds, established during the COVID-19 pandemic, or engaging in future municipal bond purchases. This move has reignited discussions on the Fed's role in stabilizing the economy, with implications for states and municipalities nationwide.

Background and Immediate Reactions

The Federal Reserve's Municipal Liquidity Facility (MLF), created as part of the CARES Act in spring 2020, was designed to aid cash-strapped states, counties, and cities by purchasing up to \$500 billion of three-year notes. This emergency measure, which expired in December 2020, was only utilized by Illinois and New York's Metropolitan Transportation Authority. Paul's amendment, framed as a safeguard against government bailouts of "mismanaged states," has surprised many, including municipal bond advocates like the Government Finance Officers Association (GFOA), who were unaware of the proposal's introduction.

Legislative Responses and Debates

Despite the amendment's failure, with 37 yes votes exclusively from Republicans, the proposal has stirred a bipartisan debate on the Federal Reserve's flexibility in times of crisis. Critics, including Minnesota Democratic Sen. Tina Smith, argue that restricting the Fed's emergency powers could be dangerous, emphasizing the necessity of such tools in unforeseen emergencies. Proponents of the amendment, however, view it as a crucial step towards fiscal responsibility and preventing unchecked bailout powers.

Implications for the Future

The debate over the Federal Reserve's emergency lending capabilities raises important questions about the balance between fiscal responsibility and the need for robust economic safety nets. While the amendment did not pass, its introduction and the subsequent discussions underscore the ongoing tension between different visions of economic governance. As the GFOA and other organizations seek dialogue with lawmakers, the future of the Federal Reserve's role in state and municipal finance remains uncertain, highlighting the need for a nuanced approach to economic policy in times of crisis.

bnnbreaking.com

BNN Correspondents

MSRB Publishes 2023 Fact Book of Municipal Securities Data.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today published its [annual Fact Book](#), the definitive compilation of the most recent five years of statistics on municipal securities market trading, interest rate resets and disclosures. The 2023 Fact Book includes monthly, quarterly and yearly aggregate market information from 2019 to 2023, which can be analyzed to identify market trends.

“This is the 16th year the MSRB has published its annual Fact Book, which municipal market participants continue to rely upon to better understand emerging and long-term trends within the municipal securities market,” MSRB Senior Director, Research and Market Transparency Marcelo Vieira said. “We are pleased to release this information to the market annually as it provides added context and transparency for market participants, policymakers and the public.”

Statistics provided in the 2023 Fact Book validate trends highlighted in the MSRB’s [2023 Municipal Market Year in Review](#). Most notable of these trends are the significant interest rate volatility and the record trading volume driven by strong demand from individual investors.

In addition to compiling quarterly and annual statistics, the MSRB regularly conducts independent research and analysis to support the understanding of municipal securities market trends. Much of this research is based on real-time municipal securities trade data the MSRB collects, along with primary market and secondary market disclosures, which it makes available for free to the public on its Electronic Municipal Market Access (EMMA®) website.

Date: February 29, 2024

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Solicitor Municipal Advisors On Watch With New MSRB Rule G-46 In Place.

After years of soliciting market feedback, new Municipal Securities Rulemaking Board Rule G-46 on the duties of solicitor municipal advisors is in effect as of March 1, setting the stage for closer scrutiny from both municipal advisors and the Securities and Exchange Commission.

Solicitor municipal advisors are a much smaller crowd than traditional municipal advisors and only solicit for pension funds, though some MAs do both kinds of work. For those that do, new policies and procedures will need to be put into place.

“While the rule is especially important for those professionals that solicit for pension funds, it could potentially impact MAs and other regulated entities,” said Susan Gaffney, executive director of the National Association of Municipal Advisors. “If MA firms are engaging in solicitor MA activity, as outlined in the rule, it will be important for firms to develop necessary policies and procedures to comply with the Rule’s standard of conduct and recordkeeping requirements.”

Specifically, the rule defines solicitor MA activity as an entity in direct or indirect communication with a municipal entity or obligated person, for direct or indirect compensation, on behalf of an MA or investment advisor that is a third party and not controlled by the MA firm, for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor, and if the engagement does not include excluded communications, as defined in Rule G-46.

It could also include recommending another MA or investment advisor for compensation, directly or indirectly and encompassing quid pro quo arrangements or unrequested gifts to a municipal entity involved in an issuance, NAMA said in a compliance release.

If applicable, solicitor MA activity would also have to include disclosures to solicitor clients, documentation of the solicitor relationship, representations to solicited entities, disclosures to solicited entities, timing and manner of disclosures and certain prohibitions.

MAAs and solicitor MAAs came under the MSRB's purview following the passing of Dodd-Frank more than a decade ago, but this is the first time specific solicitor MA standards of conduct will also be scrutinized by the SEC. In its 2024 exam priorities, the SEC made a particular point of drawing attention to the new rule.

"Examinations of solicitor municipal advisors during the second half of fiscal year 2024 will focus on compliance with new MSRB Rule G-46," the SEC said. That will be part of its efforts to look at MAAs as a whole and whether they've fulfilled their fiduciary duty to clients, "particularly when providing advice regarding the pricing, method of sale and structure of municipal securities," the Commission added. "Examiners will review whether municipal advisors are complying with their obligations to document municipal advisory relationships and disclose conflicts of interest and requirements related to registration, professional qualification, continuing education, recordkeeping and supervision."

On the Form MA, or the application for municipal advisor registration, solicitor MAAs is just another box that may have been checked if a registering MA wasn't exactly clear on the definitions. NAMA suggests going back to review those materials, now that there are new and clear definitions.

"We've also been telling our members if you're not a solicitor, uncheck the box because we've heard from exams that they will be looking at the population of solicitor MAAs that are self identified on Form MA and focus exam efforts on that in this year," Gaffney said.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 03/01/24 11:40 AM EST

[Financial Accounting Foundation Trustees Name New Vice Chair and Two New Members to the Governmental Accounting Standards Advisory Council \(GASAC\).](#)

[Read the News Release.](#)

February 27, 2024

SIFMA Comments on Request for Information on Impacts of MSRB Rules on Small Firms.

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on their Request for Information on Impacts of MSRB Rules on Small Firms as part of the MSRB's retrospective review of its rule book.

[View the SIFMA request.](#)

SEC Answers Questions on New Tailored Shareholder Report Requirements: Proskauer Rose

The staff of the Division of Investment Management (the "Staff") has issued a FAQ pertaining to the rule and form amendments adopted by the Securities and Exchange Commission (the "SEC") in October 2022, which require open-end mutual funds and exchange-traded funds ("ETFs", and together with open-end mutual funds, "funds") registered on Form N-1A to transmit concise and visually engaging annual and semi-annual shareholder reports, and amend the advertising rules for all regulated investment companies, including closed-end funds and business development companies, to ensure fee comparability in fund advertising.[1]

Overview of Amendments to Shareholder Report Requirements

Purpose of Amendments. The amendments require shareholder reports to highlight key information deemed crucial by the SEC for retail investors to assess and monitor their fund investments. Shareholder reports must be made available online and filed on Form N-CSR semi-annually using Inline XBRL tags.

Content of Reports. The reports may only include information permitted or required by new Item 27A of Form N-1A, such as:

- fund/class name,
- ticker symbol,
- principal U.S. markets (for ETFs only),
- an expense table,
- concise disclosure of management's discussion of fund performance,
- a comparison of fund performance to relevant indices,
- performance graphs and tables,
- net assets,
- portfolio holdings, and
- material changes impacting various aspects of the fund.

Requirements. Incorporation by reference is not permitted for required information, and all data must be tagged using Inline XBRL. Further, if the report references online information, it must include a hyperlink for immediate access. One of the more potentially burdensome requirements is that each fund must produce individual shareholder reports, separate from other series of the same registrant, and a separate report for each class of a multi-class fund, ensuring shareholders only

receive reports relevant to their specific class and/or series.

Exclusion from Rule 30e-3. Importantly, funds subject to these shareholder report requirements may not take advantage of Rule 30e-3, the rule that currently permits funds to use a “notice and access” approach to transmitting shareholder reports. Shareholders must directly receive tailored shareholder reports either in paper form or electronically (if a shareholder affirmatively elects).

The Staff’s FAQ

The Staff published an FAQ specifically addressing questions about the tailored shareholder report amendments, and the following provides an overview of the key points addressed in it, organized into five broad categories.

- 1. Appropriate Broad-Based Securities Market Index.** When comparing fund performance, funds must select an “appropriate broad-based securities market index” that accurately reflects the market in which a fund invests. The appropriate broad-based index must represent the overall applicable domestic or international equity or debt markets relative to a fund’s investments, providing investors with insights into the fund’s performance relative to the applicable broader market.

Examples. The following examples could qualify as broad-based indexes: (i) those covering the equity or fixed income market of groups of countries (e.g., Europe and Asia), groups of countries excluding a specific country (e.g., Asia excluding Japan), or groups of countries with shared characteristics (e.g., emerging markets); and (ii) for funds investing primarily in non-U.S. equity, those representing the overall equity market of the representative non-U.S. country. These examples could qualify as an appropriate broad-based index provided that the index represents the overall applicable market relative to the fund’s investments (emphasis added). In addition, the Staff notes that given the tax-exempt status of municipal bonds, an index representing the national municipal securities market is considered a standalone overall market opposed to a subset of the fixed income market (and, by extension, such an index would qualify as a broad-based index).

The following indexes do not qualify as they, according to the Staff, do not represent the overall market in which a fund invests: (i) indexes focused solely on a specific industry sector (e.g., an index consisting only of healthcare companies) or (ii) indexes characterized by specific attributes like “growth”, “value”, “ESG”, or “small- or mid-cap”.

2. Form N-CSR and Website Availability Requirements

Combined Items for Form N-CSR. Funds may prepare combined financial statements for multiple series or portfolios in a trust to satisfy Item 7 of Form N-CSR, as long as it aligns with Regulation S-X.

The Staff notes that funds have the option to satisfy website availability requirements by posting the most recent Form N-CSR report in its entirety on the website specified in the report. This option permits Form N-CSR information to be grouped by type of materials and/or by series as long as certain presentation requirements are met, including that the grouped information: (i) is presented in a format that effectively communicates the information, (ii) clearly distinguishes between different types of materials and/or series, and (iii) provides easy navigation for shareholders, like through a table of contents with hyperlinks. Relying on this framework, the Staff believes that a combined response to multiple Form N-CSR items would generally be appropriate if the combined Form N-CSR response adheres to the three requirements identified above.

Compliance with Regulation D. Posting Form N-CSR information online under amended Rule 30e-1 does not violate the prohibition on general solicitation and advertising in Regulation D as long as the fund posts only the information required by Rule 30e-1 and does not use its website to offer or sell its securities in violation of Regulation D.

3. Binding Individual Shareholder Reports of Multiple Funds. Funds are permitted to bind, staple or stitch together multiple individual shareholder reports for investors who have invested in multiple funds or share classes. The Staff's concern about multi-series/class reports does not apply to this approach as the investor is still only receiving reports specific to the investments it holds. The Staff recommends that a fund consider including a table of contents when combining shareholder reports in this manner.

4. Electronically Provided Shareholder Reports

Hyperlinking Requirements. Shareholder reports delivered electronically must comply with hyperlinking requirements outlined in Instruction 9 to Item 27A(a) of Form N-1A. The Staff notes that if a hyperlink becomes stale or inaccurate, Rule 30e-1 provides a safe harbor for temporary noncompliance, provided the fund has reasonable procedures in place and takes prompt action to correct any issues.

Electronic Delivery Approaches. In addition to sending an email that includes the full shareholder report, funds can email, or otherwise electronically notify investors, with direct links to specific shareholder reports or direct investors to a website landing page with links to the shareholder reports for specific fund(s) and/or share classes(es) owned by the investor. Any other methods that adhere to the requirements of Instruction 4 to Item 27A(a) of Form N-1A for delivering fund and share class specific shareholder reports directly to investors in an electronic format are permissible.

5. Compliance Date and Inline XBRL Issues

Transmittal Timing and Form N-CSR Filing. Shareholder reports for funds registered on Form N-1A must adhere to the new amendments if transmitted to shareholders on or after the compliance date of July 24, 2024. Regardless of when filed, Form N-CSR should include the report actually transmitted to shareholders.

Tagging Requirements and Compliance Date. Tailored shareholder reports included in Form N-CSR transmitted to shareholders on or after July 24, 2024, must be tagged using Inline XBRL.

Amended Form N-CSR and Tagging. In cases where an issuer submits an amended Form N-CSR (N-CSR/A), and the originally filed N-CSR contained multiple tailored shareholder reports but only one is being amended, the Form N-CSR/A filing need only contain a complete version of the report being amended with all elements of that report tagged in Inline XBRL (not only the amended elements).

Variable Annuity or Variable Life Insurance Company Products

The FAQs also offer guidance specific to variable annuity and variable life insurance issuers (collectively, "variable contract issuers"), which is outlined below.

Online Hosting of Fund Materials. Materials required to be posted to a specified website pursuant

to Rule 30e-1 may appear on either the variable contract issuer's website or the fund's website for funds offered as an investment option in variable contracts. If multiple variable contract issuers offer the same underlying fund, the Staff notes that it may be most efficient for that fund's required materials to be hosted on its website.

Binding Individual Shareholder Reports of Multiple Underlying Funds. Funds can bind, staple or stitch together multiple individual shareholder reports for variable contract investors who have allocated value to multiple underlying funds. The Staff's concern about multi-series/class reports does not apply to this approach as the variable contract investor is still only receiving reports specific to the funds to which it has allocated contract value. The Staff recommends that a fund consider including a table of contents when combining shareholder reports in this manner.

Optional Online Tools in Electronically Provided Shareholder Reports. Variable contract issuers only need to transmit reports containing information required under Rule 30e-2 and Rule 30e-1. They do not need to include any optional content an underlying fund may elect to include under Item 27A(a) of Form N-1A. If necessary, variable contract issuers may avail themselves of the safe harbor under Rule 30e-1 for temporary noncompliance with the hyperlinking requirements.

[1] Tailored Shareholder Reports for Mutual Funds and Exchange Traded Funds; Fee Information in Investment Company Advertisements, SEC Rel. No. IC-34731 (Oct. 26, 2022).

Proskauer Rose LLP – William T. MacGregor and Adrianna Vallee

February 23 2024

[Existing MSRB Dealer and Municipal Advisor Fees Maintained Upon Withdrawal of 2024 Annual Rate Card.](#)

[View the MSRB notice.](#)

2/16/24

[Proposed Rule Change to Amend MSRB Rule G-14 and FINRA Rule 6730: SIFMA Comment Letter](#)

SUMMARY

SIFMA and SIFMA AMG provided comments to the U.S. Securities and Exchange Commission (SEC) on SR-MSRB-2024-01 (the "MSRB Proposal") filed with the SEC by the Municipal Securities Rulemaking Board (the MSRB) and SR-FINRA-2024-04 (the "FINRA Proposal" and together with the MSRB Proposal, the "Proposals") filed with the SEC by the Financial Industry Regulatory Authority (FINRA).

[Read the SIFMA Comment Letter.](#)

Feb 15, 2024

GASB Issues Guidance on Disclosure of Certain Risks.

Norwalk, CT, January 8, 2024 —The Governmental Accounting Standards Board (GASB) issued guidance today that requires governments to disclose information about certain risks.

Although governments are required to disclose information about their exposure to some risks, such as interest and credit risk associated with investments, essential information about certain other risks that are prevalent among state and local governments is not routinely disclosed because it is not explicitly required. The new Statement is meant to provide financial statement users with information about certain risks when circumstances make a government vulnerable to a heightened possibility of loss or harm.

[GASB Statement No. 102](#), *Certain Risk Disclosures*, requires governments to disclose essential information about risks related to vulnerabilities due to certain concentrations or constraints.

1. The Statement defines a concentration as a lack of diversity related to an aspect of a significant inflow or outflow of resources—for example, a small number of companies that represent a majority of employment in a government’s jurisdiction, or a government that relies on one revenue source for most of its revenue.
2. The Statement defines a constraint as a limitation imposed on a government by an external party or by formal action of the government’s highest level of decision-making authority—such as a voter-approved property tax cap or a state-imposed debt limit. Based on input from financial statement users during the research phase of the project, GASB is proposing that certain types of assets be disclosed separately in the note disclosures about capital assets. This would allow users to make informed decisions about these and to evaluate accountability.

Concentrations and constraints may limit a government’s ability to acquire resources or control spending.

Disclosure Criteria

The Statement generally requires a government to disclose information about a concentration or constraint if all of the following criteria are met.

1. The concentration or constraint is known to the government prior to issuing the financial statements.
2. The concentration or constraint makes the government vulnerable to the risk of a substantial impact.
3. An event or events associated with the concentration or constraint that could cause a substantial impact have occurred, have begun to occur, or are more likely than not to begin to occur within 12 months of the date the financial statements are issued.

Note Disclosures

The disclosures should include a description of the following:

1. The concentration or constraint,
2. Each event associated with the concentration or constraint that could cause a substantial impact if the event has occurred or has begun to occur prior to the issuance of the financial statements, and
3. Actions taken by the government to mitigate the risk prior to the issuance of the financial

statements.

The requirements of Statement 102 are effective for fiscal years beginning after June 15, 2024, and all reporting periods thereafter. Earlier application is encouraged.

The Statement is available on the GASB website, www.gasb.org.

Small Firms Describe Frustrations in Response to MSRB Request.

Small muni market firms are being overburdened by an excessive regulatory environment that favors the large Wall Street firms, with small firms feeling overwhelmed by the recent amendments to Municipal Securities Rulemaking Board Rule G-14 on time of trade that reduces the trade reporting window to one minute.

Those complaints are being expressed as part of the MSRB's request for information on small firms, which encouraged all muni market participants to respond to eleven specific questions, such as what rules have had a disproportionate impact on smaller regulated entities, what makes a regulated entity small, medium or large, and whether there are circumstances in which the application of an MSRB rule has required firms to spend additional resources that have had a negative impact on the firm.

Mark Kim, chief executive officer of the MSRB, in announcing the effort late last year, noted that he believes that "an impactful way to support the efforts of regulated entities to comply with our rules is to assess whether a rule is no longer achieving its intended purpose or if there are disproportionate costs or burdens associated with compliance for certain types of firms."

Many of the commenters have noted not only the extremely difficult task of having to comply with the one-minute reporting window, but also the strenuous costs associated with establishing systems to make them comply with it, in addition to the challenges small firms face generally in having to comply with the "pile on" of regulations.

"Although I believe that the MSRB has good intentions, I strongly feel that the current regulatory environment disproportionately penalizes small broker-dealers who most likely don't have large compliance teams and the seemingly unlimited resources of larger firms," wrote Mike Petagna, president, Amuni Financial. "Since our small firm lacks a large dedicated compliance department, we spend precious time responding to regulatory inquiries and complying with new regulations; time that could otherwise be spent serving our clients," he added. "Often, we face unrealistic turnaround times, only to wait months for the next round of questions after our responses."

Petagna went on to note that the municipal market differs significantly from the taxable and equity markets, and that the one-minute reporting window will likely consolidate the marketplace further.

Matthew Kamler, president of Sanderline Securities said that the one-minute reporting window requires smaller firms to invest in order entry software, such as Bloomberg's TOMS system, which carries an annual price tag of \$250,000.

But outside of the one-minute reporting requirement coming soon, there are other issues that continue to burden some firms that don't fit squarely into being characterized as a municipal securities dealer.

“Despite our many years of employment and experience in the industry, MSRB required us to pass two new exams in order to continue to be employed,” wrote Elaine Philbrick, principal at Derivative Advisors, a swap broker. “Both the new exams, Series 50 and 54, covered material unrelated to our firm or work. We estimate only 5% of the questions were related to interest rate derivatives, and the rest pertained to credit analysis and issuance of municipal debt which is unrelated to our firm and has nothing to do with us or our services.”

Uniform fees across all players in the market was also noted as a sore spot.

“Fees for small firms should not be the same as for larger firms, but lower,” wrote Dennis Dix, Jr., principal at Dixworks. “Using the SEC risk-based protocol for examinations, small firms require less monitoring than large firms. Large fees represent a substantial burden for small firms and should be reduced.”

Others took aim at smaller requirements that aren’t questioned as often. Dmitry Semenov, principal at Ridgeline Municipal Strategies, wrote that the requirement to develop written supervisory procedures “can be easily mitigated by provisioning an easy-to-use template with regular updates and notifications that smaller firms could utilize to develop and update their WSPs without having to hire outside consultants,” he said.

The MSRB is continuing to accept comments on this topic.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 02/13/24 02:34 PM EST

Finra Fines Morgan Stanley \$1.6M Over Muni Transaction Shortfalls.

Broker-dealer self-regulator finds pattern of gross supervisory failure involving municipal securities over a five-year period.

Finra has imposed a \$1.6 million fine on Morgan Stanley for significant lapses in handling municipal securities transactions.

In a statement Thursday, the broker-dealer self-regulatory organization announced the landmark action, highlighting it as the first disciplinary case in which it “charged a firm with violating the close-out requirements of Municipal Securities Rulemaking Board (MSRB) Rule G-12(h) and related supervisory failures.”

“Member firms must establish and maintain controls and procedures for detecting, resolving and preventing the consequences of municipal short positions and fails to receive,” Bill St. Louis, executive vice president and head of enforcement at Finra, [said in the statement](#).

In its decision, Finra underscored the firm’s gross negligence as shown by its “repeated failures to timely close out failed inter-dealer municipal securities transactions.”

Under MSRB Rule G-12(h), broker-dealers must cancel or close out failed inter-dealer transactions in munis within 20 days after the settlement date. Finra found that between December 2016 and August 2021, Morgan Stanley failed to cancel or close out in a timely manner 239 inter-dealer municipal transactions with a total value of roughly \$9 million.

The financial industry regulator said the financial giant also fell short in its obligation to “obtain physical possession or control of municipal security positions that are short more than 30 calendar days,” as required under Rule 15c3-3(d)(2) of the Securities Exchange Act of 1934.

[Finra said](#) that from January 2016 through August 2021, Morgan Stanley neglected to take the necessary steps to obtain possession or control of 247 municipal securities, valued at about \$9.4 million, which it had failed to receive for an average of approximately 177 days.

While Morgan Stanley did take steps to improve how it addresses municipal fails-to-receive, those efforts were too little and too late. The firm only revisited its systems and processes in June 2021, and updated its written supervisory procedures in September 2021.

The financial giant has consented to Finra’s findings without admitting or denying the allegations.

investmentnews.com

By Leo Almazora

February 15, 2024

Morgan Stanley to Pay \$1.6-Mln Over Municipal Securities Violations: Finra

The Financial Industry Regulatory Authority has fined Morgan Stanley \$1.6 million based on findings that the wirehouse repeatedly failed to abide by rules set by the Municipal Securities Rulemaking Board for processing and settling municipal securities transactions.

From 2016 to August 2021, Morgan Stanley failed to close out 239 failed inter-dealer municipal securities transactions and to promptly take physical possession or control of 247 municipal securities that were short more than 30 calendar days, Finra said in a Thursday morning announcement. The 30 days exceeded by 10 days the window for closing out allowed under the MSRB rules, according to Finra.

Finra said that Morgan Stanley violated its requirements to maintain a reasonably designed supervisory system to comply with MSRB rules.

Finra noted that this action marked its first time imposing a fine based on the violation of the MSRB’s close-out requirements, but it was the second time it had sanctioned Morgan Stanley for supervisory failures regarding short positions in municipal securities, as it had done so in 2015.

“Member firms must establish and maintain controls and procedures for detecting, resolving and preventing the consequences of municipal short positions and [any] fails to receive,” Bill St. Louis, Finra’s executive vice president and head of enforcement, said in a statement.

A spokesperson for Morgan Stanley, which consented to FINRA’s findings without admitting or denying the charges, said: “Morgan Stanley has enhanced its policies and procedures for closing out municipal short positions and is pleased to resolve this matter.”

Morgan Stanley will pay its \$1.2 million of its \$1.6 million fine to the MSRB and also had, as of September 2021, resolved all outstanding municipal bond positions that violated MSRB rules, Finra said.

In March 2015, Finra censured Morgan Stanley and imposed a \$675,000 fine based on findings that it had violated MSRB rules “by failing to implement adequate supervisory procedures to address short positions in tax-exempt municipal bonds,” Finra said.

The regulator also found at that time that Morgan Stanley failed “to provide adequate guidance or oversight on covering municipal short positions” and “inaccurately” represented “to customers that the interest they received on municipal bonds that the firm did not hold was non-taxable when it was paid by the firm and thus taxable as ordinary income,” Finra said.

by AdvisorHub Staff

February 15, 2024

[SEC Expands Dealer Definition to Capture Large Traders Regularly Providing Liquidity to the Markets: Goodwin](#)

High-frequency traders, private funds, decentralized exchange automated market makers, and even state pension plans should consider whether the expanded dealer definition triggers the need to register as a securities dealer with the SEC and with an SRO like FINRA.

On February 6, 2024, the SEC [adopted rules](#) to greatly expand the Exchange Act definitions of “dealer” and “government securities dealer” by further defining the phrase “as a part of a regular business.” In doing so, the SEC has significantly narrowed the existing dealer/trader distinction long recognized by the SEC through staff guidance and interpretations. The rulemaking is likely to require dealer registration by proprietary trading firms (PTF) and certain large private funds that regularly provide liquidity in the securities markets. Even state pension plans and their managers could be swept into the SEC’s dealer regime if they trip into the new qualitative standards discussed below.

Policy Underlying the Expanded Dealer Definition

The Exchange Act definition of “dealer” historically excluded from its scope a trader who “buys or sells securities...for such person’s own account...but not as a part of a regular business.” The SEC, under Chair Gensler grew concerned with certain market participants whose activity and market share in providing liquidity to the equities and government securities markets was significant and existed outside of the dealer regime and in a mostly unregulated way. The SEC has expressed particular concern that investors and the markets have lacked important protections that, in the view of a majority of the commissioners, would otherwise result from such an entity’s registration and regulation under the Exchange Act. The adopting release also pointed to the absence of obligations and regulatory oversight that would otherwise promote market resiliency and stability. All of this culminated in the adoption of two new rules requiring dealer registration and FINRA or other SRO membership for these large and active market participants.

New Exchange Act Rules 3a5-4 and 3a44-2

New Exchange Act Rules 3a5-4 and 3a44-2 further define the phrase “as a part of a regular business” in Exchange Act Sections 3(a)(5) and 3(a)(44) using certain qualitative standards that, if tripped, would require dealer or government securities dealer registration under Exchange Act Sections 15 and 15C, respectively, along with SRO membership (likely with FINRA, although exchange membership could be a viable path). The rules also define trading in one’s “own account”

to mean an account held in the name of that person or held for the benefit of that person.

Top 10 Takeaways (And Dozens More Requiring Consideration)

1. The SEC's focus is on market participants that "engage in a regular pattern of buying and selling securities (or government securities) that has the effect of providing liquidity to other market participants." However, the scope of the proposal is vast—all securities, including equities, fixed income, treasuries, **municipal securities**, and, wait for it...crypto assets that are securities.

2. Any person, firm, or even a private fund that has or controls total assets of at least \$50 million and satisfies one of two new qualitative standards must register as a dealer. The new qualitative standards that the SEC considers to be "dealer-like" and, in Chair Gensler's view, are "de facto market making," are:

a. *Regularly expressing* trading interest that is at or near the best available prices on both sides of the market for the same security that is communicated and represented in a way that makes it accessible to other market participants; or

b. Earning revenue *primarily from* capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest.

3. Investment companies registered under the 40 Act are exempt, as are central banks, sovereign entities, and international financial institutions (with new definitions to match).

4. Private funds with at least \$50 million of AUM that trip either of the qualitative standards would need to register as dealers. This topic drew significant attention from Commissioner Peirce during the SEC open meeting and raises significant questions for large PE, VC, hedge, and state pension funds. For example, commenters sought from the SEC, but were refused, clarification that the new rules would not apply to governmental plans, including public pensions, nor to state administrators managing state funds or to city administrators managing the city pension funds through an exclusion from the proposed rules. One particular commenter expressed concerns that the proposed standards could subject state boards and similar investment fiduciaries and/or administrators of state pension funds to the rules. The SEC chose not to exempt these arrangements because, in the SEC's view, the final rules "should not" capture these arrangements. Unfortunately, the stakes are too high to casually rely on such a flimsy assurance. As a result, each of these funds and plans will likely need to conduct an analysis of their market activity and revenue streams to determine whether they need to register as dealers.

5. The introduction of "qualitative" standards essentially gives the SEC limitless ability to subjectively determine who's in and who's out. And many likely fear that the SEC will use the much lamented "regulation by enforcement" approach in this area (a topic that came up during the open meeting). For example, what does "regularly" mean? What does "primarily" mean? Another easy example worth highlighting is the crypto market and the compounding uncertainty of whether these new rules sweep in DEX AMMs or DEXs themselves and other liquidity providers. Commissioner Peirce asked the Director of the Division of Trading and Markets several questions about scope and applicability, including about potential distinctions between software coders, the software itself, and those who eventually utilize the software to provide liquidity or otherwise contribute to a pool of assets. In typical fashion, however, the rulemaking devotes little to this important discussion.

6. The SEC's use of "regularly" is designed to capture market participants "expressing

trading interest that is at or near the best available prices on both sides of the market for the same security and is communicated and represented in a way that makes it accessible to other market participants.” A market participant will be “regularly” expressing the requisite trading interest if doing so both within a trading day and over time. Regularly is not defined, though the SEC states that it is not intended to capture “isolated or sporadic” expressions of trading interest. The SEC does make clear that “a market participant does not need to be continuously expressing trading interest to be engaging in a ‘regular’ business.” “Regularity” will also depend on the depth and liquidity of the underlying security. The SEC states that for a market as deep and liquid as U.S. treasuries, “expressing trading interest on both sides of the market for the same security as part of an investment strategy on a one-off basis would not be sufficiently regular to be caught by the expressing trading interest factor.” The activity would have to occur in “more frequent periods.” How frequent? Well, that is unclear, but the fact that the SEC used “one-off” as an example for the U.S. treasuries markets – the largest and deepest markets in the world, is slightly concerning. The SEC does note that that this factor also “would include market participants that, for example, employ passive market making strategies involving the submission of non-marketable resting orders (bids and offers) that provide liquidity to the marketplace at specified prices.”

7. Regarding the second qualitative standard and earning revenue “primarily from,” the proposing release stated that deriving a majority of revenue from the activity would likely trigger the “primarily” factor. In the adopting release, the SEC notes that earning more revenue “from an appreciation in the value of [] inventory of securities than from capturing bid-ask spreads or incentive payment for liquidity provision” would be unlikely to be “considered to earn revenue ‘primarily’ from capturing bid-ask spreads or trading incentives.” Ultimately, the SEC notes that the analysis turns on the “totality of the particular facts and circumstances,” including in crypto asset security markets, despite the novel structures, products, and activities inherent therein.

8. The final rules dropped several aspects from the original proposal from early 2022, including:

a. A proposed qualitative standard of making roughly comparable purchases and sales of the same or substantially similar securities in a day.

b. A proposed “aggregation” provision that would have otherwise considered “own account” to include accounts “held in the name of a person over whom that person exercises control or with whom that person is under common control.” Instead, the final rules include an anti-evasion provision that prohibits persons from evading the registration requirements by: (1) engaging in activities indirectly that would satisfy the qualitative factors; or (2) disaggregating accounts.

c. A bright line quantitative standard under which persons engaged in certain levels of activity in the U.S. Treasury market would be defined to be buying and selling securities “as part of a regular business,” regardless of whether they met any of the qualitative factors.

9. A knock-on concern for any private funds captured by the expanded dealer definition is the likely loss of the ability for their personnel to rely on the so-called “issuer’s exemption” in Exchange Act Rule 3a4-1 when engaging in sales activity. Rule 3a4-1 is not available to an associated person of an issuer if such person is an “associated person of a broker or dealer.” The scope for this limitation covers situations of common control with a broker or dealer. That said, because the expanded dealer definition would only apply to a fund with at least \$50 million AUM, it is less likely that the

personnel of funds of that size would be relying on Rule 3a4-1 (instead, they would likely be using third party placement agents or their salespeople would be registered with an affiliated broker).

10. Another interesting point to consider is that certain public exchanges give execution priority to “customer” orders (provided the customer is not classified as a professional customer). One of the key definitions of customer is that the person is not a broker or dealer. Market participants caught up by the expanded dealer definition should consider the potential loss in priority and how that would affect their strategies and routing decisions.

Compliance Date + Implementation Challenges

The rulemaking effective date will be 60 days after the adopting release is published in the Federal Register (potentially out as far as June depending on the FR publication date). Compliance will be required within one year after that period has expired, but that is only for those already engaging in covered activity prior to the compliance date. Those who begin engaging in this activity one day later could not do so until registering as a dealer and becoming a FINRA or other SRO member, which, as noted below, that could take the better part of a year.

Implementation challenges are likely, although SEC staff indicated that FINRA has committed to expedite its new membership process. Unfortunately, even on an expedited basis, it could take applicants a month or longer to complete the application and several months to receive FINRA’s approval. This is particularly true if FINRA receives a deluge of several dozen or more applications all around the same time (including applications to register as a broker-dealer and ATS if the Commission adopts the expanded meaning of what it means to be an exchange under Exchange Act Rule 3b-16). Registrants will need to address such matters as examinations for supervisors and other registered persons, supervisory policies and procedures, business continuity plans and, perhaps most importantly, minimum net capital and aggregate indebtedness standards. Individual traders caught by the definition will find themselves in the position of having to register as dealers in their individual capacity or forming an entity to be the registered dealer. The SEC removed the aggregation provision from the final rule, but included an anti-evasion provision that prohibits persons from evading the registration requirements by: (1) engaging in activities indirectly that would satisfy the qualitative factors; or (2) disaggregating accounts. The release is unclear, however, about potential cases where a fund group has multiple funds that trigger the registration requirement and whether each fund has to register, or about whether the adviser, fund itself, or both must register.

Closing Thoughts

The expanded dealer definition continues the SEC’s trend of broad rulemaking that expands the agency’s oversight in existing areas and into new areas, often with unforeseen and unintended consequences. Coupled with the SEC’s pending proposal to amend the meaning of what it means to be an exchange, this rulemaking is central to the SEC’s plans to regulate additional market participants (like “communication protocol systems” and this broader universe of securities dealers), both in traditional financial markets and beyond (including crypto and DeFi).

Christopher Grobbel, Peter LaVigne, Nicholas Losurdo

February 12, 2024

Goodwin

[Aon Pays \\$1.5M SEC Penalty Over Key Return Rate Discrepancies.](#)

The Pennsylvania pension fund “repeatedly raised questions” about Aon’s return rate calculations, noting a 37 basis point discrepancy, the SEC found.

Dive Brief:

The Securities and Exchange Commission announced Friday it settled charges against Aon Investments USA, a Chicago-based investment adviser, and its former partner, Claire Shaughnessy, for misleading the Pennsylvania Public School Employees’ Retirement System about “the reason for a discrepancy between two different calculations for the large pension fund’s investment returns.”

The case centered on questions raised by the pension fund regarding a discrepancy that Aon failed to “adequately investigate” related to reports on an investment return rate for a nine-year period ending June 30, 2020. The rate was tied to a “risk-share” provision that required public-school employees to contribute more to their pensions if it fell below 6.36%.

Without admitting or denying the findings, Aon agreed to pay a civil penalty of \$1 million and disgorgement and prejudgment interest of \$542,187 and Shaughnessy agreed to pay a \$30,000 civil penalty. “Investment advisers must be scrupulously honest with their clients. Pension funds and other municipal entities should be able to trust that their investment advisers are telling them the truth,” said LeeAnn G. Gaunt, chief of the SEC’s public finance abuse unit.

[Continue reading.](#)

CFO Dive

by Maura Webber Sadovi

Published Jan. 29, 2024

[Governmental Accounting, Auditing, and Financial Reporting \(GAAFR\) | 2024 Blue Book](#)

What’s new since the 2020 GAAFR:

- Updates for 10 GASB Statements issued since the 2020 GAAFR, including: Subscription-Based Information Technology Arrangements (SBITAs), Public-Private and Public-Public Partnerships and Availability Payment Arrangements (PPPs), Accounting Changes and Error Corrections, and Compensated Absences
- New chapter dedicated to leases, SBITAs, and PPPs (Chapter 26) with expanded discussion of the accounting for each arrangement, including determining the terms (length) of the agreements and measuring assets, liabilities, deferred inflows and outflows of resources, and inflows and outflows of resources recognized for each type of arrangement
- A new chapter on the internal control component Information and Communication (Chapter 42)
- A new discussion of pledged revenues not received by the pledging government has been added to Chapter 28

[Click here](#) to learn more and to purchase.

[Current Dealer and Municipal Advisor Fees Upon SEC Suspension of 2024 Annual Rate Card Fees.](#)

[View the MSRB notice.](#)

1/30/24

[Financial Accounting Foundation Launches Redesigned Website for the Financial Accounting Standard Board; Additional Sites Premiere Soon](#)

Norwalk, CT, January 23, 2024 — The Financial Accounting Foundation (FAF) today announced the launch of a completely redesigned website for the Financial Accounting Standards Board (FASB). Users can access the new FASB site immediately at www.fasb.org.

New websites for the Governmental Accounting Standards Board (GASB) and the Financial Accounting Foundation itself are scheduled to debut in the coming weeks. The new websites feature streamlined navigation, a simpler menu structure, more attractive and intuitive design, a more robust search algorithm, and more prominent placement of the most important information stakeholders are looking for.

“We are pleased to provide to FASB stakeholders the first of our three new websites,” said FAF Executive Director John W. Auchincloss. “We are confident that they will appreciate the many improvements we made and how much easier it is to access important information.”

Auchincloss gave credit for the success of the project to the cross-organizational team that worked throughout most of 2023 to create the new sites. The group included representatives from the FASB, the GASB, and the FAF’s Publishing, IT, Legal, Administration, and Communications teams.

“We know how much our stakeholders want to get the information they need from us as quickly as possible. We believe our redesigned websites will deliver a better, faster, and more intuitive experience to all our users,” Auchincloss said.

[SEC Releases New Guidance on Tailored Shareholder Reports: Troutman Pepper](#)

On January 19, 2024, the Division of Investment Management staff at the Securities and Exchange Commission (SEC), released several responses to frequently asked questions (FAQs) related to the adoption of rules and form amendments for registered open-end funds (i.e., mutual funds and ETFs) that will substantially alter the form and content of fund shareholder reports. In October 2022, the SEC adopted amendments (Adopting Release) to rules under the Securities Act of 1933 and Investment Company Act of 1940, as well as Forms N-1A and N-CSR, in an effort to require funds to, among other things, transmit “concise and visually engaging” shareholder reports.

The FAQs address what an appropriate broad-based securities market index is, Form N-CSR and website availability requirements, binding individual shareholder reports of multiple funds, electronically provided shareholder reports, and compliance date and Inline XBRL issues. The full text of the new FAQs can be found [here](#).

[Continue reading.](#)

Troutman Pepper – Joseph V. Del Raso, John P. Falco, John M. Ford, Terrance James Reilly, Theodore D. Edwards, Joseph A. Goldman and Barbara H. Grugan

January 23 2024

[Accelerating EMMA: Time and Price in Municipal Securities Transactions](#)

Settlement Time

One of the great truisms is “Time is Money,” and there is no better exposition of the factors that demonstrate the truth of this statement than “The Price of Time: The Real Story of Interest” by the British financial historian Edward Chancellor (2022). In that book, Chancellor addresses both the history of interest (since the Babylonian Empire) and the critical importance of understanding the costs of future repayment. Perhaps nowhere else in the experience of Americans does the price of things to be done in the future have more currency than in the purchase of a dwelling place or some other major asset (automobile, boat, etc.).

Another area of life where time particularly matters is in the purchase or sale of securities. In the days of paper stock certificates and physical (as opposed to electronic) delivery, disturbing things could happen between the purchase or sale and the time of settlement.

The New York Stock Exchange dates back to 1792 and the Buttonwood Tree Agreement, while the “Curb Exchange” (American Stock Exchange) was in organized operation by the 1840s. But everything was done by hand, with pieces of paper and in-person delivery.

[Continue reading.](#)

by Peter D. Hutcheon

January 29, 2024

Norris McLaughlin P.A.

[MSRB Discussed Public Comments on 2024 Rate Card and Advanced Strategic Initiatives During Quarterly Board Meeting.](#)

Washington, D.C. –The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met in Washington, D.C., on January 24-25 for its second quarterly meeting of fiscal year 2024. At the meeting, the Board approved amendments to MSRB Rule G-27, received updates on the MSRB Rule G-14 and 2024 rate card filings, and discussed pre-trade market transparency. The Board also met with U.S. Securities and Exchange Commission (SEC) Chair Gary Gensler and members of

Commission staff to discuss the MSRB's market regulation and market transparency priorities.

2024 Rate Card

The Board discussed public comments received by the SEC in response to the MSRB's 2024 rate card filing, which established dealer market activity fees and the municipal advisor fee for the 2024 calendar year.

"I want to reaffirm the MSRB's long-standing commitment to transparency and accountability to the public we serve," said Meredith Hathorn, MSRB Board Chair. "One of our strategic goals is to uphold the public trust, and there is no better way to do that than to be good fiscal stewards of the resources the industry provides to us. We sincerely appreciate the comments we received on our fee filing, particularly regarding requests for more information related to our technology expenses, and we look forward to engaging with our stakeholders to inform the budgeting process."

The MSRB expects to file its response to the public comments with the SEC shortly.

Market Regulation

The Board authorized filing amendments with the SEC that would modernize MSRB Rule G-27, on dealer supervision, including the creation of a residential supervisory location (RSL) designation to reflect changing work patterns since the COVID-19 pandemic and further harmonize MSRB dealer supervisory requirements with FINRA's supervisory rules.

The Board received an update on industry feedback on its request for comment on draft amendments to MSRB Rule G-12(c) to consolidate existing guidance on certain inter-dealer confirmation requirements into a single streamlined rule provision. The Board decided to conduct further discussions with stakeholders prior to finalizing the proposed amendments.

The Board also received an update on the status of its recently filed amendments to MSRB Rule G-14 to shorten the timeframe for the reporting of trades from 15 minutes after the time of trade to as soon as practicable but no later than one minute, subject to exceptions for firms with limited trading activity and for manual trades. The G-14 rule filing was published in the Federal Register by the SEC today.

Market Transparency

The Board continued its discussion of pre-trade market transparency and directed MSRB staff to develop a concept proposal outlining the collection of pre-trade data in the municipal securities market for the Board to consider at a future date.

The MSRB published a new issuer case study as part of its Structured Data Lab in EMMA Labs, the MSRB's free innovation sandbox for transparency enhancements to the municipal securities market. The Structured Data Lab, originally launched in 2023 to foster a common understanding of structured data, now features three case studies telling the stories of municipal issuers who have prepared their financial statements in a machine-readable format. This latest case study provides additional issuer perspectives on the costs and benefits of structured data in the municipal bond market.

MSRB Leadership Update

The Board was introduced to Aleis Stokes, the MSRB's new Chief External Relations Officer, who will oversee the organization's corporate communications, stakeholder engagement and government

relations functions.

“I am delighted to welcome Aleis to lead the MSRB’s external relations team,” said Mark Kim, MSRB CEO. “Aleis comes to us with a wealth of experience and knowledge within the financial services industry, having led critical communications and stakeholder initiatives at key banking trade associations over the past two decades. We look forward to leveraging her expertise and keen ability to build and strengthen our stakeholder relationships.”

Prior to joining the MSRB, Stokes was senior vice president of communications for the Independent Community Bankers of America (ICBA). Stokes holds a BA in advertising and public relations from Pennsylvania State University and earned Accreditation in Public Relations (APR) from the Public Relations Society of America.

Date: January 26, 2024

Contact: Bruce Hall, Director, Communications
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[OCC Advises Banks on How to Prepare for Shortening the Standard Securities Settlement Cycle: Troutman Pepper](#)

On January 17, the Office of the Comptroller of the Currency (OCC) issued a [bulletin](#) advising banks on how to prepare for the upcoming shortening in the standard securities settlement cycle for most U.S. securities transactions. This is in response to the Securities and Exchange Commission (SEC) adoption of final rules that shorten the standard settlement cycle for most broker-dealer transactions from the second business day after the trade date (T+2) to the first business day after the trade date (T+1). The SEC has approved a similar rule change by the Municipal Securities Rulemaking Board (MSRB) to the settlement cycle for municipal securities, which has shortened the regular-way settlement for municipal securities transactions to T+1. The OCC expects banks to be prepared to meet T+1 standards as of May 28, 2024.

Banks should evaluate their preparedness for the accelerated settlement cycle and employ effective change management processes for all trades related to banks’ securities activities. These include activities related to banks’ investment and trading portfolios and securities settlement and servicing provided to banks’ custody and fiduciary accounts. Banks that offer retail nondeposit investment products through a broker-dealer are also expected to assess the broker-dealer’s preparedness for the new settlement time frames.

[Continue reading.](#)

Troutman Pepper – Jason L. Langford, Gregory Parisi and Zayne Ridenhour Tweed

January 18 2024

[What All Municipal Bond Issuers Should Know About Cybersecurity Risk](#)

Disclosure in 2024.

Over the last fifteen years, the Securities and Exchange Commission (SEC) has increased its focus on inadequate disclosure relating to governmental debt issues. Although municipal bond issuers are largely exempt from federal requirements for securities, they are required to comply with the antifraud provisions of the Securities Act of 1933 and Rule 10b-5 of the Securities Exchange Act of 1934 (the Exchange Act). These laws prohibit the making of material misstatements, or omissions of material facts if those facts are necessary to avoid a misleading statement. Issuers who fail to comply with disclosure requirements may be subject to regulatory actions and/or monetary fines. Primary market disclosure practices for municipal securities have developed as a result of these antifraud provisions and the regulatory actions brought by the SEC.

Cybersecurity Risk Disclosure

With a drastic increase in cyberattacks impacting municipal governments and the increased scrutiny on cybersecurity by rating agencies, cybersecurity risk disclosure has become increasingly more important for municipal bond issuers. There is no official guidance from the SEC about what municipal bond issuers should disclose about cybersecurity risks. The SEC has indicated that many principles applicable to the registered market provide guidance and can be applied to the municipal market.

1. On July 26, 2023, the SEC adopted a new rule to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incidents by public companies that are subject to the reporting requirements of the Exchange Act (the "Final Rule"). In summary, the Final Rule requires: disclosure of material cybersecurity incidents within four (4) business days of the company's determination that the cybersecurity incident is material;
2. new annual disclosures regarding the company's cybersecurity risk management and strategy, including with respect to the company's processes for managing cybersecurity threats and whether risks from cybersecurity threats have materially affected the company; and
3. new annual disclosures regarding the company's cybersecurity governance, including with respect to oversight by the board and management.

Best Practices for Municipal Bond Issuers

Although municipal bond issuers are not required to comply with the Final Rule, it provides guidance to municipal bond issuers in preparing cybersecurity risk disclosure. Such issuers should consider the following points for inclusion in their disclosures:

1. Cybersecurity attacks, if material;
2. Existence and description of policies and procedures for cybersecurity risk management;
3. In the absence of a formal policy, develop a framework related to cybersecurity preparedness to institute centralized responsibilities and a transparent strategy on how to proceed if cybersecurity incidents occur;
4. How and when the policies are reassessed to ensure the practices are up to date;
5. Note the risks unique to the particular infrastructure and how to best protect the issuer's financial condition, operations, reputation and relationships;
6. Existence of cybersecurity insurance, what it covers and the deductible.

Pullman & Comley, LLC

by Jessica Grossarth Kennedy

January 18, 2024

Proposed Rule Change To Amend MSRB Rule G-12 To Promote the Completion of Allocations, Confirmations, and Affirmations by the End of Trade Date: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) filing. SIFMA applauds the MSRB's goal to modernize its rule book and align municipal securities settlement with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6-1, as amended.

[Read the SIFMA Comment Letter.](#)

MSRB Announces Members of 2024 Advisory Groups.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its advisory groups. In all, 30 experienced market professionals will share their municipal market and regulatory perspectives while serving on the Compliance Advisory Group (CAG) and Municipal Fund Securities Advisory Group (MFSAG).

For the seventh consecutive year, CAG will inform the MSRB's compliance initiatives by providing feedback on compliance resources and tools to enhance dealers' and municipal advisors' understanding of MSRB rules and areas where compliance clarification and assistance may be warranted. "We are fortunate that such a diverse class of municipal market participants have volunteered their time and expertise to help inform the MSRB's important work," said Liz Sweeney, Board member and FY 2024 CAG Chair. "It is especially helpful that issues of particular interest and concern to small firms can be effectively communicated to the MSRB by hearing directly from CAG's small firm representatives, in addition to the MSRB's other outreach and engagement channels with smaller regulated entities."

Reinstated in FY 2024 following a gap year, MFSAG will provide input on industry practices, guidance and investor education related to 529 savings plans and Achieving a Better Life Experience Act of 2014 (ABLE) programs. "For MFSAG, we are pleased to welcome market participants operating within the 529 and ABLE spaces to lend their experience and perspectives on current market practices — such thoughtful discussions will inform the MSRB's work as it explores regulatory efforts within this market," said David Belton, Board member and FY 2024 MFSAG Chair.

[Continue reading.](#)

Date: January 18, 2024

Contact: Bruce Hall, Director, Communications
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MSRB Announces Discussion Topics for Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet on January 24-25, 2024, holding the second meeting of fiscal year 2024 to advance its [FY 2022-2025 Strategic Plan](#).

Annual Rate Card

The Board will discuss comments received in response to the MSRB's 2024 rate card filing with the SEC, establishing market activity fees and the municipal advisor fee for the 2024 calendar year. The MSRB's new rate card process annually adjusts rates assessed on regulated entities to ensure a timelier return of any excess revenue (i.e., surplus) to regulated entities and to better manage the organization's reserve funds.

Market Regulation

The Board will consider whether to modernize [MSRB Rule G-27](#), on dealer supervision, to reflect changing work patterns since the COVID-19 pandemic and to further harmonize MSRB dealer supervisory requirements with FINRA supervisory rules.

The Board also will receive an update on industry input on its request for comment on draft amendments to [MSRB Rule G-12\(c\)](#) to consolidate existing guidance on certain inter-dealer confirmations requirements into a single streamlined rule provision.

Additionally, the Board will continue its discussions on a potential pre-trade market transparency initiative.

Date: January 17, 2024

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MSRB Publishes 2023 Annual Report and Audited Financial Statements.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its annual report for the 2023 fiscal year. The report summarizes the MSRB's key accomplishments over the past year and provides detailed information about its core operations and financial position. Congress established the MSRB with the mission to protect investors, issuers and the public interest by serving as the principal regulator of the \$4 trillion municipal securities market.

"The value the MSRB delivers to the municipal securities market rests on the independence and expertise that are the defining features of our SRO model," said MSRB Chair Meredith Hathorn and MSRB CEO Mark Kim in their letter to stakeholders. Noting that MSRB Board members are municipal market experts whose knowledge and perspectives are essential to ensuring that the MSRB's rules are necessary, fair and balanced, Hathorn and Kim added: "The MSRB also delivers value to the market through our market transparency products and services... and by consistently engaging with market stakeholders as we advance key initiatives."

Highlights from the report include:

Modernizing Market Regulation

- Advancing a rule proposal to shorten the timeframe for trades to be reported to the MSRB;
- Facilitating the transition to T+1 settlement for municipal securities transactions in coordination with other financial regulators;
- Creating a new rule establishing the core standards of conduct for solicitor municipal advisors; and
- Enhancing compliance by advancing the codification or retirement of approximately 20% of the MSRB's body of interpretive guidance since launching the rulebook modernization initiative in 2021.

Enhancing Market Transparency through Technology and Data

- Releasing user-driven enhancements to the EMMA platform to improve the accuracy and quality of the information available on EMMA and to provide additional market transparency for market participants, such as adding an hourly municipal yield curve and retiring individual user accounts to give issuers greater control of their information.
- Launching a new structured data lab in the MSRB's innovation sandbox, EMMA Labs, to educate municipal market participants about structured data. The lab defines key concepts and terms, provides informative case studies from municipal issuers and demonstrates a possible application of structured data in a future state version of EMMA.

Advancing the Public Trust

- Implementing a new rate card model, which takes into account both actual and projected market activity to adjust rates assessed on regulated entities each year. The rate card model provides greater transparency into the rate-setting process as well as greater accountability to the regulated entities that pay those fees by automatically returning any operating surplus in one year in the form of lower rates the following year.
- Issuing a request for information to consider the perspectives of small firms operating in the municipal securities market to better inform our market regulation and market transparency priorities.

The annual report includes audited annual financial statements for the fiscal year that ended September 30, 2023, ensuring transparency and accountability to the public around how the MSRB advances its mission.

[Read the report.](#)

Date: January 16, 2024

Contact: Bruce Hall, Director, Communications
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[Beyond 'Boring Bonds': SEC Settles with Former Executive Over Risky Investment Recommendations - Sherman & Howard](#)

The Securities and Exchange Commission (SEC) has reached a settlement with the former head of

the municipal bond desk at Aegis Capital Corporation (Aegis) Alan Appelbaum.

The SEC alleged Appelbaum violated customer-specific suitability requirements in both recommending and selling variable interest rate structured products (“VRSPs”) to seven retail investors. The SEC stated in the complaint that Appelbaum either, “knew, was reckless in not knowing, or should have known that these securities were unsuitable for those customers.” Appelbaum was obligated under both suitability requirements and internal Aegis policy to make recommendations only after considering a customer’s risk tolerance, age, and investment time horizons.

VRSPs are high-risk structured products and pay interest at a fixed rate for an initial period, usually 1-3 years. After that, they are not guaranteed to pay any interest. The recovery of the principal at maturity is based on the operation of derivative features connected to equity indices like the Standard and Poor’s 500 and the Russell 2000. Additionally, there is no assurance of liquidity. A secondary market may not exist for VRSPs, and if a secondary market does exist, it can be at a great discount to face value.

The complaint alleged Appelbaum made “over 140 unsuitable recommendations and purchases of highly complex structured products for [the] retail investors.” All seven retail investors had a “moderate” risk tolerance, meaning they were unwilling to lose their entire investment principal. Additionally, the customers included in the complaint all had investment time horizons of up to 11 years. In contrast, the majority of VRSPs Appelbaum recommended or purchased for customers did not mature for 15 years.

Aegis policy required customers to sign a disclosure form prior to purchasing any VRSPs; however, Appelbaum failed to provide such form to any of the seven customers presented in the complaint. Additionally, Appelbaum did not attend the Aegis mandatory training on structured products. The complaint also alleged Appelbaum engaged in unauthorized trading. All the accounts managed by Appelbaum were “non-discretionary.” Aegis policy required Appelbaum to obtain customer authorization before every transaction in a “non-discretionary” account. The SEC claimed Appelbaum failed to obtain the mandatory consent needed from customers before purchasing and selling VRSPs in their accounts.

Customers noticed losses and confronted Appelbaum about his investment strategies. The complaint alleged Appelbaum continued to make material misrepresentations to his customers, assuring them that he was investing in “boring bonds,” and they would see a return on their investments in time. One customer lost over \$1 million, and another lost over \$200,000; in contrast, Appelbaum received at least \$1 million in compensation for the VRSP trades.

Without admitting or denying the allegations, Appelbaum and the SEC reached a settlement. The United States District Court for the Southern District of Florida entered final judgment on November 14, 2023. The final judgment permanently restrained and enjoined Appelbaum from any further violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Appelbaum was also ordered to pay \$42,000 in disgorgement, (representing net profits gained as a result of the conduct alleged in the complaint), \$5,500 in prejudgment interest, and a civil penalty of \$50,000. The SEC also settled an administrative proceeding against Aegis and another against former Aegis broker Paul Gallivan, both for the improper recommendation and trading of VRSPs.

VRSPs are not, in fact, “boring bonds,” as Appelbaum put it. As indicated in the complaint; “Retail investors often rely on the recommendations of broker-dealers and their associated registered representatives when purchasing or selling securities. Registered representatives are required

under, inter alia, FINRA and SEC Rules to recommend only securities transactions that are suitable for their customers...” The SEC views VRSPs as complex and risky structured products that are not suitable for retail investors with moderate risk tolerances, incompatible investment time horizons, and an unwillingness to lose their entire invested principal.

[Litigation Release: SEC.gov](#) | [Alan Z. Appelbaum](#)

[Complaint: Alan Z. Appelbaum \(sec.gov\)](#)

[Final Judgment: judg25895.pdf \(sec.gov\)](#)

Sherman & Howard L.L.C.

by Jessie Salas

January 9, 2024

GASB Proposes Guidance on Disclosure of Certain Risks.

Norwalk, CT, January 8, 2024 — The Governmental Accounting Standards Board (GASB) issued guidance today that requires governments to disclose information about certain risks.

Although governments are required to disclose information about their exposure to some risks, such as interest and credit risk associated with investments, essential information about certain other risks that are prevalent among state and local governments is not routinely disclosed because it is not explicitly required. The new Statement is meant to provide financial statement users with information about certain risks when circumstances make a government vulnerable to a heightened possibility of loss or harm.

[GASB Statement No. 102](#), *Certain Risk Disclosures*, requires governments to disclose essential information about risks related to vulnerabilities due to certain concentrations or constraints.

1. The Statement defines a concentration as a lack of diversity related to an aspect of a significant inflow or outflow of resources—for example, a small number of companies that represent a majority of employment in a government’s jurisdiction, or a government that relies on one revenue source for most of its revenue.
2. The Statement defines a constraint as a limitation imposed on a government by an external party or by formal action of the government’s highest level of decision-making authority—such as a voter-approved property tax cap or a state-imposed debt limit. Based on input from financial statement users during the research phase of the project, GASB is proposing that certain types of assets be disclosed separately in the note disclosures about capital assets. This would allow users to make informed decisions about these and to evaluate accountability.

Concentrations and constraints may limit a government’s ability to acquire resources or control spending.

Disclosure Criteria

The Statement generally requires a government to disclose information about a concentration or constraint if all of the following criteria are met.

1. The concentration or constraint is known to the government prior to issuing the financial statements.
2. The concentration or constraint makes the government vulnerable to the risk of a substantial impact.
3. An event or events associated with the concentration or constraint that could cause a substantial impact have occurred, have begun to occur, or are more likely than not to begin to occur within 12 months of the date the financial statements are issued.

Note Disclosures

The disclosures should include a description of the following:

1. The concentration or constraint,
2. Each event associated with the concentration or constraint that could cause a substantial impact if the event has occurred or has begun to occur prior to the issuance of the financial statements, and
3. Actions taken by the government to mitigate the risk prior to the issuance of the financial statements.

The requirements of Statement 102 are effective for fiscal years beginning after June 15, 2024, and all reporting periods thereafter. Earlier application is encouraged.

The Statement is available on the GASB website, www.gasb.org.

[MSRB Files to Shorten Timeframe for Trade Reporting to One Minute.](#)

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission amendments to [MSRB Rule G-14](#) to shorten the timeframe for trades to be reported to the MSRB. The amendments change the current 15-minute standard to as soon as practicable, but no later than one minute after the time of trade, subject to exceptions for manual trades and firms with limited municipal trading activity.

“With this rule filing, the MSRB achieved a milestone on the way to improving the transparency of the municipal securities market,” said MSRB CEO Mark Kim. “We look forward to working with the SEC to finalize this rulemaking. I also want to acknowledge FINRA, with whom we worked closely to harmonize our respective rule proposals to provide clarity and consistency in trade reporting across fixed income markets.”

The MSRB initially sought comment from stakeholders on its one-minute trade reporting proposal in August 2022, which resulted in a robust response from market participants. Thereafter, the MSRB engaged in additional analysis and extensive engagement with market stakeholders to understand why certain types of voice-brokered, block and other trade types might not currently be readily reportable within one minute, as well as to understand potential resource or other barriers to meeting a new one-minute timeframe that might exist for some firms, including smaller or less active firms.

“We have considered this feedback and recognize the critical roles that all types of firms and

differing manners of trading play in the municipal securities market,” said Ernesto Lanza, Chief Regulatory and Policy Officer. “The proposal filed today represents a carefully crafted modernization of the trade reporting paradigm that we believe will result in substantial improvements in making more contemporaneous prices available to investors and other market participants. It also will ensure firms with limited trading volumes can continue to participate in this market and the many legitimate uses of manual trades are not unnecessarily impeded.”

Trades reported on RTRS are made available for free to the public via the Electronic Municipal Market Access (EMMA®) website, providing investors, dealers, municipal advisors and other market participants with the information they need to make informed decisions about the pricing of municipal securities.

[Read the SEC Filing.](#)

Date: January 12, 2024

Contact: Bruce Hall, Director, Communications
202-838-1500
bhall@msrb.org

[MSRB 2023 Municipal Bond Market in Review.](#)

[View the MSRB publication.](#)

1/11/24

[MSRB Prepares to Change the Market for Dealers in 2024.](#)

The Municipal Securities Rulemaking Board is gearing up to change how broker-dealers operate in 2024, as the controversial move to a one-minute trade reporting window will come into effect, a change to a T+1 settlement cycle, in addition to a new proposal aimed at soliciting market feedback on pre-trade data.

The board’s last few years have been dominated by its self-described focus on pre-trade, time of trade, and post-trade regulations and in the new year, those efforts will begin to shape the market.

“Most likely in the first quarter of 2024, we will see the MSRB file amendments to our Rule G-14 on trade reporting,” said MSRB Chief Executive Officer Mark Kim. “This is the culmination of a years-long effort to look at market structure, examine post-trade transparency and to look specifically at shortening the trade reporting requirements from the current 15 minutes to the proposed one-minute timeline.”

“The rule filing the MSRB is anticipating to make early next year will include two important exemptions to the one-minute trade reporting requirement,” Kim said. “They focus around an exemption for de minimis market activity, or firms that do not trade a significant amount in the municipal securities market, as well as an exemption for manually-executed trades.”

In addition to amendments to Rule G-14 on time of trade, the MSRB will also move to a T+1

settlement cycle, with the compliance date set for equities and corporate bonds May 28, 2024, and launch a new proposal on pre-trade reporting.

“The MSRB has systematically been examining market structure and our rules thereunder,” Kim said. “Rule G-14 is an example of post-trade transparency and looking at how long it takes the market to report the trades once they happen. Earlier this year, the MSRB examined time of trade disclosures in proposing amendments to its Rule G-47,” he added. “In the year ahead, I would expect the MSRB to continue its examination of pre-trade market transparency in the form of soliciting feedback from the industry.”

The Financial Data Transparency Act will upend the way in which most issuers present and submit financial information and has received a heavy dose of criticism since it passed a year ago. Rulemaking from the SEC is coming in 2024 and the board looks forward to the opportunity to comment.

“I think the market is looking forward to the data standards that will be coming from the Treasury and SEC as mandated by Congress under the FDTA,” Kim said. “We’re expecting those standards to come out for public comment sometime in the middle of this next year, sometime perhaps in the summer of 2024.”

The MSRB has already put in some effort to educate the market. Within the last year the board has published its structured data lab on its own EMMA Labs platform and within that, has published case studies that show how some issuers have dealt with structured data so far.

Early in the new year the MSRB plans to publish another case study from what it calls a “prominent issuer” to give market participants even more information ahead of the regulations.

The board also plans, early next year, to publish a 2023 year in review research piece, which analyzes many of the ups and downs of 2023. But as far as what can be predicted for the new year, the MSRB is keeping an eye on the new rate environment for 2024. Rates are widely expected to drop and that expectation is already being priced into the market, Kim said.

“We’ve seen a very rapid rise in interest rates over the last two years and if you believe some of the projections for the coming year, the interest rate cycle may have peaked, and we may be expecting the Fed to begin lowering interest rates. Of course, if that doesn’t happen, we will see a lot more volatility across our markets which have already priced in that expectation.”

The SEC’s Best Execution rule, proposed at the end of 2022, has been controversial due to the fact that there are already Best Execution rules on the books at the MSRB and FINRA. Once that’s finalized, the MSRB will likely have to reexamine its own rule.

“If the SEC adopts a new Best Execution standard, that almost certainly would require the MSRB to pivot and re-examine our own Best Execution rule to make sure that our rules are harmonized across markets,” Kim said.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 01/02/24 10:48 AM EST

Outlook: SEC In for a Dizzying Year.

The year 2024 is shaping up to be a landmark one for the Securities and Exchange Commission, not only through their own rigorous enforcement agenda but the regulator is in for continued industry backlash and a Supreme Court case that could test its enforcement powers and change how the SEC operates.

Through its own enforcement agenda, the SEC has made clear its muni market focus in 2024 will be to scrutinize solicitor municipal advisors and compliance with Regulation Best Interest. Dave Sanchez, director of the SEC's Office of Municipal Securities, also said during a panel during at regulator's Compliance Outreach Program in early December that issuers should keep an eye on the Government Finance Officer's Association's best practices for climate and ESG risk disclosure.

But outside of its normal examination priorities, the Commission has received intense backlash in recent years for what many market participants view as an unprecedented regulatory agenda, and with many of these proposals coming into effect in 2024, even more backlash is expected.

"Next year is going to be the year of the lawsuit for the SEC," said Chris Iacovella, chief executive officer of the American Securities Association. "This administrative state chairman (SEC chairman Gary Gensler), who is an unelected partisan, has decided to use his influence to demand that the MSRB write rules, when there is no market failure, is a threat to our marketplace and quite frankly, it's a threat to democracy and the freedom to operate because you have somebody coming in and telling the MSRB that they have to change what works, because that's what he thinks is best."

Top of mind for the broker-dealer community are the post-trade and time-of-trade reporting rules, which change the trade reporting window to one minute and the settlement date to T+1, respectively. The MSRB has also indicated in the new year that it will be soliciting feedback on pre-trade reporting.

"We're very concerned that he's not going to stop with post-trade reporting, and that he intends fully to lean on them to try to change to some pre-trade mechanism to force everything onto an electronic platform because he's predisposed to trying to do that, based upon his time at the CFTC, implementing the swaps regime," Iacovella said of Gensler.

"It's come to our attention that the current chair of the SEC has called the MSRB a glorified trade association," Iacovella said. "We obviously disagree with that but we're also concerned that the government is using its authority to lean on and pressure the SRO (self-regulatory organization) to do things that are unnecessary, because there's no market failure."

"My view is that 2024 is going to continue to be a difficult environment for the broker-dealer community," said Leslie Norwood, managing director, associate general counsel and head of municipal securities at the Securities Industry and Financial Markets Association. She noted a mix of factors such as the interest rate environment, expected to come down in 2024, that has caused new issue volume to decrease, and capital rules such as the Basel III End Game proposal, on which comments are due Jan. 16.

"There's also direct costs that are at play, such as the increase in MSRB fees," Norwood said. The MSRB recently filed its new rate card with the SEC and comments on that are due Jan. 2, though the rates were effective immediately.

"The rate card was put in place to try to create more certainty in terms of the fees and to try and smooth out some of the swings," Norwood said. "However, the swings within each of the buckets of

this new rate card model have been pretty dramatic this round, including a reduction in the trade count fees of 48% and an increase in the underwriting fees of 25%. The increase in underwriting fees was only 25% because they hit the cap," she added. "I think that's something that continues to be an issue for the broker dealer community."

Gensler has made it clear that he's trying to bring the Commission up to speed with the large technological and societal changes over the last several decades and has made strong efforts to issue regulations, not just enforcement actions.

"We've all seen complaints that they're doing regulation through enforcement, and now they're doing regulation through regulation so I guess we can't have it both ways," said Teri Guarnaccia, partner at Ballard Spahr, co-leader of the firm's public finance group and co-leader of the firm's municipal securities regulation and enforcement team.

But for the SEC's Public Finance Abuse Unit, new ground has been broken on enforcement as well. Beginning at the end of 2022, the Office of Municipal Securities has begun enforcing nonadherence to the limited offering exemption, and so far, it's had a positive effect on the habits of the market.

"I think that it is one of those areas like MCDC was, where the regulatory or the enforcement activities have forced better practices from broker dealers," Guarnaccia said. "Where now, certainly at least the big banks, most of whom the SEC has already looked at, have policies and procedures in place and it's received such attention that I think its people are really looking at it."

Others have already noted the MCDC-like nature of the SEC's look at the limited offering exemption, where the Commission takes a specific offense and offers lenient settlements with firms that self-report their offenses. The Commission has so far charged seven firms for violating the exemption.

"I don't know that they're done, because maybe they haven't finished all of their started actions," Guarnaccia said. "But I think going forward, people understand what they were looking at and are more cognizant of how to comply."

But all will be eager to watch what happens in SEC v. Jarkey, the case that will test whether the Commission's statutory provisions which allow them to seek civil penalties have been violating the Seventh Amendment. The decision is expected in 2024.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 12/27/23 11:32 AM EST

[Dealers Want Subsection of Rule G-12 Eliminated.](#)

The Municipal Securities Rulemaking Board's proposal on Rule G-12(c), the subsection of its uniform practices dealing with inter-dealer confirmations, which would simplify some existing guidance, retire some others and merge much of it into Rule G-15, should go further and eliminate the subsection altogether, dealers say.

MSRB Rule G-12 on uniform practice establishes the industry standards for the processing, clearance and settlement of transactions between municipal securities dealers. The MSRB's current proposal is focused solely on Rule G-12(c) and would codify existing interpretive guidance on inter-dealer disclosure requirements that are ineligible for automated comparison.

Since the vast majority of transactions are eligible for automated comparison, Rule G-12(c) doesn't touch a large swath of the market but for those it does, paper confirmations among dealers are outdated and new requirements to simplify these disclosures would only streamline a process largely out of sync with the rest of the market.

"Rule G-12(c) should be deleted as electronification of systems has rendered it obsolete," Leslie Norwood, managing director, associate general counsel and head of municipal securities at the Securities Industry and Financial Markets Association wrote in the proposals' only comment letter. "Rule G-12(c) had value when it was originally adopted, and it served a valid purpose in an operational environment where there were a significant number of trades that were ineligible for automated comparison. However, Rule G-12(c) has been made obsolete in large part to the speed of computers as settlement cycles have continued to shrink from T+3 to the current T+2 and the planned move to T+1 in May 2024."

The draft amendments, proposed as part of the MSRB's retrospective rule review, would reorganize the content of Rule G-12(c) on inter-dealer confirmation to align with the format for similar provisions in Rule G-15(a) on written confirmations. The amendments would also regroup requirements into the three buckets of transaction information, securities identification information and securities descriptive information.

The proposal would also require inter-dealer confirmations to include confirming party's name, address and telephone number, contra party identification, designation of purchase from or sale to, par value of the securities, trade date, settlement date, yield and dollar price, amount of concession, final monies, delivery of securities and "additional information about the transaction," the proposal said.

They would also have to include the name of the issuer, CUSIP number, maturity date, interest rate and dated date and descriptive information such as credit backing, features of the securities, information on status of securities, and tax information. Some of this may be worth disclosing to customers but not for dealers.

"While Rule G-15 customer confirmations still have value, paper interdealer transactions do not," the SIFMA letter said. "Currently industry practice is to evidence interdealer trades with Bloomberg screen captures, VCONs, or trade blotters. These are also the types of items that FINRA examiners ask for as evidence of interdealer trades."

Harmonizing Rule G-12(c) with Rule G-15 would be unnecessary, as disclosures of information as such would "merely create a web of potential regulatory foot-faults without any benefit," SIFMA said.

The scope of the proposal is also overwhelming and if the board chooses to proceed with the proposal, the amount of guidance being amended, codified, merged and retired should be significantly reduced, as the sheer scope makes it difficult to gauge any unintended consequences, SIFMA said.

SIFMA also recommends that the MSRB should prioritize guidance not being incorporated into the rule before taking further action, and should address the guidance being retired or codified in a FAQs page before being codified into the rule.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 12/18/23 01:52 PM EST

Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13 (Joint Trades): SIFMA Comment Letter

SUMMARY

SIFMA, American Securities Association (ASA), Bond Dealers of America (BDA), and National Association of Municipal Advisors (NAMA) provided comments to the U.S. Securities and Exchange Commission (SEC) on the MSRB's Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13.

[Read the SIFMA Comment Letter.](#)

Proposed Rule Change to Establish the 2024 Rate Card Fees for Dealers and Municipal Advisors Pursuant to MSRB Rules A-11 and A-13: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) filing to establish its 2024 Rate Card Fees.

[Read the SIFMA Comment Letter.](#)

MSRB Designation Information Regarding Mandatory Participation in Business Continuity and Disaster Recovery Testing.

[Read the MSRB Notice.](#)

1/4/24

Cybersecurity Disclosure Guidance for Municipal Bonds: Cozen O'Connor

Cyberattacks against municipal entities and 501(c)(3) organizations are becoming increasingly sophisticated and severe. The potential impact of these cyberattacks on entities is significant in both the time required to address the impact of the attack and the costs of any liability and remediation. Credit rating agencies have emphasized that cyberattacks pose a credit risk to municipal bond issuers and may result in a lower credit rating, which increases borrowing costs.

On July 26, 2023, the Securities and Exchange Commission (the SEC) adopted final rules (the Rules) requiring public companies to disclose material cybersecurity incidents and to annually disclose material information regarding their cybersecurity risk management, strategy, and governance.¹ Although the Rules only apply to public companies subject to the reporting requirements of the

Securities Exchange Act of 1934, the SEC has frequently urged the municipal markets to look to the disclose requirements imposed on public companies. Accordingly, the Rules provide guidance to municipal issuers and 501(c)(3) organizations on how they may consider disclosing cybersecurity matters in offering documents and on the formulation of policies and strategies to combat cyberattacks.

Disclosure of a Material Cybersecurity Incident

Commencing on December 18, 2023, the Rules require public companies to publicly disclose any “cybersecurity incident” they determine to be material and describe the material aspects of its

1. nature, scope, and timing; and
2. impact or reasonably likely impact on the company, including its financial condition and results of operations.

A “cybersecurity incident” is defined as “an unauthorized occurrence on or conducted through a [company’s] information systems that jeopardizes the confidentiality, integrity, or availability of a [company’s] information systems or any information residing therein.” The Rules emphasize that the term “cybersecurity incident” is to be construed broadly.

Disclosure of a cybersecurity incident will generally be due within four business days after the affected company determines that a cybersecurity incident is material.² This requirement is similar to the disclosure of certain reporting events the municipal market is accustomed to under Rule 15c2-12.³

Annual Disclosure

In addition, commencing with its annual report for the fiscal year ending on or after December 15, 2023, public companies will be required to provide annual disclosures related to the companies’ processes for the management and governance of cybersecurity threats.

In the annual disclosure, companies must describe the following:

1. The process, if any, for assessing, identifying, and managing material risks from cybersecurity threats in sufficient detail for a reasonable investor to understand those processes. In providing such disclosure, the company should address:
 - whether and how any such processes have been integrated into the company’s overall risk management system or processes;
 - whether the company engages assessors, consultants, auditors, or other third parties in connection with any such processes; and
 - whether the company has processes to oversee and identify such risks from cybersecurity threats associated with its use of any third-party service provider.
2. Whether any risks related to cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the company, including its business strategy, results of operations, or financial condition, and if so, how.
3. The board of directors’ oversight of risks from cybersecurity threats. If applicable, identify any board committee or subcommittee responsible for the oversight of risks from cybersecurity threats and describe the processes by which the board or such

committee is informed about such risks.

4. The management's role in assessing and managing the company's material risks from cybersecurity threats, including:

- whether and which management positions or committees are responsible for assessing and managing such risks and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;
- the processes by which such persons or committees are informed about and monitor the prevention, detection, mitigation, and remediation of cybersecurity incidents; and
- whether such persons or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

Guidance for Municipal Market Participants

Although the municipal market is not subject to Rules, they offer helpful insight and guidance to its participants. The Rules provide municipal issuers and 501(c)(3) organizations with a valuable framework for drafting cybersecurity risk disclosure in offering documents. Additionally, the Rules provide guidance on drafting and implementing policies and procedures for responding to cyberattacks.

1 SEC Release Nos. 33-11216 and 34-97989.

2 The cybersecurity incident disclosure may be delayed if the United States Attorney General determines that immediate disclosure would pose a substantial risk to national security or public safety and notifies the SEC of such determination in writing.

3 17 CFR § 240.15c2-12.

Cozen O'Connor - Scott R. Mehok

December 7, 2023

[Apply to Serve on GFOA's Executive Board.](#)

Put your leadership skills and knowledge of public finance to work to help members continue to build thriving communities. Applications are open to serve on GFOA's Executive Board. Board members serve a three-year term and are expected to participate in all meetings, including three on-site meetings per year, plus GFOA's committee meetings. Applications are due by February 2.

[LEARN MORE](#)

[MSRB Seeks Feedback on Impact of Municipal Market Regulation on Small Firms.](#)

Washington, D.C.- The Municipal Securities Rulemaking Board (MSRB) today issued a request for information (RFI) to solicit feedback from market participants and the public on the impact of municipal market regulation on small firms operating in the municipal securities market. The MSRB is seeking this input as part of its broader stakeholder engagement to hear directly from municipal market participants on how the MSRB's rules, or the absence thereof, may create undue regulatory, compliance, operational or administrative burdens or other negative unintended impacts.

"By seeking to understand the impact of our rules on market participants, we strive to ensure that the municipal securities market is both fair and efficient," said Mark Kim, MSRB CEO. "I believe that an impactful way to support the efforts of regulated entities to comply with our rules is to assess whether a rule is no longer achieving its intended purpose or if there are disproportionate costs or burdens associated with compliance for certain types of firms."

The MSRB is soliciting responses and information on a range of topics, including:

- Factors that should be considered in identifying a firm as small versus mid-sized or large, such as revenue, market participation (i.e., trade and underwriting volume), number of employees or type of regulated entity;
- Rules or market practices that may have unintended and disproportionate impacts on the ability of small firms to compete in the municipal securities market;
- Rules or market practices that may unintentionally limit small firm participation in the municipal securities market;
- Potential revisions to rules or changes to administrative processes that could be made to better address specific challenges uniquely faced by small firms; and
- Compliance resources or guidance the MSRB could produce that would be useful for small firms.

The MSRB's request for information directs a number of questions to small municipal advisor firms and dealers, but the MSRB welcomes responses from all market participants on any aspect they wish to address. Comments are due to be submitted by February 26, 2024.

[Read the Request for Information.](#)

Date: December 04, 2023

Contact: Bruce Hall, Director, Communications
202-838-1500
bhall@msrb.org

[MSRB Seeks Board of Directors Applicants.](#)

Washington, D.C. - The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization (SRO) established by Congress to safeguard the \$4 trillion municipal securities market, is soliciting applications for three positions on its Board of Directors for the 2025 fiscal year. Selected candidates will be elected to four-year terms beginning October 1, 2024, where they will have the opportunity to oversee the advancement of the organization's Strategic Plan.

"Ensuring the MSRB Board is a diverse and inclusive decision-making body that reflects the wide variety of perspectives in the municipal market is essential to our ability to advance initiatives that support a fair and efficient market," said Meredith Hathorn, MSRB Board Chair. "We are particularly interested in applicants with compliance experience and an understanding of the role of

technology in the municipal securities market to help provide oversight of the MSRB's market transparency and regulatory initiatives," added Jennie Huang Bennett, MSRB Board member and Chair of the Board's Nominating Committee, which leads the process of identifying new Board members. "That said, we encourage all individuals with municipal securities experience from all regions of the United States to apply for membership on the Board."

The Board is charged with setting regulatory policy, authorizing rulemaking, enhancing market transparency systems and overseeing operations for the organization. The Board is currently overseeing the execution of the MSRB's FY 2022-2025 strategic goals, with a focus on modernizing the MSRB rule book, enhancing municipal market transparency through technology and data, and upholding the public trust through fiscal transparency as well as a commitment to social responsibility, diversity, equity and inclusion. Board members are compensated for their service.

Board Composition

The Board is composed of 15 total members, which includes eight members who are representatives of the public, including investors, municipal entities and other individuals not regulated by the MSRB, and seven members from firms that are regulated by the MSRB, including representatives of dealers and municipal advisors. During the current nominating process, the Board will elect two public representatives and one regulated representative to join the Board on October 1, 2024. All applicants must be knowledgeable of matters related to the municipal securities market.

Application Details

Applications are made through the MSRB [Board of Directors Application Portal](#) and will be accepted from January 2, 2024 through February 9, 2024. At least one letter of recommendation must be submitted with the application. Additional details on the Board application process, including a copy of the application form for preview, information about Board service requirements and FAQs are available on the [MSRB's website](#). Questions regarding the application and selection process should be directed to Jake Lesser, General Counsel, at 202-838-1395 or jlesser@msrb.org.

Date: December 05, 2023

Contact: Bruce Hall, Director, Communications
202-838-1500
bhall@msrb.org

[MSRB Files 2024 Rate Card for Dealers and Municipal Advisors.](#)

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) today filed its 2024 rate card for dealers and municipal advisors with the Securities and Exchange Commission (SEC). The 2024 rate card adjusts rates for the three market activity fees assessed on municipal securities dealers and the professional fee assessed on municipal advisors. The new rates will be effective as of January 1, 2024.

"Under the rate card model, the MSRB annually adjusts fees to better manage the organization's revenue and reserve levels needed to deliver value to the municipal market through regulatory protections, technology infrastructure and data services," said Mark Kim, MSRB CEO. "This formulaic rate-setting process reflects feedback we have received from stakeholders regarding our reserve management. It is more transparent and predictable for the MSRB's stakeholders, while also

allowing us to quickly adapt to changing market conditions and ensuring the MSRB does not collect more fees than it needs to operate.”

Each fee rate in the 2024 rate card was determined based on the amount of revenue each fee was expected to contribute and the anticipated volume of activity underlying the fee. The amount of revenue each fee contributes is designed to be a fair and equitable balance, in line with recent historical precedents. The 2024 rate card includes a 15% reduction in the transaction fee and a 48% reduction in the trade count fee to reflect surplus revenue collected from dealers resulting from record-high trading volume in 2023. It also includes increases of 25% in the underwriting fee and 9% in the municipal advisor professional fee to make up for a deficit last year in these two fees relative to budget. Together, these fee changes would return a net \$3 million in surplus revenue to regulated entities. The rate card model stipulates caps on rate increases, including a 25% cap on rate increases in a given year, but no floor on rate reductions.

“The tough year in underwriting along with the higher-than-expected trade volume are the reasons we are raising some fees while lowering others,” said Bo Daniels, MSRB Board member and Chair of the Finance Committee. “While our new rate card approach does not fully cure the challenge of having to make predictions about market activity volume in the year ahead, it does help ensure that excess revenue collected is returned to dealers and municipal advisers timelier and with more predictability.”

For a more detailed explanation of the MSRB’s rate card, fees and funding philosophy see:

- [2024 Rate Card FAQs](#)
- [MSRB Annual Rate Card](#)
- [MSRB Funding Policy](#)
- [MSRB Notice 2023-10](#)

Date: November 30, 2023

Contact: Bruce Hall, Director, Communications
202-838-1500
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[FAF Reappoints Carolyn Smith to GASB and Appoints Robert Hamilton as Chair of GASAC.](#)

Norwalk, CT, November 14, 2023 — The Board of Trustees of the Financial Accounting Foundation (FAF) today announced the reappointment of Carolyn Smith to the Governmental Accounting Standards Board (GASB) for a second five-year term. Her service on the GASB continues through December 31, 2029.

The Trustees also announced the appointment of Robert W. Hamilton to the role of chair of the Governmental Accounting Standards Advisory Council (GASAC) for the term of one year beginning January 1, 2024, and ending December 31, 2024. At that time, Mr. Hamilton will be eligible for reappointment for an additional two-year term.

Carolyn Smith’s Reappointment to GASB

Ms. Smith is the former chief audit executive for the Columbus, Ohio City School’s Office of Internal

Audit. In that role, she led all audits and advised the Board of Education on matters of risk, control, and compliance for Ohio's largest school system.

She previously served as director of audit and business services at the Council of Aging of Southwestern Ohio where she established and managed the audit and contract division.

Regarding Ms. Smith's reappointment, Edward C. Bernard, chair of the FAF Board of Trustees, said, "Carolyn's many years of leading the audit team at the Columbus City Schools lend an invaluable perspective to her service on the GASB. We're delighted she will continue to share that perspective with the Board during a second term."

GASB Chair Joel Black said, "Carolyn's real-world insights and depth of knowledge are vital to the Board's work. We are very pleased Carolyn has elected to serve a second term on the GASB."

Robert Hamilton Appointed Chair of GASAC

Mr. Hamilton has served as the vice chair of the GASAC since August 2022, and as the National Association of State Auditors, Comptrollers and Treasurers (NASACT) representative to the GASAC for the last three years. He currently serves as a manager for the Department of Administrative Services, Statewide Accounting and Reporting, for the state of Oregon.

Previously, he was a public accountant in Oregon for Michael L. Piels CPA LLP, where he served both governmental and not-for-profit clients, among others.

Of Mr. Hamilton's appointment, GASB Chair Black said, "We look forward to working with Robert in his new role as chair of the GASAC. As vice chair, he has been an engaged member of the Council and given generously of his time and talents."

About the Financial Accounting Foundation

Established in 1972, the Financial Accounting Foundation (FAF) is an independent, private-sector, not-for-profit organization based in Norwalk, Connecticut. Its Board of Trustees is responsible for the oversight, administration, financing, and appointment of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

The FASB and GASB (collectively, "the Boards") establish and improve financial accounting and reporting standards—known as Generally Accepted Accounting Principles, or GAAP—for public and private companies, not-for-profit organizations, and state and local governments in the United States. Both Boards set high-quality standards through a process that is robust, comprehensive, and inclusive. The FASB is responsible for standards for public and private companies and not-for-profit organizations, whereas the GASB is responsible for standards for state and local governments.

The Foundation's Board of Trustees comprises 14-18 members from varied backgrounds—users, preparers, and auditors of financial reports; state and local government officials; academics; and regulators. The Trustees direct the effective, efficient, and appropriate stewardship of the FASB and GASB in carrying out their complementary missions; select and appoint FASB and GASB members and their advisory councils; oversee the Boards' activities and due process; and promote and protect the independence of the Boards. For more information, visit www.accountingfoundation.org.

About the Governmental Accounting Standards Board

Established in 1984, the GASB is the independent, private-sector organization based in Norwalk, Connecticut, that establishes accounting and financial reporting standards for U.S. state and local

governments that follow Generally Accepted Accounting Principles (GAAP). These standards are recognized as authoritative by state and local governments, state Boards of Accountancy, and the American Institute of CPAs (AICPA). The GASB develops and issues accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to taxpayers, public officials, investors, and others who use financial reports. The Financial Accounting Foundation (FAF) supports and oversees the GASB. For more information, visit www.gasb.org.

[The Reach Too Far: SEC Sues Over Botched School Audit - Norris McLaughlin](#)

As I have written recently, accounting firms that “reach” for more business and/or for types of business that “exceed their grasp” court disaster – in terms of the quality of the professional services rendered, the damage to the firms’ professional reputations, and the financial losses the firms suffer as a result.

My July 24, 2023 blog “[Why ‘Ask Marcum’?](#)” tells the tale of an accounting firm aggressively seeking to grow, which became the “go to” firm for Special Purpose Acquisition Companies (“SPAC”) deals only to fail mightily in trying to keep up with the workload, and ended up settling an enforcement action brought by the U.S. Securities and Exchange Commission (“SEC”) including payment of a civil penalty of \$10 million to the SEC and \$3 million to the Public Company Accounting Oversight Board (“PCAOB”), as well as material restrictions on its ability to take on new work. Then, as recounted in my Aug. 29, 2023 blog “[Eating Crowe](#),” the SEC sanctioned one of the world’s largest accounting firms for trying to provide audit services in a SPAC financing that resulted in a total loss for investors, for which the accounting firm paid \$11.5 million in damages to the investors, in addition to disgorging its fees and paying a civil penalty of \$750,000. The accounting firm also forfeited its registration with PCAOB and accepted the imposition of major conditions to be met before it could reapply to register with PCAOB. As a consequence, the accounting firm is not eligible to audit public companies traded on the American capital markets.

A particular area of audit malperformance involves municipal entities, especially school districts. I have previously written extensively about the regulatory structure of the municipal security market, e.g., in my Sept. 22, 2020 blog “[SEC Focus on Municipal Securities](#),” which includes quite a number of enforcement actions arising out of the inadequacy of disclosure by municipal issuers and their advisors. In my June 27, 2022 blog “[Serving the Public?](#)” not only do I discuss a number of violative failures and misstatements, including some involving school systems, but also the creation in 2010 of the Public Finance Abuse Unit within the SEC’s Division of Enforcement, reflecting both the growing volume of cases and the seriousness of the misdeeds.

[Continue reading.](#)

by Peter D. Hutcheon of Norris McLaughlin P.A.

Tuesday, November 21, 2023

[SEC Announces Record-Setting Enforcement Results for Fiscal Year 2023: Holland & Knight](#)

The SEC's Division of Enforcement recently announced its Fiscal Year (FY) 2023 results, touting a record-setting year. Rather than repeat Enforcement's detailed report available [here](#), we boil the data down to give our readers a sense of the scale and magnitude of Enforcement's efforts and outcomes between Oct. 1, 2022, and Sept. 30, 2023. And though Enforcement does not publicly report statistics relating to the investigations it closed without action, the actions it did file – and the themes the Report highlights – underscore that the agency is committed to using all the tools at its disposal to enforce the law, from offering and accounting fraud, insider trading and disclosure cases to pioneering forays into environmental, social and governance (ESG), cybersecurity and crypto enforcement.

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Holland & Knight SECond Opinions Blog

Brandon Len King | Kayla Joyce | Jessica B. Magee | Scott Mascianica

Nov 21, 2023

Chester, PA Chapter 9 Court Confirms Certain Municipal Financing Techniques, Raises Concerns About Others: Cadwalader

On November 3, 2023, the Court in the Chapter 9 bankruptcy case of the City of Chester, Pennsylvania issued its ruling in an adversary proceeding challenging the perfection of the liens securing certain revenue bonds issued by the City.¹ Confirming the municipal bond market's longstanding understanding, the Court concluded that the liens on revenues were properly perfected by the filing of UCC financing statements.

However, the Court also held that the liens had ceased to attach to postpetition revenues by virtue of Section 552(a) of the Bankruptcy Code, which generally provides that prepetition liens cease to attach to property acquired after the commencement of a bankruptcy case. The Chester Court concluded that no relevant exception to Section 552(a) applied, in the process analyzing issues related to statutory liens, the nature of postpetition "proceeds," and the nature of "special revenues."

BACKGROUND

Chester, Pennsylvania is a city of around 30,000 residents located near Philadelphia. In 2017, the City issued two series of revenue bonds pursuant to (i) an ordinance authorizing the issuance of the bonds and (ii) a Trust Indenture. The bonds were secured primarily by liens on three major revenue streams:

"Harrah's Revenues," which consist of an annual slot machine license operation fee that the State of Pennsylvania collects pursuant to the Pennsylvania Race Horse and Development Gaming Act (the "Gaming Act") from a Harrah's casino located in Chester, and a portion of which the State then pays to the City;

"Harrah's Table Game Revenues," which consist of a "local share assessment" that the Harrah's casino is required to pay to the State, equivalent to 2% of daily gross revenue from the casino's table games, and a portion of which the State distributes to the City;

and

“Host Community Revenues,” which consist of fees paid to the City by a waste incinerator operator (“Covanta”) pursuant to an agreement that authorized Covanta to operate a waste incinerator in the City.

In November 2022, following decades of financial difficulties, the City filed for Chapter 9 bankruptcy protection. In the bankruptcy case, the City commenced an adversary proceeding against the bondholders and their trustee, alleging, among other things, (i) that the bondholders’ liens on the revenues were unperfected and could therefore be avoided, and (ii) that the bondholders’ liens did not extend to postpetition revenues because of Section 552(a) of the Bankruptcy Code.

The Court ultimately ruled for the bondholders on the perfection and avoidance issues, holding that the bondholders’ liens were properly perfected by the filing of UCC financing statements and therefore unavoidable. The Court ruled for the City on the Section 552(a) issue, however, holding that Section 552(a) had terminated the bondholders’ liens as to postpetition revenues because none of the relevant exceptions applied.

ANALYSIS

UCC Financing Statements Can Perfect Liens on Municipal Revenues

Under the Uniform Commercial Code (“UCC”), the method of perfecting a lien depends on the nature of the collateral and how it is characterized under the UCC. In Chester’s case, the City argued that the pledged revenues constituted “money,” a security interest in which can be perfected only by “possession.” Because the City alleged that the bondholders did not have “possession” of postpetition revenues as of the petition date, the City argued that their liens could be avoided under Section 544 of the Bankruptcy Code.

The bondholders countered by arguing that the pledged revenues were properly characterized as either an “account” or a “payment intangible” for UCC perfection purposes. The UCC defines an “account” as “a right to payment of a monetary obligation,” and defines a “payment intangible” as a “general intangible under which the account debtor’s principal obligation is a monetary obligation.” *See* 13 Pa.C.S.A. § 9102. Unlike a security interest in “money,” a security interest in an “account” or a “general intangible” (including a “payment intangible”) can be perfected through the filing of a UCC financing statement, and the trustee for the bonds had in fact filed such UCC financing statements.

The Court agreed with the bondholders that the pledged revenues were “more akin to an ‘account’ or ‘payment intangible’ than ‘money’ for purposes of perfection.” This holding was consistent with prior cases addressing security interests in “revenues” under other types of agreements, such as where hotel revenues serve as collateral under a private loan agreement.² The Chester Court’s ruling appears to be one of the first to expressly hold revenues to constitute “accounts” or “payment intangibles” in the case of a municipal revenue bond. Financing statements are routinely filed to perfect liens on revenues in the municipal finance context, so the Chester Court’s perfection holding was consistent with the practices and expectations of the municipal bond market.

Section 552(a) of the Bankruptcy Code

Section 552(a) of the Bankruptcy Code generally cuts off most security interests in property acquired by a debtor after the date of the bankruptcy petition.³ There are three main exceptions to Section 552(a), which permit a prepetition lien to continue to attach to property acquired after the

commencement of the bankruptcy case if:

- the prepetition lien is a “statutory lien”;
- postpetition collateral constitutes “proceeds” of prepetition collateral; or
- the postpetition collateral qualifies as “special revenues” as defined in the Bankruptcy Code.

The Chester bondholders argued that each of these exceptions to Section 552(a) applied, but the Court rejected the bondholders’ arguments, ultimately holding that no relevant exception to Section 552(a) applied and that the bondholders’ liens therefore did not attach to the City’s postpetition revenues. Certain of the Court’s rulings with respect to Section 552(a) undermine fundamental principles of the municipal financing of revenue-generating projects.

Statutory Lien Analysis

Because Section 552(a) by its terms applies only to a “lien resulting from a security *agreement*,” Section 552(a) does not apply to a *statutory* lien that results from a statute rather than an “agreement.” The Bankruptcy Code defines a “statutory lien” as one “arising solely by force of a statute on specified circumstances or conditions.” 11 U.S.C. § 101(53). The Chester bondholders argued that they had such a statutory lien arising from the below provision of the ordinance authorizing the issuance of their bonds:

Pledge of, and Security Interest in, Pledged Revenues. The City hereby irrevocably pledges the Pledged Revenues for the payment of the principal of, premium, if any, and interest on the Bonds and grants a security interest in and to all such Pledged Revenues which shall be perfected as provided in the [Debt] Act and the Pennsylvania Uniform Commercial Code (the ‘UCC’), as applicable, for the benefit and security of the Trustee . . . on behalf of the owners of the Bonds. The Trustee is hereby authorized to file a financing statement under the UCC reflecting the foregoing pledge and security interest. Such pledge and security interest shall be subject, as appropriate, to those existing pledges and security interests securing existing obligations of the City described in the recitals hereto.

The Court rejected the bondholders’ statutory lien argument, holding that because the bondholders had a consensual security interest arising from the applicable Trust Indenture, they did not have a statutory lien. In reaching this conclusion, the Court relied on language from the legislative history of the Bankruptcy Code indicating that statutory liens and consensual security interests are “mutually exclusive.” See S. Rep. No. 95-989, 95th Cong, 2d Sess. 26 (1978); H.R. Rep. 95-595, 95th Cong., 1st Sess. 313-14 (1977). The Court seemed to take this legislative history to mean that a statutory lien and a consensual security interest can never coexist, but that is by no means a consensus reading of the legislative history. A significant number of courts have instead read the “mutually exclusive” language in the legislative history simply to mean that a *single* lien cannot be both a statutory lien and a consensual security interest.⁴ This does not necessarily mean that a statutory lien and a consensual lien cannot exist simultaneously if they arise from two different sources (i.e., one is created by a statute and the other is *separately* created by a security agreement). Indeed, the Court’s approach leads to the illogical conclusion that a cautious creditor trying to create a lien regardless of which of the two sources applies, instead runs the risk that *no* lien will be created.

The Chester bondholders argued that the applicable ordinance does create a statutory lien, because the ordinance itself “hereby irrevocably pledges” the “Pledged Revenues,” and the term “Pledged

Revenues” is defined within the ordinance itself without reference to the Trust Indenture. Furthermore, the bondholders argued that an ordinance qualifies as a “statute” under Pennsylvania law, and the City did not meaningfully dispute that argument.

Section 552(b) “Proceeds” Analysis

The bondholders also argued that the Section 552(b) “proceeds” exception to Section 552(a) applies. Section 552(b) permits prepetition liens to continue to attach to property acquired by the debtor after the commencement of the bankruptcy case if the postpetition collateral constitutes “proceeds” of prepetition collateral.⁵

The bondholders argued that Section 552(b) applied because their prepetition collateral package included a security interest in the City’s “right to receive” the pledged revenues, such that postpetition revenues were the “proceeds” of the City’s “right to receive” those revenues. The Court rejected the bondholders’ argument based on its reading of the applicable Trust Indenture, holding that the Indenture just defined the applicable collateral as the “Pledged Revenues” themselves, without expressly granting a security interest in the City’s “right to receive” the revenues.

Not only is the Court’s reading of the Trust Indenture inconsistent with creditors’ expectations, it also runs counter to the Court’s own holding that the relevant collateral qualified as an “account” for UCC purposes, because the UCC *defines* an “account” as “**a right to payment** of a monetary obligation.” See 13 Pa.C.S.A. § 9102 (emphasis added). A more internally consistent analysis therefore might have concluded that the collateral included the City’s “right to payment” both for purposes of the UCC’s perfection requirements and for purposes of the Section 552(b) “proceeds” exception.

Special Revenues Analysis

Section 928(a) of the Bankruptcy Code overrides Section 552(a) with respect to security interests in “special revenues.”⁶ Section 902(2) of the Bankruptcy Code in turn defines “special revenues” to include “special **excise taxes** imposed on particular activities or transactions,” among other categories of “special revenues.” See 11 U.S.C. § 902(2)(B) (emphasis added).

The Chester bondholders argued that the “fees” and “assessments” that the State of Pennsylvania imposed on Harrah’s slot machine and table game operations under the Gaming Act qualified as “special excise taxes” and therefore “special revenues,” but the Chester Court rejected this argument by drawing a distinction between “taxes” and “fees.” Specifically, the Court relied on a Sixth Circuit case stating that “a tax is an exaction for public purposes while a fee relates to an **individual privilege or benefit** to the payer,”⁷ as well as a Third Circuit case similarly stating that “a situation in which a payment is exchanged for a **government benefit** not shared by others indicates that the debt is not for a tax.”⁸ Based on these definitions, the Court concluded that the “fees” and “assessments” imposed on the casino under the Gaming Act were more like “fees” than “taxes,” because those fees and assessments were imposed only on specific entities operating gaming enterprises, and were imposed as a precondition to the “privilege” or “benefit” of operating such gaming enterprises.

To date, there has been limited authority interpreting the phrase “special excise taxes” specifically in the context of the Bankruptcy Code’s “special revenues” definition. Although the Chester decision surely will not be the last word on this issue, participants in the municipal bond market should be aware of the Court’s distinction between “fees” and “taxes” as potentially relevant to their assessment of how likely particular revenue streams are to qualify as “special revenues.”

CONCLUSION

The Chester Court's holding that a revenue pledge can be perfected through the filing of a UCC financing statement is consistent with the municipal bond market's longstanding practice and expectations, and therefore serves to strengthen the foundations of the municipal bond market. However, other aspects of the Court's decision demonstrate that bankruptcy courts continue to struggle with some of the unique features of municipal revenue bonds and issue rulings that contradict market expectations. In part, bankruptcy courts' lack of familiarity with some of the nuances of municipal finance may result from the fact that Chapter 9 municipal bankruptcy cases have been relatively rare historically as compared to other types of bankruptcy cases. One might hope that, as the Chapter 9 case law continues to develop, bankruptcy courts may gradually become more equipped to interpret municipal revenue bonds in a manner more consistent with the expectations of market participants.

In the interim, certain aspects of the Chester Court's Section 552(a) rulings may provide fertile ground for a bondholder appeal.

1 See *In re City of Chester*, Adv. Proc. No. 22-00084-AMC, 2023 WL 7274750 (Bankr. E.D. Pa. Nov. 3, 2023).

2 See, e.g., *In re Northview Corp.*, 130 B.R. 543, 547 (9th Cir. BAP 1991) (characterizing hotel revenues as "accounts"); *In re Ocean Place Dev. LLC*, 447 B.R. 726, 732 (Bankr. D.N.J. 2011) (characterizing hotel revenues as "accounts" or "payment intangibles").

3 Section 552(a) provides: "Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." 11 U.S.C. § 552(a).

4 See, e.g., *In re Holmes*, 603 B.R. 757, 775 (D.N.J. 2019) ("Assume, then, that under the Code, any single lien must be either a security interest or a statutory lien. Even so, there is no text or even legislative history suggesting that a single claim cannot be supported by more than one category of lien. Two liens—one statutory, and the other a security interest—can coexist and support the same claim without violating the principle that any particular lien must be one thing or the other. To say that a single claim may be supported by both a statutory lien and a separate consensual security interest is not to say that the two merge, or are the same thing.")

5 Section 552(b) provides that "[I]f the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, **then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case** to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise." 11 U.S.C. § 552(b).

6 Section 928(a) provides: "Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." 11 U.S.C. § 928(a).

7 See *United States v. River Coal Co.*, 748 F.2d 1103, 1106 (6th Cir. 1984) (emphasis added).

8 *United Healthcare Sys., Inc. v. New Jersey Dept. of Labor (In re United Healthcare System, Inc.)*, 396 F.3d 247, 260 (3d Cir. 2005) (emphasis added).

Cadwalader, Wickersham & Taft LLP

Nov 17, 2023

[SEC Announces Enforcement Results for Fiscal Year 2023.](#)

Commission filed 784 enforcement actions, obtained orders for nearly \$5 billion in financial remedies, and distributed nearly \$1 billion to harmed investors

Washington D.C., Nov. 14, 2023 — The Securities and Exchange Commission today announced that it filed 784 total enforcement actions in fiscal year 2023, a 3 percent increase over fiscal year 2022, including 501 original, or “stand-alone,” enforcement actions, an 8 percent increase over the prior fiscal year. The SEC also filed 162 “follow-on” administrative proceedings seeking to bar or suspend individuals from certain functions in the securities markets based on criminal convictions, civil injunctions, or other orders and 121 actions against issuers who were allegedly delinquent in making required filings with the SEC.

The stand-alone enforcement actions spanned the securities industry, from billion-dollar frauds to emerging investor threats involving crypto asset securities and cybersecurity, and charged violations by diverse market participants, from public companies and investment firms to gatekeepers and social media influencers. The SEC also brought numerous enforcement actions addressing conduct that undermines oversight of the securities industry, including actions to protect whistleblowers and actions to enforce recordkeeping requirements and other investor protection requirements applicable to industry participants, including broker-dealers and investment firms.

“The investing public benefits from the Division of Enforcement’s work as a cop on the beat,” said SEC Chair Gary Gensler. “Last fiscal year’s results demonstrate yet again the Division’s effectiveness—working alongside colleagues throughout the agency—in following the facts and the law wherever they lead to hold wrongdoers accountable.”

[Continue reading.](#)

[The Coming Fight Over Municipal Financial Data.](#)

Rapidly developing AI-powered technology is making it easier to appropriate the public sector’s financial information for proprietary uses. Businesses that slice and dice this data should be renters, not owners.

Earlier this year, I explained how a [new federal law](#), the Financial Data Transparency Act (FDTA), will require states and localities to prepare financial information in machine-readable forms. Since then, there has been a lot of back-and-forth between the FDTA bill’s sponsors and some of the

professional associations about implementation, the role of the federal agencies assigned to receive this information, the implementation timetable, and the scope of what's to be covered. Critics call it a [Procrustean solution](#) in search of a problem.

While all that's been going on, however, a tectonic shift in information technology has taken place featuring generative artificial intelligence systems, machine learning and rapidly evolving large language models that surpass the buzzy ChatGPT facility that is now so familiar to many. It's now a sprint for these AI systems to develop superior capabilities to ingest information of all kinds, including images, and to create and manipulate databases, compile information in user-friendly formats for analysts and decision-makers, and deliver actionable analytics that are increasingly faster, cheaper and more insightful. Literally billions of dollars will be invested in this new AI technology in coming years.

The ownership of databases, analyses and related intellectual property scarfed up and refabricated by these systems is a burning issue that will spill into the governmental finance arena in short time. There is a non-trivial risk of concentrated monopoly or oligopoly control over powerfully AI-curated versions of what starts out as public information but quickly becomes private intellectual property when compiled, dissected, analyzed and commercialized by a proprietary machine learning system.

[Continue reading.](#)

governing.com

by Girard Miller

Nov. 14, 2023

[Muni Defaults: Just One in 2022](#)

Resilient and liquid: Moody's annual report offers an overall picture of strength and stability for munis. We explore the key findings.

Toward the end of July, Moody's Investors Service released its annual municipal bond market snapshot, US municipal bond defaults and recoveries, 1970-2022, with updates through 2022. In addition to noting that the muni sector remained resilient and strongly liquid in 2022, the report continued to affirm two hallmark benefits muni bonds offer. First, defaults and bankruptcies remain rare overall: just one in 2022. Second, municipal credits continue to be highly rated compared to corporates, and, indeed, in 2022, in general, the sector saw ratings continue to "drift up," and global corporates' ratings drift down. And according to Moody's: "The five-year average defaulter position was 97% for municipals and 84% for global corporates."

An important observation, noted, once again, in this year's report, was that over the 53-year study period: "Any one default may only reflect the idiosyncrasies of that individual credit, and may not represent a general sector trend."

Continuing a theme noted in the previous year's report, in relation to the effects of the pandemic, Moody's observed that, in addition to "lingering effects with downstream credit consequences including escalating inflation" and the acceleration of remote learning and work, there are not only "potential longer-term effects for K-12, higher education and the mass transit sector...", but also changes "in municipal revenue structures from shifts in commercial real estate or other consumer

preferences.” An eye should be kept on all of these in the context of the municipal bond market.

Muni Bond Defaults Remain Rare

The report illustrated the fundamental difference between municipal and corporate credits and drew attention to the sector’s “infrequent rated defaults” and its “extraordinary stability.”

While the average five-year municipal default rate since 2013 has been 0.08%, this figure also matches that for the entire 53-year study period from 1970 to 2022. In contrast, the comparable figures for global corporates were 7.8% since 2013 and 6.9% since 1970, respectively.

Puerto Rico remains “... a reminder of the power of credit fundamentals, such as leverage, operational balance, and economic capacity, over ostensible security features written on paper. While legal security will influence recovery, credit fundamentals drive defaults.”

This year’s report once again notes that “... we have yet to see a rated default due to natural disasters.” And that, although the small town of Paradise in California was nearly destroyed, it has continued to make its bond payments.

Continuing Stability for Muni Bonds

In 2022, in addition to rating upgrades outnumbering rating downgrades, there was less rating volatility and were fewer rating changes than in prior years. And, when compared to that of global corporate bonds, rating volatility has been “significantly lower.” (The stability and strength of the municipal sector’s credit quality in the last 10 years has benefited from “... accelerated economic recovery and growth across many parts of the US over the two years leading into 2020” and after that from a combination of federal stimulus support and an influx of liquidity.)

According to the report, municipal credits remain, typically, very strong, and “their rating distribution is substantially skewed toward the investment-grade, where ratings tend to be more stable.”

The report added that the municipal sector overall remained highly rated, with approximately 91% of all Moody’s-rated municipal credits falling into the A category or higher as of the end of 2022, the same as in both 2020 and 2021. Further, at the end of 2022 (as in 2021 and 2020), the median rating for U.S. municipal credits remained at Aa3. This continued to stand in stark contrast to the median rating for global corporates, which was, once again, at Baa3 (2021: Baa3).

Muni Bond Market Exhibits Soundness and Resilience

As we mentioned last year, while we continue to argue that municipal bonds still offer a fiscally sound vehicle for generating an income stream free from federal and some state taxes, it remains challenging to obtain the same level of timely disclosure from issuers as one sees in other asset classes. Despite this, the muni market’s behavior not only during the COVID crisis in 2020 and 2021 but also after that is prima facie evidence of both its (and muni bonds’) solidity and resilience.

According to Moody’s report, there were only 115 distinct Moody’s-rated defaults, representing a little over \$72 billion, across the whole universe of more than 50,000 different state, local, and other issuing authorities between 1970 and 2022.

As Moody’s states, while the U.S. public finance sector remains remarkably stable and experiences infrequent rated defaults, there remain caveats, especially as a result of how it has evolved. In the first instance: “There is a growing evidence that legal security, while important in recovery, is a

weak shield against default when credit fundamentals are poor.”

In the second, as noted last year, the challenges associated with demographic shifts (aging and relocating populations—affecting tax receipts), substantial increases in pension and retirement healthcare leverage, and “the associated heightened exposures to equity markets.”

Finally, it is important to note that, with reference to both this study and Moody’s ratings in general, its rated universe is, actually, exceeded by that of the U.S. municipal debt market: the company estimates it covers around a third of municipal bond issuers, “but a substantially larger proportion of outstanding debt.”

Looking at the rated and unrated market together, Moody’s noted that: “Disclosures reveal that much of the risk in the US municipal debt market after Puerto Rico’s defaults lurks in two sectors: senior living and local government special districts. These two sectors represented nearly 60% of the 191 missed payments we observed in 2022, with Puerto Rico representing much of the remainder.” Going forward, therefore, it will be interesting to monitor both these sectors.

Despite this, we still believe that municipal bonds remain important to the core strategy of constructing an individual portfolio.

VANECK

By Tom Butcher
Director of ESG

NOVEMBER 19, 2023

[SEC Attempts to Calm Muni Market Over FDTA Implementation.](#)

As the timeline for implementing the Financial Data Transparency Act grows shorter, the Securities and Exchange Commission is teaming up with other federal regulators in an attempt to allay fears about implementation.

“There’s no new disclosure requirements, standards or timelines, it’s just about structured data,” said Dave Sanchez, director of the SEC’s Office of Municipal Securities.

The comments came during a panel discussion produced by XBRL US on Thursday. The FDTA was passed last year as a remedy for providing more transparency to the financial markets by introducing machine-readable formats into the Municipal Securities Rulemaking Board’s EMMA system, which tracks the muni market.

The SEC is in charge of developing the standards for how the data will be submitted to the MSRB. The upcoming deadlines include publishing proposed rules by June 2024, which will kick off the public comment period. Determining the standards is set for December 2024, with specific rulemaking to be in place by 2026.

Sanchez is especially interested in hearing from industry stakeholders. “We’re happy to hear from anybody who thinks they have a good idea about how this should work,” he said. “We really encourage people to come in and talk. We’ve had a lot of conversations with various stakeholders, and we really appreciated the input.”

Detractors to the mandated changeover point to the widely divergent nature of the muni market, a point not lost on the MSRB. "Creating a unified database of all the issuers, all the obligors in the muni market, is much harder than it sounds," said Liz Sweeney, president of Nutshell Associates, and board member of the MSRB. "There are roughly 40,000 issuers."

Sweeney revealed that the current system has limitations on accuracy. "Everybody in the muni market who does research knows exactly what I'm talking about. Having a unified database that says, 'nope, all these fourteen iterations of the same entity is one entity' is really important."

Issuer representatives have largely been opposed to the FDTA including the Government Finance Officers Association which believes the implementation will impose financial hardship and require additional labor to implement the system while not offering any new data.

Emily Brock, director of the GFOA's federal liaison center, was cheered by the call for input by the regulators.

"Both Joel Black, chair Government Accounting Standards Board, and Dave Sanchez said several times, 'you need to send in your comments' and I don't think that was necessarily aimed at the technology providers. I think they are saying it especially to the issuers," she said.

The regulators are wrestling with a number of issues including which machine-readable language will replace the PDFs currently serving as EMMA's backbone. Which data gets converted is another sticking point. "The muni market has thousands of nonprofit issuers, hospitals, charter schools, and universities," said Sweeney. "It's a very large, heterogenous market so you really want to think about that breadth of information submitted to the MSRB."

Entities that do not follow Generally Accepted Accounting Principles, including the state of New Jersey, provide another wrinkle to the plan. "We know there are a number of non-GAAP accounting states," said Sanchez. "To figure out exactly what portion of those are actually issuers is something that's actually useful to do."

The tech industry is already jockeying for support positions, but the SEC is advising patience.

"A lot of messaging for us has been 'Wait until the standards are out,' because unfortunately a lot of people will be scared into spending money and taking steps that were way too soon," said Sanchez.

By Scott Sowers

BY SOURCEMEDIA | MUNICIPAL | 11/10/23

[NFMA Municipal Analysts Bulletin.](#)

The November issue of the Municipal Analysts Bulletin is available.

[Click here](#) to read about NFMA and Constituent Society activities.

[SEC Exempts Brokers and Dealers from Rule 15c2-11 Review and](#)

Recordkeeping Requirements for Quotations on 144A Fixed Income Securities: Cadwalader

On October 30, 2023, the Securities and Exchange Commission issued an order (the “Order”) that grants exemptive relief under Rule 15c2-11 under the Securities Exchange Act of 1934 to brokers and dealers that publish quotations with respect to fixed income securities sold in compliance with Rule 144A. This order is the latest attempt to quell the fixed income market distress created in 2021, when the SEC staff took the position that Rule 15c2-11 is applicable to quotations published with respect to fixed income securities. During the five decade period prior to that point, the markets, as well as FINRA, understood the rule to apply only in the context of the equity securities markets.

The first attempt to calm the market came on December 16, 2021, when the SEC staff issued a no-action letter making clear that the rule does not apply to exempted securities (such as securities issued by Freddie Mac and Fannie Mae), municipal securities and SEC-registered fixed income securities and providing a phased-in implementation schedule for other types of fixed income securities. Under that phased-in approach, quotations relating to Rule 144A securities could be published without regard to Rule 15c2-11 until January 3, 2023. However, beginning on that date, brokers and dealers seeking to publish quotations with respect to Rule 144A securities would have been required to assure that certain “current” and “publicly available” information was available with respect to those securities.¹ In response to market participant concerns regarding the need to make that sort of information publicly available, the staff of the SEC staff granted no-action relief pursuant to a letter dated November 22, 2022 (the “November Letter”) for Rule 144A securities, among other securities. However, that no-action relief was set to expire on January 4, 2025.

All of the relief provided to date includes asset-backed securities sold in compliance with Rule 144A. The Order does not appear to affect the November Letter to the extent it relates to non-Rule 144A fixed income securities. We also note that the Order by its terms is subject to modification or revocation at any time by the SEC “but will be in effect unless and until the Commission determines that modification or revocation is necessary or appropriate in furtherance of the purposes of the Exchange Act, or the relief is otherwise superseded by future Commission action such as a rulemaking addressing the Rule 144A safe harbor or issues pertaining to the fixed income markets more generally.”

¹ Subsequent to January 4, 2024, hyperlinks relating to the required information also would have been required.

Cadwalader Wickersham & Taft LLP – Michael S. Gambro and Maurine Bartlett

November 01, 2023

MSRB Seeks Input and Volunteers for Advisory Groups.

[View the MSRB Notice.](#)

11/2/23

MSRB: Use of External Liquidity in the Municipal Market - 2023 Update

[Read the MSRB Report.](#)

10/31/23

Thorough Exam: SEC's Division of Examinations Announces Fiscal Year 2024 Priorities - Holland & Knight

Amid ongoing federal government shutdown risks and the close of its fiscal year, the U.S. Securities and Exchange Commission's (SEC) Division of Examinations (Exams) recently announced its fiscal year (FY) 2024 priorities. According to Exams, "this year's examinations will prioritize areas that pose emerging risks to investors or the markets in addition to core and perennial risk areas." In addition to key focus areas outlined based on the types of entities subject to examination, Exams identified the following risks to various market participants as FY 2024 priorities:

- **Information Security and Operational Resiliency:** Firms need to have systems, policies and people in place to maintain service during volatile events.
- **Crypto Assets and Emerging Financial Technology (FinTech):** Firms must ensure rigorous compliance with applicable professional standards, statutes, and rules even as their business models involve cutting edge products and technology.
- **Regulation Systems Compliance and Integrity (Reg SCI):** Firms must ensure they invest in and maintain systems that adequately support key market functions and improve resiliency.
- **Anti-Money Laundering (AML):** Firms must understand and adhere to the Bank Secrecy Act and tailor programs to meet their particular risk profiles.

Of note, although Exams identified environmental, social and corporate governance (ESG) as a key priority in FY 2022 and FY 2023, it did not explicitly identify it as a priority for FY 2024.

[Continue reading.](#)

Holland & Knight LLP – Jessica B. Magee and Scott Mascianica

October 26 2023

U.S. SEC Division of Exams Announces 2024 Examination Priorities: Sidley Austin

On October 16, 2023, the U.S. Securities and Exchange Commission (SEC) Division of Examinations (EXAMS or Division) issued its annual examination priorities, which, for the first time, was published at the start of the SEC's fiscal year to "better inform investors and registrants of key risks, trends, and examination topics" the Division intends to focus on in the coming year.¹

Our Take

The October 16 publication of the priorities represents the earliest publication to date in the 10-year

history of the publication of examination priorities, which will help registrants better prepare for upcoming exams. EXAMS acknowledged that the short time period since publication of the 2023 priorities, only eight months ago², means that “several initiatives and focus areas from last year remain” priorities for 2024. Against that backdrop, the Division focused on the need to demonstrate compliance with all of its new regulations, and we note that many of the areas of examination priorities also align with areas in which additional or amended regulations have been proposed or may be under consideration.

The priorities for the upcoming year underscore that investment advisers are fiduciaries and, therefore, EXAMS will focus on the identification and disclosure of conflicts of interest. Broker-dealers are especially reminded of their obligations under Regulation Best Interest (Reg BI). While EXAMS has focused for several years on duties owed to clients and investors, the fact that next year’s priorities lead with a discussion of EXAMS’ focus on duties owed to clients and investors suggests that registrants should expect even greater focus on this aspect of an examination. Further, as demonstrated by recent enforcement actions for marketing rule and custody rule violations, the SEC staff is providing little, if any, “grace period” for the implementation of new rules; that is, rather than giving registrants an opportunity to correct deficiencies, the SEC is proceeding (at least in some cases) directly to enforcement.³ For both investment advisers and broker-dealers, the Division is also focused on complex, costly, and illiquid products, such as derivatives, leveraged exchange traded funds (ETFs), variable annuities, and nontraded real estate investment trusts (REITs).

In addition, the Division highlighted its general focus on crypto assets and new technology, the need for security, resilience, and systems integrity for registrants and markets, and anti-money-laundering (AML) for broker-dealers and other financial institutions, specifically including compliance with Office of Foreign Asset Control (OFAC) sanctions (including for advisers). Notably missing from the specifically identified risk areas were environmental, social, and governance (ESG)-related issues.

This Sidley Update provides a summary of upcoming examination priorities and perennial issues registrants can anticipate in this year’s examinations. Based on the full scope of EXAMS priorities, registrants should note the following themes for 2024:

- i) The Division’s core priorities remain the same as in prior years.
- ii) Registrants should be ready to show how they have implemented compliance controls for new rules.
- iii) ESG remains a challenging area to both regulate and examine, with ESG not only slipping down, but off, the priority list (although registrants should continue to be mindful of the overlap between the Division’s priorities and ESG-related products and services).

[Continue reading.](#)

Sidley Austin LLP – W. Hardy Callcott, Kevin J. Champion, Stephen L. Cohen, Ranah Esmaili, Elizabeth Shea Fries, David M. Katz, Laurin Blumenthal Kleiman and John I. Sakhleh

October 26 2023

[2024 SEC Division of Examinations Priorities Summary: Venable](#)

The SEC's Division of Examinations got a head start this fiscal year, announcing its 2024 Examination Priorities (2024 Priorities) at the beginning of the fiscal year for the first time. This novel approach likely signifies the Division's intent to be very active over the next 12 months and a desire to give registrants and other market participants more time to shore up areas of concern.

Not surprisingly, the 2024 Priorities emphasize that conflicts of interest will remain a priority for the Division's examiners. For investment advisers, that means examiners will scrutinize not only how advisers identify and disclose conflicts to clients, but also their processes for mitigating or eliminating those conflicts where appropriate. Key areas of focus will include:

- The adviser's processes and practices for allocating investments to accounts where clients have multiple accounts (e.g., allocating between accounts that are adviser fee-based, brokerage commission-based, and wrap fee, and between taxable and non-taxable accounts)
- Investment advice regarding complex products (derivatives and leveraged ETFs), high-cost and illiquid products (such as variable annuities and non-traded REITs), and unconventional strategies (including ones purporting to address rising interest rates)
- The economic incentives an adviser and its professionals may have to recommend certain products, services, or accounts over others; and
- The adviser's disclosures of all material facts relating to conflicts of interest.

[Continue reading.](#)

Venable LLP – Adrienne Dawn Gurley, Daniel J. Hayes, George Kostolampros, Eric R. Smith and Xochitl S. Strohhahn

October 24 2023

[SEC Announces 2024 Exam Priorities: Mayer Brown](#)

[Read the Mayer Brown Legal Update.](#)

Mayer Brown – Leslie S. Cruz , Steffen Hemmerich, Adam D. Kanter, Marc Leong, Timothy B. Nagy and Anna T. Pinedo

October 23 2023

[SEC Adopts New Securities Lending Reporting Rule: Proskauer Rose](#)

On October 13, 2023, the Securities and Exchange Commission (the "SEC") adopted new Rule 10c-1a (the "Securities Lending Rule"), requiring the reporting of certain securities lending transactions. Certain material terms of securities lending transactions relating to "reportable securities" are required to be reported to a registered national securities association ("RNSA") by the end of the day on which the loan is agreed or modified. The RNSA is required to make the information – other than that deemed confidential as defined below – public on the morning of the next business day. The amount of the loan is to be made public on the 20th business day following submission of the report. Of note, currently the Financial Industry Regulatory Authority ("FINRA") is the only registered RNSA and is expected to accept the securities lending reports once the Securities

Lending Rule is effective.

The SEC states that the purpose of the new rule is to increase the transparency and efficiency of the securities lending market. The Securities Lending Rule will provide market participants with access to pricing and other material information in a timely manner, as well as aid regulators in their oversight of the securities lending market.

What Securities Are Covered by the New Rule?

All loans of “reportable securities” (with a few exceptions noted below) are required to be reported to an RNA. Reportable securities is defined as any security or class of an issuer’s securities for which information is reported or required to be reported to the consolidated audit trail (CAT) as required by Rule 613 and the CAT National Market System Plan, FINRA’s Trade Reporting and Compliance Engine (TRACE), the Municipal Securities **Rulemaking Board Real-Time Transaction Reporting System**, [emphasis added] or any reporting system that replaces one of these systems. Reportable securities include equity securities (both exchange traded and those traded OTC), debt securities subject to TRACE reporting, and digital asset securities that meet the definition of “reportable security” (each a “Reportable Security”). It is important to note that the definition of Reportable Securities is not limited to U.S. exchange traded securities or securities issued by U.S. public companies, and there may be overlap with EU or UK SFTR reporting requirements.

[Continue reading.](#)

Proskauer Rose LLP – Elanit Snow, Frank Zarb and Louis Rambo

October 26 2023

SEC Adopts Share Lending Disclosure Rules: Paul, Weiss

The SEC has adopted new [Rule 10c-1a](#), which will require disclosure to a registered national securities association (“RNA”)[1] of specified details regarding securities loans on a same day basis. The RNA will then publish certain information regarding such loans. Rule 10c-1a will become effective 60 days after its publication in the Federal Register, and disclosure will be required on the first business day 24 months after Rule 10c-1a becomes effective.

Who will be required to disclose share lending activity?

Under new Rule 10c-1a, securities loan intermediaries, or, where there are none, lenders themselves, and brokers and dealers where borrowing fully paid or excess margin securities, must disclose any loan of “reportable securities.” “Reportable securities” are defined as any security or class of an issuer’s securities for which information is reported or required to be reported to the consolidated audit trail pursuant to the CAT NMS Plan, the Financial Industry Regulatory Authority’s Trade Reporting and Compliance Engine or the Municipal Securities Rulemaking Board’s Real-Time Transaction Reporting System (or any reporting system that replaces one of these systems). The disclosure requirements do not attach to the use of margin securities by a broker or dealer unless the broker or dealer lends such margin securities to another person.

There are no reporting thresholds – all loans will trigger the disclosure requirement.

What information must be provided?

The following information must be disclosed, and will, as noted below, be mostly subject to publication by the RNSA:

Modifications to any of these terms will also need to be communicated on a same day basis.

When must the information be reported?

Loan participants must provide this information on a same day basis to the RNSA. The RNSA must publicize the required information (see above) by morning of the following business day, except for the amount of the loan, which must be publicized by the 20th business day. The RNSA must also publicize aggregate transaction activity and distribution of loan rates for those securities it determines appropriate.

When will these disclosure requirements become effective?

Rule 10c-1a will become effective 60 days after the release is published in the Federal Register. Rules to implement Rule 10c-1a must be proposed by the RNSA within four months of the effective date of Rule 10c-1a and must become effective no later than 12 months after the effective date of Rule 10c-1a. Disclosure will be required starting on the first business day 24 months after the effective date of Rule 10c-1a (the “reporting date”); and the RNSA must make specified information publicly available within 90 calendar days of the reporting date.

Paul, Weiss, Rifkind, Wharton & Garrison LLP – Christopher J. Cummings, Manuel S. Frey, David S. Huntington, Brian M. Janson, Luke Jennings, Christodoulos Kaoutzanis and John C. Kennedy

October 23 2023

[SEC Adopts Rule to Enhance the Transparency of Securities Lending Market: Ropes & Gray](#)

On October 13, 2023, the SEC issued a [release](#) (the “Release”) adopting new Rule 10c-1(a) (the “Rule”) under the Exchange Act “to increase the transparency and efficiency of the securities lending market” by requiring certain persons to report information about securities loans to a registered national securities association (an “RNSA”). In addition, the Rule requires (i) certain confidential information to be reported to an RNSA to enhance its oversight and enforcement functions and (ii) an RNSA to make certain information it receives, including daily information pertaining to aggregate transaction activity and the distribution of loan rates for each reportable security, available to the public. Currently, FINRA is the only RNSA.

Summary Rule Requirements

- For each “covered securities loan,” the Rule requires a “covered person” to provide to an RNSA the material terms of the transaction – in the format and manner required by the RNSA – by the end of the day on which the securities loan is effected or the terms of the loan are modified.
- Covered persons may rely on reporting agents to provide the required information to an RNSA.
- An RNSA is required to make publicly available certain information about reported securities loans, either on a transaction-by-transaction basis or an aggregate basis.

[Continue reading.](#)

October 20 2023

[GASB Standard-Setting Process Oversight Committee Meeting.](#)

[Meeting Notice.](#)

10/27/23

[Financial Accounting Foundation Board of Trustees Notice of Meeting.](#)

[Meeting Notice.](#)

10/27/23

[National Federation of Municipal Analysts FDTA Initial Recommendations.](#)

The NFMA established the FDTA Working Group to make initial recommendations to the SEC on the process of creating and implementing the taxonomy required by the FDTA. A letter was prepared by the Working Group, with input from our Executive Committee and review by the full NFMA Board of Governors.

To read the letter, [click here](#).

[Introducing the GFOA's New GAAFR Plus.](#)

Enhance your skills in governmental accounting, auditing, and financial reporting with our new GAAFR Plus subscription. Get peer support and guidance through an exclusive online forum, access to free webinars, Blue Book supplements, and helpful templates and guides. Take advantage of this enhanced approach to governmental finance today!

[SUBSCRIBE](#)

[MSRB Board Approves 2024 Rate Card At Its First Quarterly Meeting of FY 2024.](#)

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met in Washington, D.C. on October 25-26, 2023, for its first quarterly meeting of fiscal year 2024. The Board voted to approve the 2024 rate card to adjust rates for the three market activity fees assessed on municipal

securities dealers and the municipal advisor professional fee. The Board also discussed the regulatory and technology initiatives underway to enhance market transparency.

2024 Rate Card

Under a new rate-setting process adopted last year, the MSRB annually adjusts fees to ensure a timelier return of any excess revenue to regulated entities and to better manage the organization's revenue needs and reserve funds. The 2024 rate card will be filed with the Securities and Exchange Commission (SEC) next month, and the new rates will be operative January 1, 2024.

"The annual rate card is designed to fund the organization with the revenue needed to deliver value to the municipal market through our regulatory protections, technology infrastructure and data services," said MSRB Chair Meredith L. Hathorn. "Importantly, any surplus beyond those funding needs is promptly returned to fee-payers in the form of reduced rates rather than accumulating in the MSRB's coffers. For 2024, the MSRB will be returning over \$3 million in excess revenue collected from dealers as a result of record-high trading volume in 2023."

The MSRB provides a detailed explanation of the rate card and its funding philosophy in the [FY 2024 budget](#), which provides transparency about projected revenues, expenses and reserve funds. As projected in the MSRB's budget, the formulaic rate-setting process will result in an increase to underwriting fees and municipal advisor professional fees to reflect less revenue assessed in FY 2023 relative to budget, and significant decreases in the transaction and trade count fees to return the surplus to regulated entities.

Market Regulation and Market Structure

The Board discussed progress toward filing proposed amendments to shorten the timeframe for trades to be reported to the MSRB from 15 minutes to as soon as practicable, but no later than one minute, subject to certain exceptions. The Board previously approved seeking SEC approval of the proposed amendments to [MSRB Rule G-14](#) at its July 2023 meeting.

"The MSRB continues to closely coordinate with our fellow regulators on this impactful enhancement to post-trade transparency, with the goal of making a filing in the coming months," said MSRB CEO Mark Kim.

The Board also discussed comments received in response to the request for comment on [MSRB Rule G-47](#), on time of trade disclosure, and approved submitting a rule filing with the SEC for approval. The Rule G-47 request for comment included a number of questions about potential amendments to Rule D-15, defining "sophisticated municipal market professionals," and the MSRB plans to seek additional information from stakeholders before determining next steps in this area.

Market Transparency Products and Services

The Board received an update regarding work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems, including user personalization and improvements to search and the disclosure submission process.

Date: October 27, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1500
lszarek@msrb.org

Helpful GFOA Tool: Preexisting SBITA with Prepayment

This excel file contains two examples illustrating the effects of full or partial prepayments that had been made on preexisting subscription arrangements, when initially implementing **GASB 96**, *Subscription-Based Information Technology Arrangements*.

[DOWNLOAD](#)

SEC Adopts Rule to Enhance the Transparency of Securities Lending Market.

On October 13, 2023, the SEC issued a [release](#) (the “Release”) adopting new Rule 10c-1(a) (the “Rule”) under the Exchange Act “to increase the transparency and efficiency of the securities lending market” by requiring certain persons to report information about securities loans to a registered national securities association (an “RNSA”). In addition, the Rule requires (i) certain confidential information to be reported to an RNSA to enhance its oversight and enforcement functions and (ii) an RNSA to make certain information it receives, including daily information pertaining to aggregate transaction activity and the distribution of loan rates for each reportable security, available to the public. Currently, FINRA is the only RNSA.

Summary Rule Requirements

- For each “covered securities loan,” the Rule requires a “covered person” to provide to an RNSA the material terms of the transaction – in the format and manner required by the RNSA – by the end of the day on which the securities loan is effected or the terms of the loan are modified.
- Covered persons may rely on reporting agents to provide the required information to an RNSA.
- An RNSA is required to make publicly available certain information about reported securities loans, either on a transaction-by-transaction basis or an aggregate basis.

Reporting Requirements for Covered Persons

In General. The Rule requires any “covered person” who agrees to or modifies a “covered securities loan” on behalf of itself or another person to provide to an RNSA the information specified in the Rule. This information (the “Rule 10c-1a information”) must be provided in the format and manner required by the RNSA’s rules no later than the end of the day on which a covered securities loan is effected or modified.

A covered person may rely on a “reporting agent” to satisfy its obligation to provide Rule 10c-1a information if the covered person (i) enters into a written agreement in which the reporting agent agrees to provide Rule 10c-1a information to an RNSA on behalf of the covered person in accordance with the reporting agent requirements specified within the Rule, and (ii) provides the reporting agent with timely access to Rule 10c-1a information.

Covered Person and Reporting Agent. A “covered person” is any of the following:

1. An entity that agrees to a “covered securities loan” on behalf of a lender (an “intermediary”);¹
2. A lender that agrees to a covered securities loan when an intermediary is not used; or
3. A broker-dealer when borrowing fully paid or excess margin securities pursuant to Rule 15c3-3(b)(3) of the Exchange Act.³

A “**reporting agent**” is any broker-dealer or registered clearing agency that enters into a written agreement with a covered person that satisfies the conditions described above.

- The Release states that the Rule “does not prohibit the use of third-party vendors by covered persons.” However, a covered person’s use of a third-party vendor that is not a reporting agent does “not relieve a covered person of its obligation to report Rule 10c-1a information to an RNSA, as reliance on a reporting agent would.”
- The Rule requires a reporting agent to establish, maintain and enforce written policies and procedures that are reasonably designed to provide Rule 10c-1a information to an RNSA as specified in the Rule.
- A reporting agent is required to provide an RNSA with a list naming each covered person on whose behalf it is providing Rule 10c-1a information, as well as providing that RNSA with an update to that list by the end of each day that the list changes. In addition, a reporting agent is required to maintain records of (i) Rule 10c-1a information obtained by the reporting agent from a covered person with the time of receipt and the time of transmission to an RNSA of that information and (ii) its written agreements with covered persons.

Reportable Security and Covered Security Loan. A “**reportable security**” is “any security or class of an issuer’s securities for which information is reported or required to be reported to the consolidated audit trail as required by [Rule 613 under] the Exchange Act and the [Rule 613-mandated] CAT NMS Plan (“CAT”), [FINRA’s] Trade Reporting and Compliance Engine (“TRACE”), or the Municipal Securities Rulemaking Board’s Real Time Reporting System (“RTRS”), or any reporting system that replaces one of these systems.”

- The Release notes that the Rule’s definition of reportable security aligns with “securities for which transactions are currently being reported to existing reporting regimes” (i.e., CAT, TRACE, and RTRS).

A “**covered securities loan**” is a “transaction in which any person on behalf of itself or one or more other persons, lends a reportable security to another person.”³

Rule 10c-1a Information and Reporting Deadlines

Rule 10c-1a information falls into one of the following three categories.

Data Elements. For each covered securities loan, Rule 10c-1a information includes 12 specific “data elements,” including the name and LEI of the security issuer, the amount of the reportable securities loaned and collateral to secure the loan, and information relating to fees and charges associated with the loans. The complete list of the 12 data elements that must be provided by a covered person or its reporting agent to an RNSA is reproduced in Appendix A.

Loan Modification Data Elements. Rule 10c-1a information also includes any modification to any of the 12 data elements that occurs after the original data elements are provided to an RNSA. The reportable loan modification data elements include each “specific modification and the specific data element” modified. The Release notes that the actual modification (not a description of the modification) must be reported.

Confidential Data Elements. The Release notes that making certain information publicly available “could be detrimental because it could identify specific market participants or reveal confidential information about the internal operations or investment decisions of specific market participants.” Accordingly, the Rule categorizes certain Rule 10c-1a information as “confidential data elements.” Rule 10c-1a information within this category includes (i) the legal name or certain other identifiers

of each party to the covered securities loan, (ii) if the person lending securities is a broker-dealer and the borrower is its customer, whether such person is the lender, the borrower, or an intermediary between the lender and the borrower, and (iii) whether the covered securities loan is being used to close out a “fail to deliver.”

RNSA Collection and Public Distribution of Rule 10c-1a Information

An RNSA is required to establish rules regarding the format and manner of its collection of Rule 10c-1a information. An RNSA also must make certain Rule 10c-1a information publicly available according to a specified schedule. Some of this information is required to be made publicly available on a transaction-by-transaction basis, while other information is made available publicly on an aggregate basis only.

Transaction-By-Transaction Information. With respect to a covered securities loan’s 12 data elements, the Rule requires an RNSA to make 11 of these data elements publicly available “not later than the morning of the business day after the covered securities loan is effected.” The excepted data element is #6, the “amount, such as size, volume, or both, of the reportable securities loaned.” An RNSA is required to make this excepted information publicly available 20 business days after the covered securities loan is effected. The same disclosure schedule applies to loan modification data elements (i.e., the morning of the next business day for modifications of 11 of the 12 items and 20 business days for modifications of #6 information).

An RNSA is required to maintain the confidentiality of each of a covered securities loan’s confidential data elements. To prevent an RNSA from releasing confidential data elements, the Rule mandates that an RNSA must maintain and enforce reasonably designed written policies and procedures to maintain the security and confidentiality of the confidential data elements of Rule 10c-1a information.

Aggregate Transaction Activity and Distribution of Loan Rates. The Rule requires an RNSA, “not later than the morning of the business day after covered securities loans are effected or modified” to make publicly available “information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security.”

- *Aggregate Transaction Activity.* The Release states that the term “aggregate transaction activity” is intended to help ensure that only aggregate information, rather than individualized information, is provided to the public. This is a response to “commenters’ concerns about the potential exposure of proprietary information, while still providing volume transparency to market participants.”
- *Distribution of Loan Rates.* The Release states that providing information about the distribution of loan rates for each security “recognizes that the cost-to-borrow for loans of securities is influenced by a number of factors (e.g., counterparty-creditworthiness).” Consequently, information about loan rates on a transaction-by-transaction basis would be an imperfect comparison of such rates between loans of the same security. Nonetheless, information regarding the distribution of loan rates for a given security “can give market participants information to help market participants compare the pricing of their covered securities loan against the pricing of other covered securities loans.” In turn, the Release notes, the ability to compare “can facilitate conversations between beneficial owners and their lending agents or end borrowers with their brokers or dealers regarding the terms of their loan.”

Compliance Date

The Rule’s effective date is 60 days after publication of the Release in the Federal Register. As of the date of this Alert, the Release has not been published therein. Covered persons will be required to

report Rule 10c-1a information to an RNSA starting on the first business day that is 24 months after the effective date the Rule. An RNSA must begin publicly reporting Rule 10c-1a information within 90 calendar days following the 24-month period.

Observations

The Release states that the Rule “will result in the public availability of new information for investors and other market participants to consider in the mix of information about the securities lending market . . . to better inform their decisions.”

Funds that engage in covered securities loans will presumably need to enter into written agreements with one or more reporting agents or plan to rely on third-party vendors that are not reporting agents. Each fund complex will need to consider whether there are reasons to rely on third-party vendors that are not reporting agents. The ultimate decision will impact the scope of required written policies and procedures covering reporting of Rule 10c-1a information for the funds’ covered securities loans.

-
1. The following are not deemed intermediaries under the Rule: a clearing agency when providing only the functions of a central counterparty pursuant to Rule 17Ad-22(a)(2) under the Exchange Act or a central securities depository pursuant to Rule 17Ad-22(a)(3) under the Exchange Act.
 2. Rule 15c3-3 addresses a broker-dealer’s borrowing of fully paid or excess margin securities of a customer.
 3. There are two exclusions from the definition of covered securities loan: (i) a position at a clearing agency that results from central counterparty services pursuant to Rule 17Ad-22(a)(2) under the Exchange Act or central securities depository services pursuant to Rule 17Ad-22(a)(3) under the Exchange Act and (ii) the use of margin securities, as defined in Rule 15c3-3(a)(4) under the Exchange Act, by a broker-dealer (provided, however, if a broker-dealer lends the margin securities to another person, the loan to the other person is a covered securities loan under the Rule).

[MSRB Board Announces Discussion Topics for Its Quarterly Board Meeting.](#)

Washington, DC -The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet in Washington, D.C. on October 25-26, 2023, holding the first quarterly board meeting of fiscal year 2024 to advance its FY 2022-2025 Strategic Plan.

Market Regulation and Market Structure

The Board will receive an update on progress toward filing proposed amendments to [MSRB Rule G-14](#), which the Board had previously approved, to shorten the timeframe for trades to be reported to the MSRB from 15 minutes to as soon as practicable, but no later than one minute, subject to certain exceptions. The Board also will discuss comments received in response to the request for comment on [MSRB Rule G-47](#), on time of trade disclosure, and consider potential next steps.

Market Transparency Products and Services

The Board will receive an update regarding work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems, including user personalization

and improvements to search and the disclosure submission process.

Annual Rate Card

The Board will discuss and vote to approve the 2024 rate card to adjust rates for the three market activity fees and the municipal advisor professional fee. The MSRB's new [rate card process](#) annually adjusts rates assessed on regulated entities to ensure a timelier return of any excess revenue (i.e., surplus) to regulated entities and to better manage the organization's reserve funds.

Date: October 18, 2023

Contact: Leah Szarek, Chief External Relations Officer
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SEC Widening Net In Municipal Bond Market Fraud Cases.

Recent Securities and Exchange Commission enforcement actions signal that regulators are widening their net to charge more types of municipal market participants as so-called gatekeepers against misconduct.

So said panelists Thursday at the National Association of Bond Lawyer's annual conference in Chicago.

The SEC's enforcement division and Public Finance Abuse Unit activities are "reaching all participants in the municipal market," said Drew Kintzinger with Hunton Andrews Kurth LLP. "Under the current chairman [Gary Gensler], they're taking an aggressive approach."

The SEC has made headlines recently for a number of audit-related charges, including a recent settlement with a Louisiana-based auditor for violating antifraud provisions in connection with a Louisiana school board's 2019 audit.

The enforcement actions show how the SEC is focusing on gatekeeper accountability for professionals such as auditors and lawyers, who regulators see as first lines of defense against misconduct.

"We've brought several cases in the recent past involving [auditors], and we consider them gatekeepers, so it's an important area for us to look at," said Brian Fagel, assistant director of the SEC's Public Finance Abuse Unit.

The notion of gatekeepers also applies to lawyers, said Fagel, echoing comments made Wednesday by David Sanchez, director of the SEC's Office of Municipal Securities.

"We definitely would consider, as a whole, lawyers to be gatekeepers and it's certainly something to think about," he said.

"Nothing is off the table in terms of looking at who we can potentially charge."

Gensler emphasized the commission's focus on the role that securities lawyers play as gatekeepers in a November 2022 speech to the Practising Law Institute, said Kintzinger.

Gensler said that the SEC “views lawyers as positions of trust in our process and if you have a client who’s taking a course of action that brings them up to the line, keep them back from the line,” Kintzinger said.

“It helps us understand over the past year how enforcement has been focused on gatekeeper activity, auditors in particular,” Kintzinger said.

The Louisiana auditor settlement featured a broad injunction against participating on audits of any documents that may be posted to EMMA, Kintzinger noted. “It’s a key auditor gatekeeper type of action, but it’s very interesting to me that they really upped the ante on auditor behavior to include negligence and fraud,” he said.

Fagel said the case illustrated a “parade of bad activity” and that the auditor’s actions were “egregious.”

Another trend Kintzinger is tracking is the public finance abuse agency’s “more aggressive use” of Section 17(a)(2) and (3) – as in the Louisiana case – to “charge fraud on municipal market participants,” he said.

“It’s a distinct trend” that illustrates an “aggressive use of enforcement,” he said.

The SEC’s case against the city of Rochester marks a case in point, in which the SEC, after settling with the school district’s CFO, is going after the city and the city finance director, which regulators argue either knew or should have known about the district’s underlying financial problems that brought the case in the first place.

“It’s a fascinating case,” Kintzinger said. “It’s a case on the responsibility the city has for the school district” when issuing bonds on its behalf.

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 10/20/23 01:33 PM EDT

[Market Participants Can Improve Climate Disclosure, Says SEC's Sanchez.](#)

Municipal market participants have had to get creative to manage the current market but should not get creative on the regulatory front, warned one of the market’s key Washington regulators.

“Regulators often talk about when there is reduced issuance, this is where a lot of problematic deals come up,” said David Sanchez, head of the Securities and Exchange Commission’s Office of Municipal Securities, speaking Wednesday at the National Association of Bond Lawyers’ conference in Chicago.

“That’s not a surprise. People are trying to get creative, push the envelope to keep deal flow going on,” said Sanchez. But participants should keep in mind that for regulators, “it boils down to the question: does this deal even need to be done?”

As gatekeepers, bond attorneys should always be asking themselves that question, Sanchez said.

From bespoke deals like tenders, which have grown in popularity with rising rates, and often-tricky limited offerings to “potentially questionable” affordable housing deals, regulators are keeping a

close eye on transactions as well as broader evergreen issues like disclosure and pricing.

On the disclosure front, the emerging issue of climate change-related risk should be fairly straightforward, Sanchez said.

“When there is a weather event and damage to a city and people are saying ‘What did the issuer say before?’ [sometimes] the answer is not good,” he said.

“It’s not hard,” he added. “If you’re a city within L.A. County and L.A. County is disclosing a particular issue, you should seriously consider whether you also should disclose it,” he said. “You have to look at your neighbors.”

“There’s very public information about flood risks, sea levels rising that affect specific areas,” he said. “It’s very well known so you can’t stick your head in the sand.”

He warned that climate risk disclosure is “very easy for us to check on – very easy.”

“I thought the market had done a better job but I think in the last year, after digging around, I have to hedge that a little bit,” Sanchez said.

Rising interest rates and the elimination of tax-exempt advance refundings have prompted a resurgence of tender offers as well as so-called creeping tenders, deals that are may be unfamiliar to some in the market.

“You have something that might have been more popular 15 or 20 years ago, it dies off, and comes back to life, people forget the rules that apply and forget to pay attention to what has changed in law have happened in the interim,” Sanchez said.

Like with all transactions, the key question for the issuer should be if it’s a good deal.

On the investor side, the SEC’s “sensitivity” is whether the investor is “getting a fair shake,” Sanchez said.

With creeping tenders, in which an issuer is buying back their debt on the secondary market, regulators want to see that the issuer is not “stepping over the line into a tender offer,” Sanchez said.

Private litigation such as class-action lawsuits over variable-rate demand bonds is another area that the SEC watches, and wants to see “people changing behavior,” he said. “If we don’t see the change happening to comply with applicable rules you can be sure the SEC will step in.”

“A lot of the rule infrastructure came about in Dodd-Frank,” he said. “These rules are in place and it’s very important that people take them seriously.”

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 10/19/23 02:28 PM EDT

[MSRB FY 2024 Budget Provides Spotlight on Technology Expenses and New](#)

Rate-Setting Process.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published its annual budget to report on the allocation of the resources necessary to advance its mission of protecting investors and issuers and promoting the fairness and efficiency of the \$4 trillion market that ensures access to capital for communities across the country.

For FY 2024, the Board approved a \$47 million budget, which represents a 4.8% increase over the prior fiscal year. Since 2018, the MSRB has published an annual budget report to provide greater insight into its projected revenues, expenses and reserve funds. This year's report includes new sections spotlighting the MSRB's funding philosophy, market transparency and technology expenses, and the new rate-setting process for regulated entities.

"This FY 2024 report provides a closer look at the stewardship of our reserve funds and how we plan to allocate technology resources in the year ahead to deliver value to our stakeholders," wrote MSRB Chair Meredith Hathorn and MSRB CEO Mark Kim in a letter to stakeholders. "All of the key initiatives described in this report are aligned with the strategic goals we outlined in the long-term strategic plan we adopted two years ago. Now at the midpoint of that plan, we continue to make progress on our investment in modernizing municipal market regulation, providing transparency through technology, fueling innovation through data and upholding the public trust."

Modernizing Market Regulation

In the area of modernizing market regulation, the MSRB expects to move forward with an important change to its trade reporting rule, Rule G-14, to increase price transparency for investors while carving out exceptions that recognize the role of small firms and manual trades in the municipal securities market. The MSRB continues to review the entire body of interpretive guidance in the MSRB rule book and has completed or is in the process of proposing the codification or retirement of approximately 20% of the MSRB's interpretive guidance pieces since launching its rulebook modernization initiative in February 2021.

Providing Transparency Through Technology

As in prior years, technology remains a significant expense for the MSRB. The organization is in the midst of the largest investment in technology in the MSRB's history, starting with a migration to cloud computing, which began in 2018 and was completed without any system downtime or market disruption. In 2021, the MSRB launched the second and final phase of its journey to the cloud, which is to modernize its systems to leverage the power of cloud computing and provide greater availability, reliability and security to all market participants. The MSRB is on track to complete the system modernization initiative in 2025.

"In response to stakeholder comments, we are providing a more detailed breakdown of our investment in the technology systems that power our market and enable investors, issuers and market participants to make more informed decisions," wrote Hathorn and Kim, noting that the majority of the MSRB's technology-related expenses are dedicated to maintaining and continuously improving the public's access to real-time price transparency and hundreds of thousands of disclosure documents on its free Electronic Municipal Market Access (EMMA®) website.

New Fee-Setting Process

The MSRB's new fee-setting process, implemented in FY 2023, will automatically adjust rates to ensure a more timely return of any excess revenue (i.e., surplus) to regulated entities and to better

manage the organization's reserve funds. "Following an 18-month, 40% fee reduction that returned over \$19 million to the industry, we have achieved our goal to reduce excess reserve levels that had accumulated over the years," said Hathorn and Kim. The MSRB is projecting to end the year with a reserves balance near its current target of \$35 million, down from a high of \$67 million in 2018. A detailed explanation of the MSRB's reserves and fee-setting process are included in the MSRB's budget report.

[Read the budget.](#)

Date: October 02, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[GASB Proposes Guidance on Disclosure and Classification of Certain Capital Assets.](#)

Norwalk, CT, September 28, 2023 — The Governmental Accounting Standards Board (GASB) today issued a proposal that would establish requirements for certain types of capital assets to be disclosed separately for purposes of note disclosures.

The [Exposure Draft](#), *Disclosure and Classification of Certain Capital Assets*, also establishes requirements for certain capital assets to be classified as "held for sale."

Recent GASB pronouncements like Statement Nos. 87, Leases, and 96, Subscription-Based Information Technology Arrangements, created certain types of capital assets, which are described as "right-to-use" assets. In light of the recognition of those new types of assets, the Board decided to consider the effectiveness of existing classifications.

Based on input from financial statement users during the research phase of the project, GASB is proposing that certain types of assets be disclosed separately in the note disclosures about capital assets. This would allow users to make informed decisions about these and to evaluate accountability.

Four Types of Capital Assets Would Be Disclosed Separately

The Exposure Draft addresses four types capital assets that would be disclosed separately in the notes:

1. Capital assets held for sale, by major class of asset;
2. Lease assets reported under Statement 87, by major class of underlying asset;
3. Subscription assets reported under Statement 96; and
4. Intangible assets other than leases assets and subscription assets, by major class of assets.

Capital assets held for sale is a new classification proposed in this Exposure Draft. Under the proposal, a capital asset would be classified as held for sale if: (a) the government has decided to sell the asset, and (b) it is probable the sale will be finalized within a year of the financial statement date. Capital assets classified as held for sale would be evaluated each reporting period.

Stakeholders are asked to review the proposal and share their input with the Board by January 5, 2024. Comments may be submitted in writing or through an [electronic input form](#). More information about providing comment in both ways can be found in the document, which is available on the GASB website, www.gasb.org.

[SEC, MSRB, FINRA to Hold Virtual Compliance Outreach Program.](#)

Washington, D.C. – The Securities and Exchange Commission (SEC), Municipal Securities Rulemaking Board (MSRB), and Financial Industry Regulatory Authority (FINRA) today announced that registration is open for a virtual [Compliance Outreach Program](#) for municipal market professionals. The free webcast is open to the public and will take place on **Thursday, December 7, 2023, from 10:30 a.m. to 4:30 p.m. ET.**

The program will provide municipal market participants an opportunity to hear from SEC, MSRB and FINRA staff on timely regulatory and compliance matters for municipal advisors and dealers. Panel topics will include a discussion of compliance concerns of small dealer and municipal advisor firms; credit rating agency compliance concerns including rules of the road for municipal market participants; unregistered municipal advisory and dealer activity; pricing compliance; and a forward look at regulatory and enforcement priorities.

“This year marks the 10th anniversary of the final municipal advisor registration rule and the 13th year since the passage of Dodd-Frank, and I think it is a great opportunity for the SEC, MSRB, and FINRA to expand the compliance conference to all municipal market participants,” said Dave Sanchez, Director of the SEC’s Office of Municipal Securities. “The conference allows the SEC, MSRB, and FINRA a chance to speak jointly to the municipal market on where the examination, enforcement, and regulatory framework currently stands and where we see it going in the future. It will be a great program, and I am really looking forward to the new expanded scope.”

MSRB Chief Regulatory and Policy Officer Ernesto Lanza said, “Open dialogue among regulators and market professionals is critical to achieving a shared understanding of the rules in place to protect municipal securities investors and issuers. We are pleased to coordinate with the SEC and FINRA to create this opportunity for municipal advisors and dealers to hear directly from regulators about matters top of mind. Importantly, our program this year devotes time to the unique compliance concerns of small firms, which is a priority for the MSRB following a series of discussions the MSRB and FINRA held with minority-and-women owned and veteran-owned firms in the municipal market.”

Yolanda Trottman-Adewumi, FINRA Vice President of Specialist Programs and Exams said, “We are pleased to partner with the SEC and the MSRB to offer this substantive program designed to help market participants better understand their compliance obligations.”

Registration is being administered by FINRA and is available here: [Personal Information – 2023 Compliance Outreach Program For Municipal Advisors | VIRTUAL \(cvent.com\)](#). The program is free and open to all. For those who cannot attend the live virtual program, the recording will be archived on the SEC’s Office of Municipal Securities’ webpage at <https://www.sec.gov/municipal/municipal-sec-conferences>, for later viewing. To submit questions in advance of the event, please email: gergana.sellers@finra.org.

Date: September 29, 2023

Contact: Leah Szarek, Chief External Relations Officer

MSRB Seeks Comment on Streamlining Interpretive Guidance Related to Interdealer Confirmations.

Initiative Part of the MSRB's Rule Book Modernization Efforts

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) today issued a Request for Comment (RFC) on draft amendments to MSRB Rule G-12, on uniform practice, to codify, retire and reorganize approximately 40 pieces of interpretive guidance related to interdealer confirmations, some of which date back more than 40 years. With this proposal, the MSRB will have advanced efforts to codify or retire approximately 20% of its body of interpretive guidance since launching the modernization initiative in February 2021.

“As part of our efforts to modernize municipal market regulation, we are seeking to streamline the MSRB rule book by retiring outdated or superfluous guidance and codifying the relevant investor and issuer protections established over decades of interpretive guidance directly into the rule text,” said MSRB Chief Regulatory and Policy Officer Ernesto Lanza. “Our goal is to ensure our rules are reflective of current market practices, have not become overly burdensome, and are harmonized with the rules of other regulators, among other things.”

Rule G-12(c) sets forth the confirmation disclosure requirements for interdealer municipal securities transactions that are ineligible for automated comparison in a system operated by a registered clearing agency (i.e., the Depository Trust & Clearing Corporation).

“The draft amendments to Rule G-12 do not seek to impose any new burdens on regulated entities. Rather, they seek to facilitate compliance and reduce unnecessary burdens while ensuring the rule continues to achieve its goals consistent with current market practices,” said Lanza.

Comments should be submitted no later than December 15, 2023.

[Read the request for comment.](#)

Date: September 28, 2023

Contact: Leah Szarek, Chief External Relations Officer
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MSRB Enhances Free Yield Curves Available on EMMA With Hourly Updates and Monthly Data.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today enhanced the free daily yield curves and indices available on its Electronic Municipal Market Access (EMMA®) website with hourly updates from Bloomberg's BVAL AAA Municipal Curve.

“The launch of this enhanced yield curve on EMMA represents a significant improvement in market transparency for investors, issuers and all market participants who now have free access to intra-day price movements in the \$4 trillion municipal securities market for the very first time,” said MSRB CEO Mark Kim.

MSRB Chief Market Structure Officer John Bagley said, “The MSRB’s EMMA website brings together data, documents and tools to facilitate decision-making in the municipal market. Previously, yield curves available on EMMA reflected data from the day before. With EMMA’s new enhancements, the website now displays timelier pricing from BVAL’s AAA Municipal Curve.”

The enhanced website now shows curve updates hourly between 9:00 a.m. and 4:00 p.m. Eastern Time. Tables displaying monthly data points from BVAL’s AAA Municipal Curve have also been added, providing users with more information to guide their investment decisions. [View the BVAL curve here.](#)

The MSRB first added [yield curves and indices](#) to its suite of free tools on EMMA in 2017. These market indicators and tools help investors to evaluate bond prices and yields, measure market direction and performance, and determine pricing on new bond issues. [Read more about understanding yield curves and indices](#) in the MSRB Education Center.

The MSRB’s EMMA website serves as the free official source for municipal securities data and documents. The MSRB continues to enhance the EMMA website to bring greater transparency to the \$4 trillion municipal market.

Date: September 19, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[JPMorgan, BofA, Wells Face Price-Fixing Suit Over Municipal Bonds.](#)

Baltimore, Philadelphia and San Diego allege eight big banks conspired to raise the rates on more than 12,000 variable-rate demand obligations from 2008 to 2016.

A federal judge Thursday denied a request from eight major banks to dismiss class-action claims filed by cities alleging the banks conspired to increase the interest rates on a commonly used municipal bond, Reuters reported.

In a nearly decade-long dispute, Judge Jesse Furman of the U.S. District Court for the Southern District of New York granted the request for class certification instead of pursuing claims individually — a likely reason for reducing potential recoveries, according to the wire service.

Bank of America, Barclays, Citi, Goldman Sachs, JPMorgan Chase, Morgan Stanley, Royal Bank of Canada and Wells Fargo were accused of conspiring to raise rates on over 12,000 variable-rate demand obligations between 2008 and 2016.

Cities led by Baltimore, Philadelphia and San Diego claim the collusion reduced the available funding for hospitals, transportation, schools, power and water supplies, possibly leading to billions of dollars in damage.

The municipalities are seeking damages of \$6.5 billion, said Elliott Stein, senior litigation analyst at Bloomberg Intelligence.

“This is an additional milestone that will push this case to settle eventually,” Stein told Bloomberg after the ruling was issued. He said he expects the case to go to trial next year with settlements amounting to roughly \$600 million across the eight defendants.

The first class-action lawsuit was filed in February 2019 by Philadelphia, followed by Baltimore a month later and finally by the San Diego Regional Transportation Commission. The lawsuits have been combined.

The variable-rate demand obligations are long-term bonds with short-term rates that usually reset every week. Banks remarket the VRDOs that investors redeem at the lowest possible rates, Reuters noted. But the lawsuit alleges the banks, which acted as the remarketing agents, missed out on getting the best rates for the issuers.

However, the banks opposed the class certification, arguing that the differences among the bonds would necessitate numerous separate investigations into whether rate inflation occurred. This would make a single class-action lawsuit difficult to manage.

But Furman, in his decision, said the two financial market specialists whom the cities appointed to investigate found that the alleged conspiracy would have a broader impact on the class.

“Of course, it remains an open question whether, assuming plaintiffs paid supra-competitive interest, that payment was caused by defendants’ allegedly anti-competitive behavior,” Furman wrote. “Whatever the answer to this question may be, however, it is a common question.”

A lawyer for the cities, Dan Brockett, said they were pleased with the decision, according to Reuters.

Barclays, Citi and JPMorgan declined to comment to the wire service. The other banks and lawyers did not immediately respond to a request for comment.

The VRDOs market, which used to be more than \$400 billion, declined to \$72 billion by the end of last year, according to the Municipal Securities Rulemaking Board.

Banking Dive

by Rajashree Chakravarty

Published Sept. 22, 2023

[Muni-Price Fixing Suit Inches Closer to Settlement With Wall Street.](#)

- **Municipalities seek \$6.5 billion in pre-trebled damages**
- **Illinois settled False Claims Act suit in July for \$68 million**

An almost decade long dispute over price-fixing in the municipal bond market is one-step closer to a settlement after three municipalities secured a small win Thursday.

Judge Jesse M. Furman of the US District Court for the Southern District of New York granted the request for class certification from two cities and one transportation commission suing eight banks

— including Bank of America Corp. and Goldman Sachs — for conspiring to fix the rates on variable rate demand obligation bonds.

The municipalities are seeking pre-trebled damages of \$6.5 billion, and the case could head to trial next year, according to Elliott Stein, senior litigation analyst at Bloomberg Intelligence.

“This is an additional milestone that will push this case to settle eventually,” Stein said in an email after the court denied the banks’ motions to bar plaintiffs’ experts, and granted plaintiffs’ motion for class certification, as expected.

Stein has been expecting settlements to amount to about \$600 million across the 8 defendant banks which also include Barclays, Citigroup Inc., JPMorgan Chase & Co., Morgan Stanley, the Royal Bank of Canada and Wells Fargo.

The first of the class action lawsuits was filed by the city of Philadelphia in February of 2019, followed by the city of Baltimore in March of that year, and later by the San Diego Regional Transportation Commission. The lawsuits have since been consolidated.

These lawsuits followed a series of state False Claims Act lawsuits filed under seal in 2014 and unsealed in 2018, by a Minnesota financial adviser named Johan Rosenberg.

In July, the state of Illinois settled its lawsuit for \$68 million, saying the case filed on its behalf “almost certainly” would have resulted in a loss, according to a filing by Attorney General Kwame Raoul.

The so-called VRDOs are long-term bonds that have their rates periodically reset and offer investors the opportunity to return the securities for cash if they think the yields are reset too low. The lawsuits alleged that the banks — acting as remarketing agents on the securities — failed to get the best rates for issuers.

The only bank that has responded to Bloomberg’s requests for comment on the ruling, JPMorgan, declined to comment.

Bloomberg Markets

By Joseph Mysak Jr

September 21, 2023

[Judge Denies Big Banks, Allowing San Diego, Other Cities to Push Bond Collusion Claim.](#)

A federal judge on Thursday said San Diego and other U.S. cities may pursue class-action claims accusing large banks of driving up interest rates on a popular municipal bond.

U.S. District Judge Jesse Furman in Manhattan rejected efforts by eight banks – Bank of America, Barclays, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, Royal Bank of Canada and Wells Fargo – to require cities to pursue claims individually, likely reducing potential recoveries.

In addition to San Diego, cities led by Baltimore and Philadelphia accused the banks of colluding to

raise rates on more than 12,000 variable-rate demand obligations (VRDOs) from 2008 to 2016.

They said this reduced available funding for hospitals, power and water supplies, schools and transportation, and likely caused billions of dollars in damages.

Once a more than \$400-billion market, VRDOs are long-term bonds with short-term rates that typically reset weekly. Banks must remarket VRDOs that investors redeem at the lowest possible rates.

Cities accused the banks of conspiring not to compete for re-marketing services, and artificially inflating rates by sharing information about bond inventories and planned rate changes.

In opposing class certification, the banks said differences among the bonds would require many thousands of individualized examinations into whether rate inflation occurred, making a single class-action lawsuit unwieldy.

But in a 33-page decision, Furman said two financial market specialists who the cities hired as expert witnesses established that the alleged collusion could have a class-wide impact.

"Of course, it remains an open question whether, assuming plaintiffs paid supra-competitive interest, that payment was caused by defendants' allegedly anti-competitive behavior," Furman wrote. "Whatever the answer to this question may be, however, it is a common question."

Barclays, Citigroup and JPMorgan declined to comment. The other banks and their lawyers did not immediately respond to requests for comment.

Dan Brockett, a lawyer for the cities, said they were gratified by the decision.

The VRDOs market shrank to \$72 billion by the end of 2022, according to the Municipal Securities Rulemaking Board.

The case is Philadelphia et al v Bank of America Corp et al, U.S. District Court, Southern District of New York, No. 19-01608.

by Reuters

(Reporting by Jonathan Stempel in New York; editing by Marguerita Choy)

[SEC Approves Amended MSRB Rule G-3 Creating an Exemption for Municipal Advisor Representatives from Requalification by Examination and Related Amendments to MSRB Rule G-8.](#)

[Read the MSRB Notice.](#)

[NFMA Board is Accepting Applications for At-Large Seats.](#)

If you are a Regular Member of the NFMA (this excludes Associate Members and Student/Faculty Members) you are eligible to apply for one of three At-Large Seats opening for two-year terms

beginning January 1, 2024. NFMA Board members are asked to attend three in-person meeting per year on the days preceding Advanced Seminars and the Annual Conference.

To apply for an At-Large seat, [click here](#). The deadline for applications is midnight, September 30.

GASB Adds Project on Subsequent Events to Current Technical Agenda.

Norwalk, CT, September 7, 2023 — The Governmental Accounting Standards Board (GASB) recently added a project on accounting and financial reporting issues for subsequent events to the Board's current technical agenda.

The project will reexamine existing requirements in GASB Statement No. 56, *Codification of Accounting and Financial Reporting Guidance Contained in the AICPA Statements on Auditing Standards*, and evaluate ways to improve the accounting and financial reporting for subsequent events.

The reexamination will address issues that were identified in pre-agenda research, including:

1. Confusion about and challenges associated with applying the existing standards for subsequent events,
2. Inconsistency in practice in the information provided about subsequent events, and
3. The usefulness of the information provided about subsequent events, with a focus on clarifying how subsequent events are defined and what information should be provided.

The project will also consider relationships with other existing GASB standards and projects as they relate to transactions or other events that occur subsequent to the date of the financial statements.

Pre-agenda research conducted by the GASB staff found that subsequent events are generally prevalent among governments and related issues are relevant to a broad number of governments. Research indicated the presence of inconsistencies and misreporting in practice in the accounting and financial reporting for subsequent events. Guidance on subsequent events in Statement 56 dates back to audit literature from 1972 and has not been fully evaluated for its effectiveness or consistency with the GASB's conceptual framework.

The Board decided to add a project to the agenda focusing on subsequent events after carefully evaluating the staff's research findings and taking into account the level of interest from the Governmental Accounting Standards Advisory Council, the GASB's advisory council, which ranked the project highly during its annual project prioritization.

Three Takeaways for Municipal Bond Issuers From the New SEC Cybersecurity Disclosure Rules: McGuireWoods

State and local governments increasingly are becoming targets of cybersecurity attacks. According to CloudSEK, cyberattacks targeting the government sector increased by 95% worldwide in the second half of 2022, compared to the same period in 2021. With the rise of cybersecurity threats, S&P Global Ratings, a leading rating agency, noted that cyberattacks pose a growing credit risk to municipal bond issuers and warned that weak cybersecurity could lead to credit downgrades over

the next 12 months.

With the increased scrutiny on cybersecurity by S&P and the growing threat of cyberattacks, disclosure about cybersecurity risk has become increasingly common for municipal bond issuers. To date, there is no official guidance from the U.S. Securities and Exchange Commission (SEC) about inclusion of information on cybersecurity risks for municipal bond issuers.

This lack of official guidance is due in part to the SEC's limited ability to directly regulate municipal bond transactions. The SEC has indicated that many principles applicable to the registered market can be applied to the municipal market. Many municipal issuers also rely on guidance from the registered market when analyzing disclosure issues. Recent SEC rulemaking on cybersecurity disclosure is one instance where municipal issuers can apply these principles.

On July 26, 2023, the SEC adopted a final rule standardizing cybersecurity disclosure practices for public companies that offers guideposts for municipal issuers on disclosure about cybersecurity. Beginning in December 2023, public companies will have to make a timely materiality determination about cybersecurity incidents and, if an incident is determined to be material, disclose the same within four business days of such determination. Importantly, the SEC provided that an item is material if there is a "substantial likelihood that a reasonable shareholder" would deem the information meaningful to make an investment decision. Once a material cybersecurity incident determination is made, the company must disclose within four business days: (1) the nature, scope and timing of the cybersecurity incident; and (2) the incident's qualitative and quantitative impact (or the reasonably likely impact) on the company, including, but not limited to, its financial condition, operations, reputation and relationships.

Additionally, beginning with its annual report for the fiscal year ending on or after Dec. 15, 2023, public companies will be required to provide annual disclosures related to the companies' processes for the management and governance of cybersecurity threats. In the annual disclosure, companies must describe (1) the process for the assessment, identification and management of risks for cybersecurity threats; (2) whether any risks related to cybersecurity have materially affected (or are reasonably likely to materially affect) their business strategy, operations or financial conditions; and (3) the board's oversight and management of cybersecurity risks.

Although municipal bond issuers will not be required to comply with the new SEC rules, the rules provide valuable guidance for issuers on how to address cybersecurity risks in their disclosure documents and through cyberattack policies. In applying the principles found in the new rules, municipal bond issuers should make the following key considerations:

Implement and regularly reassess cybersecurity policies.

Municipalities are vulnerable to cybersecurity attacks without the proper assessment, response and management policies. An issuer that does not have a formal cybersecurity policy should consider developing a framework related to cybersecurity preparedness to institute centralized responsibilities and a transparent strategy on how to proceed if cybersecurity incidents occur. Even issuers that have formal policies should regularly reassess their policies to ensure the practices are up to date.

To create a workable policy, municipal bond issuers should consider the risks unique to their particular infrastructure and how to best protect their financial condition, operations, reputation and relationships. Municipalities also should consider whether cybersecurity insurance could be managed through an insurance policy as part of their overall risk management system.

For all issuers, ongoing management of cybersecurity risks through regular weakness testing will ensure that municipalities have an action plan in the event of a real cybersecurity attack.

Prepare a disclosure that addresses cybersecurity policy and procedures and material prior attacks.

Including cybersecurity attacks as a risk factor in offering document disclosure has become a best practice to address rating agency and investor questions. In preparing disclosures, issuers should consider their current risk posture, including policies and procedures for cybersecurity risk management, any past cybersecurity attacks and to what degree the board oversees this or delegates to management the day-to-day risk management. Issuers should work closely with legal counsel to craft disclosures on these points.

Disclosures still should be guided by materiality.

While the SEC has been reluctant to define “materiality,” the new rules for the registered market demonstrate that disclosures regarding cybersecurity (as with most disclosure issues) should revolve around materiality. In response to comments from the market during the rulemaking process, the final rule requires disclosure of “management’s role in assessing and managing the registrant’s material risks from cybersecurity threats.”

Further, the adopting release notes that certain actions are material by virtue of the level of attention provided by the board of directors and management. The final rule does not contain a materiality qualifier related to the requirement that registrants describe the oversight undertaken by their board of directors and any applicable committee responsible for this oversight because, by virtue of the board or a committee taking an active role in oversight, the SEC deemed that material to investors.

McGuireWoods LLP – Anna C. Horevay, Thomas William Bruno and Camille A. Pappy

September 6 2023

[ESG Activity in the House Financial Services Committee \(HFSC\): K&L Gates](#)

Prior to departing for the August recess, Chairman Patrick McHenry (R-NC) wrapped up the month-long series of hearings considering digital assets and environmental, social, and governance (ESG) legislation. In tandem markups held on 26 July and 27 July, HFSC advanced several bills on these issues, both on a bipartisan basis (digital assets and stablecoin) and along party lines (anti-ESG bills). Prior to the ESG markup, HFSC Republicans had released 18 bills that would be under consideration. However, these bills were then bundled into a few larger packages, which was done in a way that largely precluded Democratic support, as they were then tied to provisions that only Republicans would support.

More information on the legislation advanced during the 27 July ESG-related markup, as well as the vote outcomes, is detailed below.

[Continue reading.](#)

K&L Gates LLP – Daniel F. C. Crowley, Karishma Shah Page, Bruce J. Heiman, Ryan T. Carney, William A. Kirk, Lauren M. Flynn and Lauren E. Hamma

MSRB Enhances Free Yield Curves Available on EMMA With Hourly Updates and Monthly Data for BVAL Curves.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today enhanced the free daily yield curves and indices available on its Electronic Municipal Market Access (EMMA®) website with hourly updates for the Bloomberg® valuation (BVAL) curves.

“Investors, issuers and market participants will benefit from the free availability of timelier data to inform their assessment of bond pricing,” said MSRB Chief Market Structure Officer John Bagley.

Previously, BVAL curves and other yield curves available on EMMA reflected the previous day’s data. The enhanced BVAL curve will update hourly between 9:00 a.m. and 4:00 p.m. Eastern Time. Tables displaying monthly data points have also been added.

The MSRB first added yield curves and indices to the free tools available on EMMA in 2017. These market indicators can be useful for understanding the general level and direction of municipal bond interest rates and comparing the relative yields of specific municipal securities. [Read more about understanding yield curves and indices.](#)

The MSRB’s EMMA website serves as the free official source for municipal securities data and documents. The MSRB continues to enhance the EMMA website to bring greater transparency to the \$4 trillion municipal market.

MSRB Research Indicates Rise in Municipal Securities Transaction Costs for Individual Investors Amid Rising Rates and Market Volatility.

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today published a new research report that indicates a rise in customer transaction costs for municipal securities since early 2022, particularly for individual investor-sized trades.

“This increase in transaction costs is likely due to the steep decline in bond prices triggered by rising interest rates and market volatility starting in 2022, as those factors are often associated with higher effective spread,” said Simon Wu, MSRB Chief Economist and lead author of the report. “Tax implications associated with buying discount bonds tend to make them less liquid, which in turn impacts the costs of trading these securities. Moreover, since dealers may be inclined to charge relatively fixed markups for customer trades, when bond prices decline, transaction costs as a percentage of the purchase price generally increase.”

As previous MSRB research has shown, other than a sharp but brief spike in 2020 attributable to the COVID-19 crisis, transaction costs (as measured by effective spread) in the municipal market declined steadily between early 2009 and late 2021. However, starting in early 2022, that trend reversed. Bond prices suffered a steep decline as interest rates began to rise due to rising inflation, and market volatility increased. Declining bond prices resulted in more trading of discount bonds, which become less liquid the greater the discount from par value. This is because of the Internal Revenue Service’s Market Discount Rule, which sets the threshold at which a discount municipal

bond should be taxed as a capital gain rather than as ordinary income, making bonds with deeper discounts less attractive.

During this time, the average effective spread for municipal securities trades began to rise. Since the effective spread is calculated as the difference between customer purchase price and customer sale price and expressed as a percentage of bond price, declining bond prices with a relatively fixed markup would make the effective spread on a customer purchase higher.

The rise in effective spread was especially pronounced for individual investor-sized trades. As of March 2023, the effective spread for the sub-\$100,000 par value trades, a proxy for individual investors, was three times as large as the effective spread for the over \$1,000,000 par value trades that are generally attributed to institutional investors. Whereas, as recently as 2021, the effective spread for individual-sized customer trades was only 1.7 times the effective spread for institutional-sized customer trades. Additionally, the authors found that customer trades flagged with non-transaction-based compensation typically tied to a fee-based customer account, such as separately managed accounts, received a 30-basis point lower effective spread than customer trades from a regular non-fee-based customer account.

“While we do not tell dealers how much markup they can charge a customer, we do have rules to ensure that they charge fair and reasonable prices and clearly disclose markups on customer confirmations,” said John Bagley, MSRB Chief Market Structure Officer. “In addition to writing rules designed to protect investors and ensure a fair and efficient market, monitoring market trends and publishing research reports is another way the MSRB supports market transparency and empowers investors to make informed decisions.”

[Read the report.](#)

Date: August 22, 2023

Contact: Leah Szarek, Chief External Relations Officer
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Transaction Costs for Municipal Bonds Rose for Retail Investors.

- **MSRB report says spreads surged as securities' prices dropped**
- **Effective spread widened to 54.5 basis points from 40 in 2021**

Transaction costs for retail investors buying municipal bonds in the secondary market have jumped since 2021 as falling bond prices have made the securities riskier for dealers to hold, according to a study released on Tuesday.

The gap between the yield where dealers buy or sell a security, known as the effective spread, has widened to 0.545 percentage point, or 54.5 basis points as of March. That's up from 52.9 bps in 2022 and 40.1 bps in 2021, according to the report from the Municipal Securities Rulemaking Board, an industry regulatory body.

The steady rise in interest rates since last year has broadly eroded the value of fixed-income securities. The Federal Reserve started increasing the so-called federal funds rate in March 2022 to combat inflation. After 11 increases, the top of the range for the rate stands at 5.50%.

That's pushed down the price of bonds, with longer-term debt generally hit the hardest. Municipal bonds that trade at below their face value are often harder for dealers to sell, because any gains on the principal can be taxable, making the debt less attractive to the wealthy investors that often focus on tax-free bonds.

Dealers finding it harder to sell the bonds can translate to wider gaps between the prices at which brokerages will buy and sell securities, according to the MSRB. Also, brokers often charge fixed markups on securities, so when bond prices fall, transaction costs as a percentage of the purchase price will rise.

The report focused on trading costs for transactions in about the \$25,000 to \$100,000 range, often viewed as a proxy for retail trades. For institutional investors, trading costs moved much less. The effective spread on trades over \$1 million rose from 17.4 basis points in 2019 to 17.9 in 2021 and 18.1 in 2023.

The kind of customers who engage in transactions of \$1 million and above probably agree upon a price with their dealers before a trade goes through, said Simon Wu, MSRB chief economist and lead author of the report.

Bloomberg Markets

By Joseph Mysak Jr

August 22, 2023

Wall Street's Most Hated 3 Letters Prove Too Risky to Ignore.

- **ESG risks have dragged down shares of TUI, UPS this month**
- **GOP attacks are leading bankers to avoid talking about 'ESG'**

As the label "ESG" ends up among the most hated on Wall Street, the financial cost of ignoring it is making headlines.

In just the past few weeks, a string of textbook environmental, social and governance issues — spanning workers' rights to extreme weather — erupted in a number of major stocks.

The world's biggest publicly traded package courier, United Parcel Service Inc., was forced to issue a profit warning that drove down its shares, after it said a tentative labor agreement will add to its costs. The firm agreed to raise wages for some workers, bump up the amount of paid vacation and improve working conditions. That includes installing air conditioning in new vehicles rendered unbearably hot by extreme heat.

[Continue reading.](#)

Bloomberg Markets

By Saijel Kishan

August 16, 2023

Issuers Urge Supreme Court to Review BABs Subsidies Case.

A bevy of city, state and public finance advocates is urging the U.S. Supreme Court to take up a case challenging the subjection of Build America Bond subsidies to federal budget sequestration.

The [amicus brief](#), filed by groups including the Government Finance Officers Association, the National Association of Bond Lawyers, the National League of Cities and the American Public Transportation Association, argues that allowing the BABs decision to stand would have “grave ramifications” for federalism and “significant and adverse practical consequences” for states and local government finances.

“It’s frustrating that this has to go through the courts,” said John Godfrey, senior director of government relations for the American Public Power Association, which is filing its own amicus brief in the case. “I think we have a strong legal case and the bottom line is, if we prevail in court, all the money stays in the communities and it’s the communities where the bonds were issued that will benefit.”

The case stems from a three-year-old lawsuit brought against the United States by six Midwestern public power agencies, led by the Indiana Municipal Power Agency. The agencies, which together had floated \$4 billion in direct-pay Build America Bonds before 2011, argued that the federal government’s reductions of the 35% direct-pay subsidies – under Office of Management and Budget’s sequestration calculations – violated the American Recovery and Reinvestment Act and represented a breach of contract. The group was seeking the full 35% subsidy on interest payments from 2013 through 2030.

The Court of Federal Claims sided with the U.S. when it ruled that no statutory claim existed because sequestration applied to the payments and that ARRA did not create a contract.

The agencies appealed to the U.S. Court of Appeals for the Federal Circuit, which on Feb. 17 ruled that the BABs subsidies are subject to federal budget sequestration, and that the public power agencies are not eligible for refunds.

The power agencies on July 13 filed a petition asking SCOTUS to take up the case, saying it arises from a “multi-billion-dollar broken promise by the federal government.” The questions presented are whether a payment obligation imposed by Congress can be reduced without congressional repeal by agencies and whether a statutory provision creates a contractual obligation.

For the issuer groups, the stakes are both constitutional and financial, according to its amicus brief.

“The import of this case extends far beyond the group of public power providers that have sued,” the brief says. “If this court permits the Federal Circuit’s reasoning to stand, it will have adverse long-term implications for state and local governance in the United States.”

Allowing a federal agency like the Internal Revenue Service to interpret generic statutory language “raises constitutional alarm bells,” the issuers argue.

The decision will undermine federal policies and programs that the federal government relies on locals to implement, the issuers said.

“This case is of acute concern not only to the thousands of state and local governmental entities that issued Build America Bonds but to the 40,000 state and local governments in the United States

cooperating with the federal government to implement critical programs and deliver essential services.”

The GFOA’s federal liaison Emily Brock notes that SCOTUS opts to review only a small number of the volume of requests it receives.

“That said, GFOA and our fellow Amici have a good feeling about this one due to the variety and expanse of interest here,” Brock said. “Although preemption has been on the docket quite a bit in the last several years, it’s been a while since it’s been in the muni context, so fingers crossed.”

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 08/16/23 02:27 PM EDT

[Husch Blackwell Authors U.S. Supreme Court Amicus Brief in Public Finance Litigation.](#)

Husch Blackwell prepared and filed an *amicus curiae* brief on behalf of 11 major state and local government organizations, including the International Municipal Lawyers Association, Government Finance Officers Association, and the National League of Cities, urging the U.S. Supreme Court to grant certiorari in *Indiana Municipal Power Agency v. United States*. The case addresses whether the federal government can renege on its binding commitments to state and local governmental entities under the Build America Bonds program—the first-ever direct federal subsidy program for general-purpose state and local borrowing.

In 2009, the Build America Bonds program was created by the American Recovery and Reinvestment Act (ARRA), a stimulus package in response to the Global Financial Crisis that began in 2007. The program was an unprecedented federal intervention in the municipal bond market that induced thousands of state and local entities to issue taxable bonds, giving up the considerable advantages of tax-exempt bonds. State and local issuers made this election in reliance on Congress’s promise to refund 35% of the interest payments on the bonds.

The petitioners—Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Northern Illinois Municipal Power Agency, American Municipal Power, Illinois Municipal Electric Agency, and Kentucky Municipal Power Agency—were among the 2,275 state and local governmental entities that issued over \$181 billion in Build America Bonds in 2009 and 2010. These entities used the proceeds to invest in capital infrastructure projects that created thousands of new jobs, just as Congress intended.

In 2013, Congress had not repealed the ARRA, but federal agencies—specifically, the Office of Management of Budget, the Department of the Treasury, and the Internal Revenue Service—decided to stop making direct cash payments to issuers to cover the full 35% of interest payments, maintaining that these payments qualified as direct spending subject to sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, Budget Control Act, and American Taxpayer Relief Act of 2012.

The Petitioners appealed to the Federal Circuit, which affirmed the trial court’s ruling that the IRS did not improperly decrease the payments for sequestration.

Husch Blackwell’s brief was written by attorneys Danny Solomon, Kate David, Sebastian Waisman,

Ben Stephens, and Spencer Tolson. The petition for writ of certiorari was filed on August 16, and the justices are scheduled to consider the petition shortly after returning from their summer recess next month.

August 18, 2023

Additional ESG Disclosure Requirements Coming for Public Debt Issuers?

In a world where deadly heat waves, droughts, storms, wildfires and floods are becoming more widespread and more frequent every year, investors want to know about environmental, social and governance (ESG) risks when buying securities. To ensure transparency, the U.S. Securities and Exchange Commission (SEC) has proposed rules on ESG disclosure for corporate securities. And, where the private sector goes, public finance is usually close behind.

The investment community's push for guidance on ESG came from two fronts: the desire to invest in ventures with a focus on environmental, social and governing sustainability, and a need to understand risks that these factors pose to the overall security of any investment. In 2021, the SEC announced priorities addressing climate-related risks, and proposed rules in 2022 regarding the corporate disclosure of environmental, social and governing risks and the impact on publicly traded securities.

The Government Finance Officers Association (GFOA), , a membership organization of government finance professionals, which provides resources, education and best practices, followed suit by releasing voluntary ESG disclosure guidelines in 2021, and we recommend that officers responsible for municipal debt disclosures take note to avoid the potential litigation risks of non-disclosure. It will only be a matter of time before the SEC issues ESG disclosure rules for the municipal sector. Public agency officers should review what's happening on the corporate side now to be ahead of the game. See "The Evolving Word of ESG Disclosure," webinar presented by Best Best & Krieger [here](#).

What environmental risks municipal issuers should disclose

Environmental risks have significant material impact on municipal securities. If a community is located in a fire-risk area and the property taxes secure bonds, casualty loss of a group of houses in a wildfire could reduce the community's ability to collect sufficient property taxes to pay that debt. Investors want to know that risk.

A discussion of risks can be complex, but public entities would be wise to take the time to assess them during the early stages of planning public issuances. Such a discussion may appease investors, reduce the likelihood of claims that such risks were undisclosed in the event of some unforeseen event and ensure success of the agency in its ongoing communications with investors.

Issuers should identify physical risks that could impact a debt-financed project. Are there risks of wildfire, tornados, flooding, wind damage or coastal erosion? Could natural disasters wipe out the project itself, or the tax base that services the debt?

Some questions to address are: Could higher temperatures, changing climate, or the increased frequency and intensity of natural disasters disrupt power generation or farming? Could climate-related changes, such as the rise of sea level, change the consumer or tax base that will service the debt? Could these changes impact prices for real estate in the area? Will current residents leave as a result of the climate related change? How might these risks impact business operations or services?

Additionally, a discussion of resolution might be needed. How will the agency mitigate climate-related risks? Is there technology investment needed to offset such risk? What would be the cost of researching and developing these offsets? Has the agency implemented prevention measures, such as wildfire cameras or detection systems?

Comprehensive disclosure could also involve discussions about greenhouse gas emissions. The SEC's proposed rules identify three scopes of emissions. For example, if you have a toy factory in your city, Scope 1 includes direct emissions out of the factory's smokestack; Scope 2 includes indirect emissions, such as for purchasing energy to run the plant; and Scope 3 includes downstream emissions, such as those from transporting the toys to retailers.

Finally, for environmental risks, the GFOA recommends including cautionary language similar to what issuers include on financial projections in official statements for bond issuances. This language should reflect the importance that no one knows what the actual impacts of climate change will be, and these disclosures are forward-looking projections based on facts available to date. The issuer cannot guarantee any results from mitigation measures or impacts as assumed.

Recommendations for disclosure on social and governance risks

The GFOA recommends disclosing information about demographics, income level and wealth disparity, housing availability and affordability, the availability and affordability of services, access to and quality of education, and other resources. Investors want to know about employment statistics, labor relations and challenges for public entities, and the long-term costs related to labor such as pension and other post-employment benefit liabilities.

For example, investors want to know about social risks that could impact service to general obligation bonds, such as a sudden decline in population. Or, if a school district issues debt, investors want to know if a drop in enrollment will impact the ability to service bonds for a new facility.

Governance is the ESG factor that is already widely discussed in most offering documents. Issuers should include a description of the entity's organizational structure and offer transparency about debt management policies and how financial policies are implemented. Investors want to know when a budget is adopted each year and when financial reports are issued. They also want to know about budget controls and how an entity generates revenue assumptions.

Issuers should also disclose any governance instability that poses risk. For example, continuity in administration is important. Investors want to know the composition and term of board or council membership, and they want to know if there have been departures in executive management or significant turnover in operating staff.

Naturally, issuers should always be transparent about any lawsuits, federal or state investigations or other actions against the agency.

Increased investor scrutiny of ESG factors will force governmental agencies to improve their own due diligence for bond-financed projects. Public officials have a variety of resources at their disposal, such as regional climate change impact studies, local developers, real estate appraisers and economists, who can help evaluate the risks. Analyzing risk will help municipal issuers better plan their future projects and manage their finances over time. Environmental, social and governance factors impact everyone, and before long, issuers will need to provide comprehensive disclosure regarding these risks.

Reuters

Best Best & Krieger LLP

By Mrunal M. Shah and Kimberly A. Byrens

August 17, 2023

[MSRB Demystifies Structured Data with Newest Addition to EMMA Labs.](#)

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today debuted its third entry on EMMA Labs – the MSRB’s free innovation sandbox for transparency enhancements to the municipal securities market – with a new lab aimed at demystifying structured data. The lab explains what structured data is, features case studies from municipal issuers who have prepared their financial statements in a machine-readable format and illustrates potential future capabilities of the Electronic Municipal Market Access (EMMA®) website.

“Our goal with this Lab is first and foremost education,” said Chief Product Officer Brian Anthony. “Issuers and other market participants need a common understanding of structured data as technology continues to evolve and new legislation is being implemented to require the greater use of structured data in regulatory filings with the MSRB.”

The Lab features case studies from two early adopters of structured data for financial management: the City of Flint and the College of DuPage. The Lab also illustrates how the EMMA website could be enhanced with dynamic comparison tools leveraging structured data.

“Since EMMA Labs launched in 2022, it has served as a place for market participants to collaborate on innovative prototypes and ideas that have the power to improve transparency in our market,” Anthony said.

EMMA Labs is free to use. The structured data lab is one of three “Active Labs” that serve as a proving ground for functional prototypes that could eventually be deployed on the EMMA website. The first Lab is a powerful search engine that the MSRB plans to bring to future-state EMMA to enable keyword searches across the hundreds of thousands of disclosure documents submitted to EMMA as unstructured PDFs. The second Lab is a dynamic dashboard for market data analysis that empowers users to discover and visualize market trends. An additional Idea Labs section provides a forum for users to submit and provide feedback on ideas for potential future Active Labs.

Date: August 07, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[Municipal Securities Regulation and Enforcement: 2023 Mid-Year Review - Ballard Spahr](#)

In the first half of 2023, several rule changes have been proposed by the Municipal Securities Rulemaking Board (MSRB) and the U.S. Securities and Exchange Commission (SEC), including changes to “Best Execution” requirements and new data transparency requirements. The SEC’s “Regulation Best Execution” proposal has been met with particularly strong pushback, with many in the municipal market encouraging that it be dropped altogether.

[View the Ballard Spahr Mid-Year Review.](#)

August 1, 2023

SEC Adopts Significant Money Market Fund Reforms; Enhances Private Liquidity Fund Reporting on Form PF: Dechert

[View the pdf.](#)

Dechert LLP – Brenden P. Carroll, Nicholas Carroll, Stephen T. Cohen, Jonathan Blaha, Kathleen Hyer, Austin G. McComb, Devon Roberson and Ashley N. Rodriguez

August 2 2023

BDA Forms Fixed Income Technology Clearinghouse to Facilitate Information Sharing, Tech Intel, and Deliverables for US-Focused Bond Dealers.

Today, the Bond Dealers of America – Washington DC’s only dedicated Fixed Income Advocate – is pleased to announce the creation of the Fixed Income Technology Clearinghouse intended to help US focused bond dealers navigate their technology and back-office options including costs and deliverables.

The Fixed Income Technology Clearinghouse will bring together professionals at BDA full member firms with responsibility for and focus on technology decisions and adoption.

This group will be managed by BDA staff working alongside outside consultant Stephen Winterstein of SP Winterstein & Associates LLC, a long-time municipal market leader, previously as Head of Capital Markets at Alphaledger and as the Head of Municipal Fixed Income at MarketAxess.

Mission

To bring together fixed-income market leaders to address the most pressing fixed income technology issues of the day. Providing a platform to help facilitate solutions to technology and back office or operational challenges being faced by securities firms and banks active in the US bond markets.

Whether having a conversation with a vendor about issues with an existing product, or proposing a new idea, this group provides BDA members a forum to discuss issues, while working with industry professionals to identify and implement proper solutions.

The Fixed Income Technology Clearinghouse will also work with regulators where the membership sees fit, providing additional opportunities with dialogue with the MSRB, FINRA, and SEC to help

direct and better inform the respective staffs.

The main objectives of the Clearinghouse include:

- To collaborate and develop ideas to improve existing vendor products, or present new ideas
- Provide a unified voice and solutions to regulators on key issues such as the Financial Data Transparency Act and one-minute trade reporting
- Hold an annual Roundtable to discuss key technology topics and assist in drafting the agenda for key BDA events such as the NFIC to ensure proper topics are incorporated.

Membership

The BDA's Fixed Income Technology Clearinghouse will have cross-product representation from all BDA full member firms that wish to participate. Each full member interested in participating would select a delegate to represent them within the group.

We will also work to ensure BDA associate members are engaged while finding parity in representation from both the municipal and taxable markets and in sizes of firms.

If you or your firm is interested in participating in the BDA Fixed Income Technology Clearinghouse, please contact Mike Nicholas at mnicholas@bdamerica.org.

Bond Dealers of America

August 3, 2023

[GASB Financial Accounting Foundation Board of Trustees.](#)

[Meeting Notice](#)

07/28/23

[GASB Standards-Setting Process Oversight Committee Meeting.](#)

[Meeting Notice](#)

07/28/23

[Join GFOA's Women's Public Finance Network.](#)

WPFN is a voluntary association of women, elected and appointed officials, and other women finance professionals, formed within GFOA to develop a core network of women GFOA members to coordinate communications and to encourage participation in GFOA and WPFN. The purpose of the network is to foster the careers of women in public finance through education, networking, and mentoring opportunities. Membership in WPFN is free.

MSRB Announces FY 2024 Board Leadership and New Members.

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) announced today that it has elected Fiscal Year 2024 officers and five new members who will join the Board on October 1, 2023. The MSRB also announced that Ernesto A. Lanza would join the senior staff of the MSRB to lead the Market Regulation department.

Board Leadership

The Board re-elected public member Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, to serve a second one-year term as Chair of the Board.

Angelia Schmidt, a bank dealer representative on the Board, will serve as FY 2024 Vice Chair. Schmidt is Managing Director and Head of Underwriting at UBS.

"I am grateful for the opportunity to continue working alongside my fellow Board members to advance long-term initiatives that will profoundly shape the future of our market," said MSRB Chair Hathorn. "As we approach the midpoint of the organization's four-year strategic plan, we are making great strides toward modernizing our rule book, our technology systems and our data capabilities to better serve investors, issuers and the public interest."

Hathorn's and Schmidt's terms were set to end on September 30, 2023, but the Board tapped them, along with public member Thalia Meehan, to serve one additional year in the final phase of its transition plan to reduce the size of the Board from 21 members to its current size of 15 members.

Board Members

The Board includes eight independent public members and seven members from MSRB-regulated broker-dealers, banks and municipal advisors. Four new members will join the Board to serve four-year terms that will begin October 1, 2023. One new municipal advisor will join the Board on October 1 to serve the remaining three years of a vacancy created by the departure of a municipal advisor representative on the Board.

"Thanks to the tremendous efforts of the Nominating Committee, we have the pleasure of welcoming five individuals who will refresh our Board with new perspectives, relevant experience and a shared commitment to serving our market," Hathorn said.

New public members joining the MSRB Board in FY 2024 are Michael Craft, Senior Credit Analyst at Genworth Financial Inc. in Stamford, Connecticut; and Pamela M. Frederick, Chief Financial Officer and Treasurer for New York City's Battery Park City Authority. New regulated representatives are Alexander Chilton, Managing Director, Head of Municipal Securities, at Morgan Stanley's Municipal Bond Division in New York; and Christopher A. Kendall, Managing Director, Fixed Income Trading, at Charles Schwab and Company, Inc. in Denver, Colorado. Wendell G. Gaertner of Public Resources Advisory Group, Inc. in St. Petersburg, Florida is the municipal advisor representative joining the Board for a three-year term.

The new Board members were selected from more than 50 applicants this year.

MSRB Leadership

Ernie Lanza returns to the MSRB this month to serve as Chief Regulatory and Policy Officer. His career as a securities regulatory and public finance attorney includes more than 15 years in leadership roles at the MSRB, serving as acting director of the SEC's Office of Municipal Securities, and private practice.

"I am delighted to welcome Ernie back to the MSRB, and I am confident that he is the right person at the right time to advance our regulatory agenda," said MSRB CEO Mark Kim.

The MSRB also said today that it has named John Toye, a 13-year veteran of the MSRB who has held several IT leadership roles, to serve in the new role of Chief Information Officer. Brian Anthony, who originated the role of Chief Data Officer at the MSRB, will transition to the new role of Chief Product Officer.

About the New MSRB Board Members

Alexander Chilton is Managing Director, Head of Municipal Securities at Morgan Stanley's municipal bond division based in New York, NY, where he oversees municipal public finance, capital solutions, capital markets, and various sales and trading initiatives. Prior to joining Morgan Stanley in 2015, Chilton was a Partner at Whitehaven Asset Management working on an investment fund in the municipal market. Alexander began his career at Citigroup in the Municipal Bond Department. He holds bachelor's degrees in both economics and engineering, and a master's degree in engineering from the University of Pennsylvania.

Michael Craft evaluates and recommends municipal bond investments as Senior Credit Analyst at Genworth Financial, Inc., which provides guidance, products, and services that help people understand their caregiving options and fund their long-term care needs, and parent company of Enact, a leading U.S. mortgage insurance provider. Prior to joining Genworth Financial in 2017, Craft was Managing Director, Credit at Lumesis, Inc., and held several positions at Fidelity Investments. He began his career at Lehman Brothers researching and analyzing the municipal market. He holds a bachelor's degree in Economics and Russian Studies from Amherst College and an MBA from NYU Stern School of Business. He is a Chartered Financial Analyst.

Pamela M. Frederick is the Chief Financial Officer and Treasurer of the Battery Park City Authority in New York, NY, where she is responsible for all financial aspects, including directing a \$1 billion investment portfolio, as well as structuring and negotiating \$1 billion senior lien and junior lien tax exempt municipal bonds. Prior to Battery Park City Authority, Frederick's 30 years as an experienced financial executive includes positions at Citigroup, GE Capital, Fieldstone Private Capital, Overseas Private Investment Corp. and Chase Manhattan Bank. She holds a bachelor's degree in economics and an MBA in finance from the University of Michigan and a Certificat de Sclarité from Hautes Etudes Commerciales (France).

Wendell G. Gaertner is Senior Managing Director of Public Resources Advisory Group, Inc. (PRAG) in St. Petersburg, FL, where he provides municipal advisory services to clients including cities, counties, states, utilities, transportation agencies, and special districts. Prior to joining PRAG in 2013, Gaertner served as Director, Public Finance at Bank of America Merrill Lynch and Vice President, Public Finance at Raymond James & Associates, Inc. He began his finance career at Barnett Bank of Tampa. Gaertner holds a bachelor's degree in chemistry from the University of Miami and an MBA from Stetson University.

Christopher A. Kendall is Managing Director, Fixed Income Trading at Charles Schwab &

Company, Inc. in Denver, CO, where he is responsible for all trading related activity related to fixed income products. In addition, he leads regulatory and compliance requirements that affect fixed-income products as well as development of electronic trading systems, including algorithmic pricing tools. Kendall has more than 30 years' financial experience, including serving on the MSRB's Retail Investor Advisory Group from 2018-2019 and Market Transparency Advisory Group in 2020. He began his career at Shawmut Bank. He holds a bachelor's degree in economics and psychology from St. Lawrence University.

Date: August 03, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[Anti-ESG Politicians Cost Their States and Cities Billions.](#)

Supposed free-market champions are limiting the freedom of investment managers, leading to lower returns and higher interest rates on bonds.

In the face of fires, record heat, floods and other extreme weather events across the country, House Republicans are using much of July to oppose financial transparency related to climate risks and to attack investor freedoms. Their reckless course endangers not just the planet but also the financial stability of Americans' retirement savings and pensions. One Republican went so far as to say consideration of climate risk by asset managers is "Satan's plan."

On July 12, leaders of the House Financial Services Committee launched hearings to attack environmental, social and governmental (ESG) practices by financial firms. They are also crafting legislation that would outlaw long-standing risk assessment practices. Just as dangerously, House Republicans intend to restrict shareholders' ability to hold corporate executives accountable by restricting rights to vote proxies and curbing shareholder resolutions related to corporate governance.

It's hardly surprising that oil companies and other fossil fuel businesses have poured tens of millions of dollars into the campaign coffers of committee members and other anti-ESG politicians across the country.

[Continue reading.](#)

Bloomberg Opinion

By Brian Frosh and Nancy Kopp

July 25, 2023

[NFMA Releases Draft Best Practices in Disclosure for State Revolving Fund Revenue Bonds.](#)

The NFMA's Disclosure Committee is pleased to release the following draft best practices in disclosure for comment.

- [Recommended Best Practices in Disclosure for State Revolving Fund Revenue Bonds](#), Draft Dated July 25, 2023. Comments due September 30, 2023
- [Press Release](#), Dated July 25, 2023

MSRB Board Approves Shortening Timeframe for Trade Reporting at Quarterly Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) approved shortening the timeframe for trades to be reported to the MSRB at its July 26-27, 2023 quarterly meeting. The Board also approved the FY 2024 budget and discussed priorities for the next fiscal year, among other business.

Market Regulation

The Board approved seeking Securities and Exchange Commission (SEC) approval of amendments to MSRB Rule G-14 to shorten the timeframe for trades to be reported to the MSRB from 15 minutes to as soon as practicable, but no later than one minute, subject to certain exceptions for firms with limited trading volume in municipal securities and for manual trades.

“Moving to a one-minute standard for trade data reported to the MSRB will achieve greater price transparency for investors who rely on this information to make informed decisions when buying or selling municipal bonds,” said MSRB CEO Mark Kim. “The proposal we plan to file with the SEC recognizes the role that small firms and manual trades play in the municipal securities market.”

As a further step in its ongoing rulebook modernization, the Board approved seeking SEC approval of a proposal to amend Rule G-12, on uniform practice, to adopt requirements for the completion of allocations, confirmations and affirmations related to municipal securities transactions. The proposed amendments are consistent with those applicable to broker-dealers for other securities under newly adopted SEC Rule 15c6-2, which facilitates compliance with the transition to T+1 settlement.

Public Trust

The Board approved a \$47 million budget to fund the activities of the MSRB for FY 2024, beginning October 1, 2023. A budget summary detailing the MSRB's projected expenses, revenues and reserve levels will be published at the beginning of the fiscal year. The Board also approved designating an additional \$3.5 million of reserves for the Board's system modernization fund.

“The MSRB's FY 2024 budget effectively manages costs in an inflationary environment and reduces organizational reserves to within target levels, all while continuing to make the necessary investment in modernizing our rule book, our technology systems and our data capabilities to serve the market of the future,” said MSRB Chair Meredith Hathorn. “Under the leadership of the Finance Committee and Committee Chair Angelia Schmidt, the Board has demonstrated the highest commitment to fiscal discipline and stewardship of industry dollars.”

The annual budget is a factor in the MSRB's new fee-setting process, which is designed to ensure the MSRB's fees on regulated entities result in the collection of only the revenue needed to fund its

activities without accumulating excess reserves. The Board plans to file a new rate card in the first quarter of FY 2024 to establish rates effective January 1, 2024.

The Board also held FY 2024 officer elections and considered candidates to fill a vacancy on the Board. Board leadership and the incoming class of new Board members will be announced in the coming weeks.

Market Transparency

The Board received an update regarding work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems to implement user-driven enhancements to the website and to the disclosure submission process.

Market Structure and Data

The Board received a demonstration of a Structured Data Lab to be added to the EMMA Labs platform next month. Anyone who creates a free EMMA Labs account will be able to explore and provide feedback on the new Lab, which highlights the experiences of municipal issuers that have adopted structured data and features a prototype of what EMMA might be able to do in the future with additional structured data. The Lab also includes educational content to support market participants' common understanding of structured data.

Date: July 28, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1500
lszarek@msrb.org

[Financial Accounting Foundation Board of Trustees Notice of Meeting.](#)

[Meeting Notice](#)

[07/28/23]

[GASB Standards-Setting Process Oversight Committee Meeting Notice.](#)

[Meeting Notice](#)

[07/28/23]

[GFOA: Navigating the Talent Shortage](#)

As demand for public finance officers grows, local governments are facing challenges in recruiting and retaining top talent. In this current environment, the use of virtual CFOs and just-in-time talent are becoming increasingly popular options.

[LEARN MORE.](#)

MSRB Board Announces Discussion Topics for Its Quarterly Board Meeting.

Washington, DC - The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet in Washington, D.C. on July 26-27, 2023 for its final quarterly meeting of the fiscal year. The Board will discuss its priorities for the next fiscal year and approve the FY 2024 budget to advance its FY 2022-2025 Strategic Plan.

Market Regulation

The Board will discuss proposed amendments to MSRB Rule G-14 to shorten the timeframe for trades to be reported to the MSRB from 15 minutes to as soon as practicable, but no later than one minute, subject to certain exceptions. The Board also will discuss a proposal to amend Rule G-12, on uniform practice, to adopt requirements for the completion of allocations, confirmations and affirmations related to municipal securities transactions that are consistent with those applicable to broker-dealers for other securities under newly adopted SEC Rule 15c6-2.

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Public Trust

The MSRB publishes its budget at the beginning of every fiscal year to report on the planned allocation of resources to advance the organization's multi-year Strategic Plan. The Board will discuss the FY 2024 budget proposal and its priorities for the next fiscal year, which begins October 1, 2023. The Board also will hold FY 2024 officer elections and consider candidates to fill a vacancy on the Board.

Date: July 19, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1500
lszarek@msrb.org

SEC to Consider Cyber Rules Next Week.

According to a recently-released [meeting agenda](#), the Securities and Exchange Commission's

("SEC") upcoming July 26, 2023 meeting will include consideration of adopting rules to enhance disclosures regarding cybersecurity risk management, governance, and incidents by publicly traded companies.

The SEC initially proposed these rules in March 2022. If adopted as proposed, the new rules would require publicly traded companies to publicly disclose a cybersecurity incident within four business days of determining that the incident is material, and to provide disclosure in periodic reports about certain cybersecurity governance practices. The proposed rule has been subject to two comment periods; after the original comment period ended in May 2022, the SEC re-opened the comment period between October-November 2022. The SEC is considering additional rules that implicate cybersecurity considerations and are in various phases of comment and revision for investment advisors, broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents.

Covington & Burling LLP – Micaela R.H. McMurrough, Ashden Fein, David H. Engvall, Caleb Skeath, Kerry Burke and Shayan Karbassi

July 20, 2023

[MSRB Proposes One-Time Exemption for Municipal Advisors to Regualify for Certification.](#)

The MSRB [proposed amendments](#) to MSRB Rule G-3 ("Professional Qualification Requirements") to provide a one-time exemption for municipal advisors who allowed their qualification to lapse.

The MSRB proposed:

- creating a "one-time, criteria-based exemption" for former municipal advisor representatives who allowed their qualification to lapse; the exemption allows the advisor to requalify, without examination, no later than one year after a two-year lapse;
- removing language that allows the MSRB to waive the reexamination requirements under "extraordinary cases" for municipal advisor representatives and principals;
- clarifying an interpretive question regarding the lapse in qualification for individuals associated with dually registered broker-dealers and advisors; and
- specifying the means for electronic delivery of a requisite MSRB notice regarding satisfaction of the criteria-based exemption.

In addition, the MSRB proposed amending MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors") to require municipal advisors to keep books and records regarding the exemption.

The MSRB stated that it is proposing amendments to MSRB Rules G-3 and G-8 as part of its rule book modernization initiative and an "industry-wide continuing education (CE) initiative."

The MSRB requested a compliance date of no more than 30 days following the SEC's approval of the amendments.

Fried Frank Harris Shriver & Jacobson LLP

July 18, 2023

Replacement of London Interbank Offered Rate - GASB Update

Norwalk, CT, July 17, 2023 — In April 2022, the Government Accounting Standards Board issued [Statement No. 99](#), *Omnibus 2022*, which stated that for purposes of applying paragraphs 35–38 of [Statement No. 53](#), *Accounting and Financial Reporting for Derivative Instruments*, as amended, the London Interbank Offered Rate (LIBOR) is no longer an appropriate benchmark interest rate for a derivative instrument that hedges the interest rate risk of taxable debt when LIBOR ceases to be determined by the ICE Benchmark Administration using the methodology in place as of December 31, 2021.

As of July 1, 2023, the ICE Benchmark Administration ceased publishing any LIBOR setting using the methodology in place as of December 31, 2021. As a result, as of July 1, 2023, LIBOR is no longer an appropriate benchmark interest rate for a derivative instrument that hedges the interest rate risk of taxable debt for purposes of Statement 53.

More information on LIBOR is available on the ICE Benchmark Administration’s website [here](#).

Statements 53 and 99 are available on the GASB website, www.gasb.org.

Financial Accounting Foundation Issues 2022 Annual Report.

Norwalk, CT, July 12, 2023 — The Financial Accounting Foundation (FAF) today posted its 2022 Annual Report to its website. The report is available as a [printable PDF file](#) and as an [enhanced digital version](#).

The annual report theme is “Standards That Work from Main Street to Wall Street,” and it commemorates the 50th anniversary of the creation of the Financial Accounting Standards Board (FASB). The report provides a snapshot of the major milestones over the last 50 years of its Board and staff as they have worked to earn the responsibility entrusted to them: to develop and improve accounting and reporting standards that provide useful information to investors and other allocators of capital.

While much has changed since then, one thing that hasn’t is the importance of stakeholder engagement in the independent standard-setting processes of both the FASB and the Governmental Accounting Standards Board (GASB). The 2022 Annual Report includes:

- Letters from FASB, GASB, and FAF leaders
- Milestones of the FASB’s 50-year history
- Highlights of 2022 FASB and GASB standards and Exposure Drafts
- Complete 2022 management’s discussion and analysis and audited financial statements (MD&A).

The annual report is available online as a downloadable PDF file, along with a mobile-friendly version at accountingfoundation.org.

About the Financial Accounting Foundation

Established in 1972, the Financial Accounting Foundation (FAF) is an independent, private-sector, not-for-profit organization based in Norwalk, Connecticut. Its Board of Trustees is responsible for the oversight, administration, financing, and appointment of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

The FASB and GASB (collectively, “the Boards”) establish and improve financial accounting and reporting standards—known as Generally Accepted Accounting Principles, or GAAP—for public and private companies, not-for-profit organizations, and state and local governments in the United States. Both Boards set high-quality standards through a process that is robust, comprehensive, and inclusive. The FASB is responsible for standards for public and private companies and not-for-profit organizations, whereas the GASB is responsible for standards for state and local governments.

The Foundation’s Board of Trustees comprises 14-18 members from varied backgrounds—users, preparers, and auditors of financial reports; state and local government officials; academics; and regulators. The Trustees direct the effective, efficient, and appropriate stewardship of the FASB and GASB in carrying out their complementary missions; select and appoint FASB and GASB members and their advisory councils; oversee the Boards’ activities and due process; and promote and protect the independence of the Boards. For more information, visit www.accountingfoundation.org.

[MSRB Board Announces Discussion Topics for Its Quarterly Board Meeting.](#)

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Public Trust

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Date: July 19, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1500
lszarek@msrb.org

[GASB Provides Guidance to Assist Stakeholders with Application of its Pronouncements.](#)

Norwalk, CT, July 10, 2023 — The Governmental Accounting Standards Board has issued implementation guidance in the form of questions and answers intended to clarify, explain, or elaborate on certain GASB pronouncements.

[Implementation Guide No. 2023-1, Implementation Guidance Update—2023](#), contains new questions and answers that address application of GASB standards on leases, subscription-based information technology arrangements, and accounting changes. The guide also includes amendments to previously issued implementation guidance on leases.

The GASB periodically issues new and updated guidance to assist state and local governments in applying generally accepted accounting principles (GAAP) to specific facts and circumstances that they encounter. The GASB develops the guidance based on:

- Application issues raised during due process on GASB pronouncements,
- Application issues identified during the first stage of the GASB's post-implementation reviews of the leases standards,
- Questions it receives throughout the year, and
- Topics identified by members of the Governmental Accounting Standards Advisory Council and other stakeholders.

The guidance in Implementation Guides is cleared by the Board and constitutes Category B GAAP. The guide is available to download free of charge on the GASB website, www.gasb.org.

[ESG in the United States: A Complex Landscape](#)

The United States is in the process of transitioning ESG disclosure from voluntary, market-led reporting to a regulatory-driven scheme, principally led by the US Securities and Exchange Commission's (SEC) anticipated (but delayed) disclosure requirements for public companies and investment advisers/companies, as well as evolving and divergent state legislation primarily aimed at those managing state assets.

This article recaps and provides an update for certain of the SEC's proposed rule-makings and

Congressional actions, as well as outlining the varying (and politicized) approaches adopted by state legislatures or administrative bodies to either restrict or encourage ESG measures.

Proposal to Enhance and Standardize Climate-Related Disclosures for Investors

On March 21, 2022, the SEC announced a proposed rule¹ called “The Enhancement and Standardization of Climate-Related Disclosures for Investors” that would require public companies to provide certain climate-related financial data and greenhouse gas (GHG) emissions insights in public disclosure filings. These proposed SEC rules are intended to make US corporate ESG reporting more standardized and consistent with similar markets such as the European Union (EU).

The SEC final rules, which were initially anticipated to be released in April, are expected to require large filers to disclose material information about their climate risks, risk management approach, corporate ESG governance, and GHG emissions.² Since publication, the SEC has received approximately 50,000 comments during an extended comment period.

[Continue reading.](#)

Eversheds Sutherland (US) LLP – Ed Winters and Ethan D. Corey

July 7 2023

Wall Street Banks Face \$8 Billion in Municipal Bond Price-Fixing Claims.

- **BofA, JPMorgan, Citigroup among banks named in lawsuits**
- **Banks may settle FCA suits for about \$1.5 billion, BI's Stein**

After almost a decade and untold millions of dollars in legal fees, some of Wall Street's biggest banks will finally get their day in court on allegations of price-fixing in the municipal bond market — that is if they don't settle first.

Bank of America, Barclays Capital Inc., BMO Financial Corp., William Blair & Co. LLC, Citigroup Inc., Fifth Third Bancorp, JP Morgan Chase & Co. and Morgan Stanley are expected to go to trial in Illinois next month to face allegations they inflated interest rates on bonds to finance public works to discourage investors from returning them for cash and colluded in setting the rates.

It is the first of four such cases originally filed under seal in 2014 by a Minnesota financial adviser, B.J. Rosenberg, saying that the banks caused a collective \$1.5 billion in damages and seeking restitution for triple that amount. Another \$6.5 billion in damages hangs in the balance in antitrust litigation in New York.

[Continue reading.](#)

Bloomberg Markets

By Joseph Mysak Jr

July 10, 2023

UBS Agrees to Settle Botched Muni Statements Suit for \$2.5 Million.

- **Lawsuit claimed bank inflated muni investors' taxable income**
- **Hundreds of clients could qualify for payment under agreement**

UBS Financial Services agreed to pay \$2.5 million to [settle](#) a class-action lawsuit claiming the bank provided inaccurate tax information to holders of taxable municipal bonds.

A federal judge in New Jersey gave preliminary approval to the deal Wednesday and scheduled a hearing in December to iron out details and make a final determination, according to a court filing.

Richard Goodman sued in 2021 on behalf of himself and other customers who bought taxable municipal bonds in accounts maintained by UBS. He claimed the bank, which was overseeing more than \$90 billion of municipal bonds, didn't report amortizable bond premiums on forms clients used to prepare tax returns, resulting in overstatement of income and tax payments.

[Continue reading.](#)

Bloomberg Markets

by Madlin Mekelburg

Fri, July 14, 2023

Illinois Nears Settlement With Wall Street Banks Over Muni Price-Fixing Case.

Illinois reached a tentative deal to settle a nearly decade-long lawsuit that alleged about a dozen of the biggest US banks engaged in price fixing in the municipal bond market.

The banks have offered to pay the state \$68 million, according to Todd Schneider, an attorney who is representing plaintiff side. The proposal comes as Bank of America, Barclays Capital Inc., BMO Financial Corp., William Blair & Co. LLC, Citigroup Inc., Fifth Third Bancorp, JPMorgan Chase & Co. and Morgan Stanley were expected to go to trial in Illinois next month to face allegations they inflated the interest rates on certain types of municipal bonds to discourage investors from returning them for cash and colluded in setting the rates.

Barclays, Citigroup, JPMorgan and Morgan Stanley all declined to comment on the proposed settlement. Representatives from Bank of America, BMO, William Blair and Fifth Third didn't respond to email requests for comment. A spokesperson for the Illinois Attorney General's Office declined to comment.

[Continue reading.](#)

Bloomberg Markets

By Joseph Mysak Jr

July 12, 2023

New Florida ESG Law Impacts Rating Agencies, Market Participants, Municipal Issuers: Holland & Knight

The Florida Division of Bond Finance published a [notice](#) (the Notice) on June 29, 2023, providing guidance on Florida House Bill 3 (HB 3), which was signed into law on May 2, 2023, by Gov. Ron DeSantis. HB 3, in part, restricts the use of environmental, social and corporate governance (ESG) factors in connection with municipal debt issuances within the state of Florida. For a more general look at HB 3, see Holland & Knight's alert, "[New Florida Law Prohibits Use of ESG Factors in Government Investment and Procurement Decisions](#)," June 30, 2023.

Florida's Prohibitions Against ESG

Pursuant to HB 3, issuers are prohibited from contracting with "any rating agency whose ESG scores for such issuer will have a direct, negative impact on the issuer's bond rating." The Notice clarifies that "current rating agency criteria indicates ESG scores are an output of a general credit analysis and *do not independently influence the credit rating of issuers*." According to the Notice, HB 3 "institutes taxpayer protections against government issuers contracting with rating agencies that attempt to transition to a paradigm that maps ESG scores directly to an issuer's credit rating." The Notice further provides that HB 3 does not prevent rating agencies from analyzing and discussing "credit risks they believe are relevant, such as providing feedback on potential risks from natural disasters, such as hurricanes, or other risks that are relevant or may potentially be relevant to an issuer's credit rating." Furthermore, the Notice states that any rating change following a natural disaster such as a hurricane is not considered an ESG metric under HB 3 and therefore such events or factors "independently do not trigger the contracting prohibition."

HB 3 also prohibits issuers from issuing ESG Bonds. ESG Bonds are defined as "bonds that have been designated or labeled as bonds that will be used to finance a project with an ESG purpose, including, but not limited to, green bonds, Certified Climate Bonds, GreenStar designated bonds, and other environmental bonds marketed as promoting a generalized or global environmental objective; social bonds marketed as promoting a social objective; and sustainability bonds and sustainable development goal bonds marketed as promoting both environmental and social objectives." HB 3 also prohibits the expenditure of public funds or bond proceeds to pay for the services of any third-party verifier related to the designation or labeling of bonds as ESG Bonds.

The Notice provides that bonds routinely issued for a specific purpose such as resiliency are not prohibited by HB 3. The Notice encourages issuers within the state to continue to disclose material risk factors.

The Notice also clarifies that HB 3 does not prevent financial institutions from underwriting bonds issued within the state.

We Can Help

Holland & Knight attorneys are working with issuers, borrowers, underwriters and lenders to address the impact of HB 3. If you have any questions regarding this alert, please contact the authors or another member of [Holland & Knight's Public Finance Team](#).

Holland & Knight

by Vlad Popik | Michael L. Wiener

July 5, 2023

Upcoming Changes to EMMA User Accounts.

The Municipal Securities Rulemaking Board (“MSRB”) is implementing changes to login accounts for its Electronic Municipal Market Access System (“EMMA”) that may affect issuers and other obligors making continuing disclosure submissions to EMMA. The MSRB has announced that “individual accounts” will be deactivated on July 13, 2023. Thereafter, an “organization account” will be required for issuers and other obligors to make continuing disclosure submissions through the EMMA Dataport.

Instructions on how to determine whether a current account is an individual account or an organizational account, how to upgrade an individual account to an organizational account, and how to consolidate individual accounts into an organization account is available on the MSRB’s website [here](#).

Foster Garvey PC

June 23, 2023

GFOA and Rutgers University Announce Joint Project to Leverage the Power of AI.

This project aims to revolutionize the way financial data is extracted from financial reports and used to support decisions.

GFOA and Rutgers University are pleased to announce a groundbreaking joint project that leverages the power of artificial intelligence (AI) to extract select financial data from local government financial reports.

[Download Full Press Release.](#)

Publication date: June 2023

Florida HB-3: An Overview of ESG Factors Relating to Public Funds Investment and Financial Industry Impacts

On May 2, 2023, Florida Governor Ron DeSantis signed into law HB 3, also known as “An Act Relating to Government and Corporate Activism (the “Act”). The Act amends Florida Statute provisions relating to (i) deposits and investments of state money, (ii) state retirement systems and plans, (iii) state public funds, (iv) state bonds, (v) public deposits, (vi) government contracts, (vii) financial institutions, (viii) consumer finance companies, (viii) money services businesses, and (ix) deceptive and unfair trade practices.

Below is a summary of the provisions of the Act and its impact on the investment of public funds and

the new legislative provisions affecting financial institutions in Florida.

Investment Decisions

The Act prohibits applicable parties from taking into consideration “non-pecuniary” factors, including environmental, social and governance (“ESG”) factors, when making investment decisions. Such investment decisions must be based solely on “pecuniary factors.” A “pecuniary factor” is defined in the Act as “a factor that... is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests.” This requirement applies to the investment of public funds made by (i) the Chief Financial Officer, or other party authorized to invest on his or her behalf, (ii) a citizen support organization or a direct support organization on behalf of an agency, (iii) the plan administrator, named fiduciary, board, or board of trustees of the retirement system or plans, and (iv) the State Board Administration of the System Trust Fund or other trust funds administered thereby.

[Continue reading.](#)

by Tala Woods

June 13, 2023

Shutts & Bowen LLP

SEC Delays Cybersecurity Rules: Covington & Burling

Earlier this week, the Securities and Exchange Commission (“SEC”) published an update to its rulemaking agenda indicating that it does not plan to approve two proposed cyber rules until at least October 2023 (the agenda’s timeframe is an estimate). The proposed rules in question address disclosure requirements regarding cybersecurity governance and cybersecurity incidents at publicly traded companies and registered investment advisers and funds.

- **Cybersecurity Risk Governance Rule for Public Companies:** Proposed in March 2022, this proposed rule would require publicly traded companies to publicly disclose material cyber incidents within four business days and to provide disclosure in periodic reports about certain cybersecurity governance practices. The proposed rule has been subject to two comment periods; after the original comment period ended in May 2022, the SEC re-opened the comment period between October-November 2022.
- **Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies:** Proposed in February 2022, this proposed rule would require registered investment advisers and investment companies to adopt and implement “written cybersecurity policies and procedures reasonably designed to address cybersecurity risks.” The rule would also require advisers to “report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients” to the SEC as well as to implement certain recordkeeping practices. The proposed rule has also been subject to two comment periods; after the original comment period ended in April 2022, the SEC re-opened the comment period between March-May 2023. The SEC is also considering multiple other rules that implicate cybersecurity considerations and are in various phases of comment and revision for broker-dealers, clearing agencies, major security-based swap participants, the Municipal

Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents.

Covington & Burling LLP – Micaela R.H. McMurrough, Ashden Fein, Caleb Skeath and Shayan Karbass

June 15 2023

Florida Law to Restrict the Use of Certain ESG Factors by Asset Managers and Financial Institutions: Latham & Watkins

The legislation mirrors anti-“industry boycott” legislation introduced or passed in other US states and provides more explicit rubrics of prohibited factors.

On May 5, 2023, Florida Governor Ron DeSantis signed into law House Bill 3, a comprehensive antiESG bill that restricts consideration of environmental, social, and governance (ESG) factors in various contexts (HB 3). The law, scheduled to take effect on July 1, 2023, builds on the State Board of Administration’s August 2022 resolution providing that its own investment decisions must be based only on pecuniary factors that do not include “the consideration of the furtherance of social, political, or ideological interests.” HB 3 amends a variety of Florida statutes relating to: (i) retirement plans and investments of funds; (ii) financial institutions, including qualified public depositories; (iii) money services businesses; (iv) consumer finance companies; (v) trust fund assets and public funds; (vi) government contracts; (vii) government bonds; and (viii) deceptive and unfair trade practices.

HB 3 fulfills the promises of a 19-state alliance formed on March 16, 2023, by Governor DeSantis and the governors of Alabama, Alaska, Arkansas, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming to push back against what they believe to be President Biden’s ESG agenda. Pursuant to the alliance’s policy statement, the governors have agreed to lead their respective state-level efforts to:

- protect taxpayers from ESG influences across state systems, such as by blocking the use of ESG in all investment decisions at the state and local level, so that only “financial factors are considered to maximize the return on investment ... [and] eliminating consideration of ESG factors by state and local governments when issuing bonds or prohibiting state fund managers from considering ESG factors when investing taxpayer money”; and
- protect citizens from ESG influences in the financial sector, including “banning the sector from considering so-called “Social Credit Scores” in banking and lending practices ... [as well as] including stopping financial institutions from discriminating against customers for their religious, political, or social beliefs, such as owning a firearm, securing the border, or increasing [America’s] energy independence.”

[Continue reading.](#)

Latham & Watkins LLP – Lawrence E. Buterman, Sarah E. Fortt, Joshua N. Holian, Betty M. Huber, Arthur S. Long, Andrea J. Schwartzman, Pia Naib, Charlie Beller, Karmpreet “Preeti” Grewal, Austin J. Pierce and Deric M. Behar

June 8 2023

Jerry Ford Joins the MSRB Board of Directors.

WASHINGTON, DC - The Municipal Securities Rulemaking Board (MSRB) announced today that municipal advisor Jerry W. Ford joined the Board of Directors and will serve through September 30, 2023. Ford will temporarily fill the position vacated by Jill Jaworski, who left earlier this month to assume the role of Chief Financial Officer for the City of Chicago.

To fill the remaining three years of Jaworski's term, the Board is seeking applications from non-dealer municipal advisors through June 16, 2023, via the MSRB's Board of Directors Application Portal. Additional details on the Board application process, information about Board service requirements and FAQs are available on the MSRB's website.

"We're grateful to welcome Jerry back to the Board at this pivotal time as we consider and adopt priorities and a supporting budget for the 2024 fiscal year," said MSRB Chair Meredith Hathorn. Ford previously served on the Board FY 2017-2020 and chaired the Board's Finance and Stakeholder Engagement Committees, among other responsibilities. For the remainder of FY 2023, Ford will serve on both the Audit and Risk Committee and Finance Committee.

Ford is president of Ford & Associates, where he advises clients on credit, structure, and sale of new-money and refunding issues, direct placement of bank loans, use and structure of interest rate swaps, and termination of existing swaps. Prior to founding Ford & Associates, Inc., Ford worked as a public finance underwriter/banker and financial advisor for a major southeast regional bank. Before entering investment banking, Mr. Ford was a senior consultant with Booz Allen Hamilton in Washington D.C. and worked in the Office of the Secretary at the U.S. Department of Health, Education, and Welfare. He has a bachelor's degree from California State University at Los Angeles and a master's in public administration from the University of Southern California.

Date: June 15, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1500
lszarek@msrb.org

MSRB Adopts Amendments to Rules G-12 and G-15, Shortening Regular-Way Settlement for Municipal Securities Transactions to T+1.

[View the MSRB Notice.](#)

5/30/23

MSRB Adopts T+1 Amendments to Align Muni Trade Settlement with SEC Rules.

The MSRB adopted amendments to MSRB Rule G-12 ("Uniform Practice") and MSRB Rule G-15 ("Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to

Transactions with Customers”) to (i) “define regular-way settlement for municipal securities transactions as occurring one business day after the trade date” and (ii) align with recent SEC rule amendments to shorten the settlement cycle. ([See previous coverage](#)).

Under amended Exchange Act Rule 15c6-1 (“Settlement Cycle”), the regular settlement cycle for most broker-dealer transactions was shortened from two business days after the trade date (“T+2”) to one business day after the trade date (“T+1”).

The effective date for the amendments is June 1, 2023 and the compliance date is May 28, 2024, which is consistent with the implementation date for amended Exchange Act Rule 15c6-1 (“Settlement Cycle”).

May 31 2023

Fried Frank Harris Shriver & Jacobson LLP

[2023 SEC Municipal Securities Disclosure Conference - Voluntary Disclosure and FDTA Structured Data Present Benefits and Pose Uncertainties for Issuers and Obligated Entities: Hunton Andrews Kurth](#)

The 2023 SEC Municipal Securities Disclosure conference took place on May 10, 2023, the first in nearly three years. Hunton Andrews Kurth LLP’s municipal disclosure lawyer Andrew Kintzinger participated as a speaker in the first panel discussion, “Voluntary Disclosure,” moderated by Adam Wendell, Deputy Director of the SEC Office of Municipal Securities (“OMS”). Mr. Kintzinger, along with other panelists, discussed current trends with voluntary disclosure and the value of voluntary disclosure generally to rating agencies, investors, and municipal analysts. In addition, the panelists deliberated ways to encourage additional voluntary disclosure with guidance from the SEC while mitigating exposure to antifraud liability. Key takeaways from the panel included a reminder that, although Regulation FD1 does not apply to municipal securities issuers, selective disclosure by municipal issuers should still be avoided. We recommend that issuer clients ensure that proper disclosure policies and procedures are in place to avoid selective disclosure. In addition, most municipal issuers still struggle to define what is “material” in the absence of clear guidance from the SEC. The panel echoed what we are seeing in our practice as a trend among issuers to avoid materiality determinations altogether by simply erring on the side of disclosure. It remains to be seen whether too much information ends up eroding the benefits of good disclosure, particularly for retail investors of municipal bonds.

The second panel discussion, the “Financial Data Transparency Act (“FDTA”),” moderated by Mary Simpkins, Senior Special Counsel of OMS, discussed the FDTA’s requirements that the SEC adopt structured data standards for information submitted to the MSRB. The potential scope of the requirement is remarkably broad – the FDTA mandate is not limited to specific information (e.g., financial statements alone), particular submissions (e.g., primary or secondary market disclosures alone), or particular categories of municipal market participants (i.e., broker dealers’ trade reports) could also be included. The “covered data” will need to be fully searchable and machine readable on a far greater level than simply a searchable PDF, meaning that every piece of data will need to be given a commonly agreed-upon “tag.” Given the diversity of issuers and credits in the municipal securities market (compare, for example, the Official Statement for a large hospital system versus a water and sewer system), establishing a common taxonomy for all municipal securities market data could be a challenge. Based on the timeline set out in the FDTA mandate, we expect the SEC and

other federal financial regulators to issue proposed rules by mid-2024, and final rules by December 2024 to establish data standards that are to be effective no later than December 2026. Until the proposed rules are issued, we can only surmise that implementation of the structured data standards will generally track the implementation of XBRL standards for financial statements that publicly reporting companies were required to undertake beginning in 2009. Based on our experience, if the burden to adopt data standards is left up to each individual municipal securities data reporter, then any affected municipal securities issuer will likely end up working closely with its auditor and internal accountants over a year or more to understand the requirements, select an appropriate electronic platform and convert its financial statements and disclosures into the required 'tagged' format. An interesting proposal from the FDTA panel was more centralization of the tagging work to ease the burden on individual issuers (especially smaller or new issuers) – such as the SEC building the platform itself, or that all issuers in a state send their information to one entity who does the work for them. Of course, there are pros and cons to that centralization idea. Any initial taxonomy will undoubtedly undergo revisions as the market provides the SEC with feedback on applying the tags and utilizing the structured data. Transitioning to structured data is no simple undertaking, and we will be following the proposals closely.

The conference continued with two afternoon panels: "Broad Risks," moderated by Mark Elion, Senior Counsel of OMS, discussed the current trends in Environmental, Social and Governance ("ESG") risks, and "Hot Topics and Cold Cases," moderated by Dave Sanchez, Director of OMS, discussed recent enforcement actions for the SEC in the municipal securities market and their applications regarding responsibilities for municipal advisors and the use of the "Limited Offering" exemption under SEC Rule 15c2-12.

During the conference, SEC Chair Gary Gensler provided [opening remarks](#), SEC Commissioner Jaime Lizárraga provided remarks prior to the ESG panel, SEC Commissioner Hester Peirce provided remarks prior to the last panel, and OMS Director Dave Sanchez provided closing remarks.

¹ See 17 C.F. R. § 243.100-.103 (2022).

Hunton Andrews Kurth LLP – Shaney B. Lokken, Andrew R. Kintzinger and Justin K. Hicks

May 22 2023

[GASB Adds Project on Infrastructure Assets to Current Technical Agenda.](#)

Norwalk, CT, May 25, 2023 — The Governmental Accounting Standards Board (GASB) recently added a major project on accounting and financial reporting issues for Infrastructure Assets to the Board's Current Technical Agenda.

The project will evaluate standards-setting options designed to make related information about infrastructure assets:

1. More useful for making decisions and assessing government accountability
2. More comparable across governments and more consistent over time
3. More relevant to assessments of a government's economic condition, and
4. Better reflect the capacity of those assets to provide service and how that capacity may change over time.

The project will consider how infrastructure assets should be recognized and measured in financial statements and whether the optional use of the modified approach should continue to be allowed to report infrastructure assets. It will also evaluate whether additional information related to the maintenance and preservation of infrastructure assets should be presented in financial statements, and, if so, what information and where in the financial report that information should be provided.

Research conducted by the GASB over the last several years on financial reporting information about capital assets, including infrastructure assets, has looked broadly at these areas. Many stakeholders shared their perspective on the value of information about capital assets in financial statements, difficulties in providing that information, and what additional information about capital assets is needed.

The Board decided to add a project to the agenda focusing on infrastructure assets after carefully evaluating the staff's research findings this spring and taking into account the high level of interest from the Governmental Accounting Standards Advisory Council, the GASB's advisory council, which ranked the project highly during its annual project prioritization.

[MSRB Report Analyzes Buying Behavior In the Primary and Secondary Markets for Municipal Bonds.](#)

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today published a new report on trading patterns in the primary and secondary markets for municipal bonds, finding notable differences in the buying behavior of individual and institutional investors in each of these markets.

The report reveals that individual investors are more prevalent in the secondary markets but have limited participation in the primary market. More specifically, while individual investors may access the new issue market through separately managed accounts, mutual funds and ETFs, individual investors buying bonds in non-managed accounts do not participate much at all. Institutional investors, on the other hand, dominate the primary market.

"There are a number of reasons individual investors may not be able to participate in the primary market," said John Bagley, MSRB Chief Market Structure Officer. "On negotiated deals, where institutional investors have priority, individual investors would likely have difficulty getting access to bonds. Similarly, on competitive deals, prices and yields can change frequently, making it hard for individual investors to participate prior to the bid time."

The findings in the report show that individual investors, defined as trade sizes of \$100,000 or less, purchased only 1.2% of the par amount traded in the primary market and 13.4% of the par amount traded in the secondary market. Conversely, institutional investors, those making trades of \$1 million or more, clearly dominated both the primary and the secondary markets in terms of par amount traded. They purchased 85.4% of the par amount traded in the primary market and 68.2% of the par amount traded in the secondary market.

In terms of number of trades, individual investors accounted for over 83% of the trades in the secondary market but only 30% of the trades in the primary market, whereas institutional investors accounted for 27% of trades in the primary market and only 4% of trades in the secondary market.

"While individual investors may have valid reasons not to access the primary market, we believe that

more balanced participation between the primary and secondary markets could bring benefits to individual investors, including access to bonds not available in the secondary market, as well as potentially better yields in some cases,” said Bagley.

[Read the report.](#)

Date: May 24, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[SEC Approves Amended MSRB Rule G-40 on Advertising by Municipal Advisors, Related Amendments to MSRB Rule G-8\(h\) on Books and Records to be Made by Municipal Advisors and Related Updates to the MSRB’s FAQs regarding the Use of Social Media.](#)

[View the MSRB notice.](#)

May 15, 2023

[MSRB Municipal Variable-Rate Demand Obligations and Auction-Rate Securities \(2009-2022\)](#)

Statistical report on trading, interest rate and other characteristics of the municipal variable rate securities market.

[View the MSRB publication.](#)

May 15, 2023

[Broker-Dealer Settles FINRA Charges for Failing to Properly Supervise Bond Sales to Affiliate.](#)

A broker-dealer [settled](#) FINRA charges for failing to monitor conflicts of interest related to the sale of bonds to a bank affiliate (“Affiliate”).

In a Letter of Acceptance, Waiver and Consent (“AWC”), FINRA said that bank regulations forbade the Affiliate from purchasing municipal bonds entailing a markup from the broker-dealer.

FINRA determined that the broker-dealer failed to implement a reasonable supervisory system to ensure that the Affiliate was not charged such a markup. FINRA found that the broker-dealer’s actions violated MSRB Rule G-27 (“Supervision”).

To settle the charges, the broker-dealer agreed to (i) a censure, (ii) a \$50,000 fine and (iii) comply with the undertakings set forth in the AWC.

Fried Frank Harris Shriver & Jacobson LLP

May 18 2023

SEC Approves MSRB Amendment to Allow Testimonials in Muni Advisor Advertisements.

The SEC [approved](#) an MSRB proposal to amend Rule G-40 (“Advertising by Municipal Advisors”) which will allow for the use of testimonial statements in municipal advisor advertisements. The MSRB set a compliance deadline of July 3, 2023.

As [previously covered](#), the rulemaking will (i) establish supervisory obligations specific to testimonial use, (ii) modify the definition of “municipal advisory client” with regard to soliciting municipal securities businesses to align with MSRB Rule G-38 (“Solicitation of Municipal Securities Business”) and (iii) create a conforming obligation under MSRB Rule G-8 (“Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors”) to keep any records relating to testimonial advertising, including any record of payment for testimonials.

In response to comments received during the initial comment period, the MSRB amended its proposal to include (i) clarifying language to “enhance readability and understanding” and (ii) social media guidance consistent with the proposed changes to Rule G-40.

May 17 2023

Fried Frank Harris Shriver & Jacobson LLP

Muni Advocates See Bank-Qualified Cap as Attainable Goal.

With advance refunding currently dead in the water, muni leaders see a change in the regulation of bank-qualified bonds as low-hanging fruit that could help attract more Republicans to get involved in public finance issues.

The Government Finance Officers Association federal advocates advanced this position during the meeting of the group’s Committee on Governmental Debt Management before the opening of the group’s annual conference in Portland, Oregon. The Bank-qualified cap is one of the core issues for muni advocates, particularly those representing smaller issuers and regional banks and broker-dealers.

“If we get a standalone bill. I would say we’re at least 65% of the way there,” said Jarron Brady, federal policy analyst, GFOA. The legislative change sought by GFOA and other muni groups would raise to \$30 million from \$10 million the cap on how much an issuer could issue in a calendar year and maintain the ability to sell debt directly to banks as bank-qualified.

The direct sale of BQ debt to banks greatly simplifies the process for smaller issuers. The GFOA

believes the qualification lowers debt issuance costs by an estimated 25 to 40 basis points. The Tax Reform Law of 1986 set the bank-qualified limit at \$10 million for a calendar year and allows banks to deduct most of the carrying cost of that debt as a business cost. The American Recovery and Reinvestment Act raised the cap to \$30 million a year in an effort to help pull the economy out of the global financial crisis. ARRA also applied the limitation to individual borrowers rather than conduit issuers.

The effort has a familiar champion in the form of Rep. Terri Sewell, D-Ala., who unsuccessfully introduced similar legislation in 2019.

The National League of Cities, the National Association of Counties, Securities Industry and Financial Markets Association, and the Bond Dealers of America are all pulling on the same rope, as are other groups representing specific groups of issuers such as healthcare and education finance authorities.

“The current bank-qualified bond limits were established in 1986,” said Michael Decker, SVP, Research and Public Policy, BDA. “As a result of inflation, they’re sorely undervalued relative to where they were decades ago, worth less than half in real dollar terms of what they were then.”

GFOA touts a sizable uptick in issuance during the years the cap was lifted. “The data shows that when the cap was lifted to \$30 million during the Obama administration, municipalities all across the country were issuing debt at a much higher rate,” said Brady. You see the data go from this flat line to a jump. We’re hoping to get back to that jump.”

A budget reconciliation bill that surfaced in the fall of 2021 contained provisions to raise the cap back to \$30 million but failed to reach the finish line.

Efforts in Congress to put advance funding back into play are currently hamstrung by efforts to repeal the Tax Cuts and Jobs Act, the legislative cornerstone of the Trump presidency and viewed as untouchable by House and Senate Republicans.

The appeal of raising the BQ limit spreads across party lines. “Most members of Congress have a small town in their district somewhere,” said Decker. “It applies equally to red and blue states so it’s popular, it’s beneficial, and it’s long overdue.”

By Scott Sowers

BY SOURCEMEDIA | MUNICIPAL | 09:06 AM EDT

[Limited Offering Exemption May Be Too High a Compliance Risk](#)

Limited offering exemptions, once a common exemption from the official statement requirements under the federal securities laws, may soon be rarely utilized by underwriters for fear that compliance risks are too high.

That’s according to representatives from dealer groups speaking at the 2023 GFOA Annual Conference, who bemoaned the speed and volume with which the Securities and Exchange Commission is producing rule proposals and recapped much of what was said at last week’s SEC Municipal Disclosure Conference.

Michael Decker, senior vice president for research and public policy at the Bond Dealers of America, addressing the room full of issuers, attempted to reassure them that there is no direct risk to themselves associated with the limited offering exemption.

"Nobody is going to come after the issuer," Decker said. "The effect you're likely to see is that some underwriters are likely to say we don't want to use this exemption anymore, because the compliance risks are too high. I would just say be prepared."

The limited offering exemption allows underwriters to underwrite deals for which the issuer has not produced an official statement, if the bonds are being sold to 35 or fewer sophisticated investors and the underwriter has a "reasonable basis" to believe that those investors will not sell the bonds on the secondary market.

The Commission has urged those concerned they're in violation of the exemption to reach out and contact the SEC at LimitedOfferingExemption@SEC.gov, similar to the self-reporting encouragement offered when the SEC sought industry-wide settlements in the Municipalities Continuing Disclosure Cooperation Initiative, which was introduced in 2014 to address potentially widespread violations of federal securities laws.

But many regard this new initiative as forcing certain requirements on the market in a particularly aggressive fashion and with it, changing how broker-dealers and underwriters handle compliance.

"MCDC, as well as prior statements from the SEC and enforcement actions from the SEC, really changed the compliance role of the broker-dealer firms in the muni space," said Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association. "A record retention requirement is being imputed for (Rule) 15c2-12, where one is not specifically written into 15c2-12 but regulators have created one out of enforcement."

"Here again, we see the SEC imputing a record retention requirement with regards to the limited offering exception, where nothing is written specifically into the rule," Norwood said, referring to the idea that broker-dealers needed to document their reasonable basis for belief that the bonds would not end up trading. "Regulation by enforcement."

LeeAnn Gaunt, chief of the SEC enforcement division's Public Finance Abuse Unit, said around the time that MCDC was concluding in 2016 that MCDC both raised the level of awareness of continuing disclosure problems and led to improvements in the market. But how far they'll take this enforcement of the limited offering exemption remains uncertain.

But the fact that the Commission seems to pick up a niche issue (Gaunt said at last week's SEC Municipal Disclosure Conference that she'd only recently heard of the exemption) and enforce it en masse does cause concern for other areas, such as green bonds.

For the muni market, there are two major concerns when it comes to ESG so far. The first is climate risk disclosure which, has to do with climate risks which could impact issuers' ability to repay debt and what issuers are doing to mitigate those risks. The other is labeled bonds, which simply means designating bonds as ESG. It's this latter which is causing some concern for BDA's members, Decker said.

"There's not really a standard for what constitutes a green bond," Decker said. "There are third party evaluating organizations that will tell you to meet their standard for what is a green bond but it's not clear that, 10 years from now or 20 years from now when the SEC really starts to dig into this in an MCDC like way, are they going to accept those standards."

Norwood and Decker agreed that the Commission continues to stack rulemaking proposals on top of each other that have caused a dizzying effect but it also gives the muni market a good opportunity to express its thoughts on the many proposals, and express individual concerns.

“This SEC administration has been very aggressive in their regulatory agenda across markets,” Decker said. “On the other hand, staff went out of their way to say they really welcome feedback.” He views this as an opportunity to take them up on it.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 09:04 AM EDT

Anti-ESG Laws' Impact on Munis May be Far-Reaching.

In a rebuke to company policies deemed pro-environmental, social and governance or “woke,” several states have introduced or passed so-called “anti-boycott” laws.

These laws are intended to ban companies, such as commercial banks and investment banks, from doing business in the state if they are perceived as boycotting or otherwise discriminating against: (i) certain industries, such as fossil fuels, firearms, timber, mining, or agriculture, or (ii) other companies that do not support their particular ESG, DEI (diversity, equity and inclusion) or other social, political, or ideological interests.

As a practical matter, anti-boycott laws may reduce competition among underwriters, resulting in increased borrowing costs. Ultimately, the staying power of these laws will depend on a number of factors, including the willingness of states to accept increased borrowing costs or whether to utilize the laws’ existing exceptions to obtain a more economically advantageous deal.

Such laws generally target contracts with state and local governments for goods and services valued at \$100,000 or more. To ensure compliance, companies are typically required to certify that they do not and will not boycott such companies.

Many of these laws include exceptions, however, where the requirements: (i) are inconsistent with legal duties related to the issuance or incurrence of debt obligations or the management of the funds or (ii) interfere with the ability to obtain particular goods or services in an economically practicable manner.

Florida’s new anti-boycott law, “An Act Relating to Government and Corporate Activism” (HB-3), goes a step further, effectively banning all state and local issuers in Florida from issuing ESG bonds. Under the law, ESG is defined simply as “environmental, social, and governance” and “ESG Bonds” is defined broadly as “any bonds that have been designated or labeled as bonds that will be used to finance a project with an ESG purpose.”

The definition of issuer is equally broad, including all state and local bond issuers, including the State’s Division of Bond Finance, municipalities and quasi-public corporations, from issuing ESG bonds. Significantly, the Florida Higher Education Facilities Financing Authority (FHEFFA), the issuer of tax-exempt bonds benefitting private colleges and universities in the state, is identified as an issuer in this definition. Effectuating HB-3, as further discussed below, will therefore determine the extent to which private colleges and universities may obtain tax-exempt financing through FHEFFA for ESG-related projects.

Arguably, HB-3 is intended to ban bonds branded in some manner as ESG. Some of the examples of bonds designated or labeled as having an ESG purpose that are included within the definition of ESG bonds are green bonds, Certified Climate Bonds and GreenStar designated bonds. Thus, an issuance of bonds named (i.e., “designated or labeled,” two concepts that are often conflated) “Green Bonds,” “Sustainability Bonds,” or “Social Bonds,” or with similar identifiers, would be banned by HB-3, as such naming choice tags the bond issue as financing a project with an ESG purpose.

If this is the end of the story, then the impact of HB-3’s ban on the issuance of ESG bonds is a fairly simple determination.

The situation become less clear, however, when considering bonds issued for the purpose of financing a project with an arguably ESG purpose, where the name of the bond issue lacks a specific ESG identifier.

Practically speaking, the proceeds of most municipal bonds have some ESG purpose, regardless of the bond issue’s name. Additionally, the official statement and the investor roadshow, which are used in marketing the bonds to investors, typically include a description of the project to be financed with the bonds proceeds.

As such, the wording of HB-3, particularly the definition of ESG bonds, raises a potential validity question due to the following additional examples included in the definition of ESG bonds of bonds designated or labeled as having an ESG purpose: (i) environmental bonds marketed as promoting a generalized or global environmental objective; (ii) social bonds marketed as promoting a social objective; and (iii) sustainability bonds marketed as promoting an environmental and social objective.

Arguably, any bond-financed project marketed through the official statement or investor roadshow as beneficial to the Florida environment, state or local government, or society at large, could fit within these categories, including, wind turbines, solar panels, hurricane preparedness equipment, affordable housing, public schools, libraries, elderly or youth centers, public safety facilities, or a city or town hall.

Complicating matters are bond-financed projects that not only support a particular Florida environmental objective, but also positively impact the environment generally or globally. Since the language of HB-3 alone does not clarify the matter, the extent to which such bond-financed projects would be banned by HB-3 ultimately depends on Florida’s interpretation of ESG bonds specifically and enforcement of HB-3 generally.

In any event, it is unlikely that HB-3 would affect the inclusion of general climate-related disclosure in an official statement for Florida bonds. Florida issuers should proceed with caution, however, in their approach to disclosure in a post-HB-3 world. To avoid potential liability under Section 17(a) of the Securities Act or Rule 10b-5 under the Securities Exchange Act, Florida issuers must avoid making any untrue statement of a material fact, or omitting any such material fact, including those related to environmental, social or governance matters, in their official statements.

Such legal considerations aside, if less information is available to investors to evaluate an issuer’s credit quality, the result may be higher interest rates or the inclusion of more onerous covenants to mitigate any perceived (albeit potentially nonexistent) risks.

HB-3 also bans Florida issuers from entering into contracts with rating agencies whose ESG scores will have a direct, negative impact on the issuer’s bond ratings. Ultimately, it may prove impracticable for a rating agency to either: (i) extract environmental, social and governance

considerations from the total mix of information available to a rating agency in its general credit review of an issuer, particularly compared to other states, or (ii) declare, at the time it enters into a contract with a Florida issuer, but prior to commencing and completing its credit review, that such ESG considerations, isolated from further relevant context, would not directly affect the issuer's bond rating in a negative way.

Significantly, unlike other so-called anti-boycott laws, HB-3 permits financial institutions (including federal or state banks) to circumvent its anti-boycott provisions in connection with the purchase or underwriting of bonds (other than ESG Bonds) issued by governmental entities in the State.

Therefore, commercial banks and investment banks may participate in Florida bond transactions notwithstanding any perceived boycott of particular industries. This exemption may reduce the risk of increased borrowing costs resulting from less competition among underwriters. However, the benefit may be offset by a potentially smaller investor pool, as ESG funds and other impact investors look to other states for ESG-related investment opportunities.

HB-3's ban on issuing ESG Bonds could be narrowly tailored to minimize disruption or broadly interpreted for a far-reaching impact, depending particularly on the meaning of ESG bonds. The latter scenario may result in a number of unintended consequences, including validation questions, ratings disruptions and disclosure issues. HB-3 could also have a precedent-setting effect beyond Florida.

It will be interesting to observe Florida's approach to effectuating, interpreting and enforcing HB-3, and the degree to which other states take notice.

By Neal Pandozzi

BY SOURCEMEDIA | MUNICIPAL | 05/17/23 01:22 PM EDT

Neal Pandozzi is a partner with the law firm Bowditch & Dewey, LLP in Boston, Massachusetts. He has over two decades of public finance experience. He is licensed to practice law in Massachusetts and Rhode Island.

[MSRB Seeks Municipal Advisor Candidates for Board of Directors.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization (SRO) established by Congress to safeguard the \$4 trillion municipal securities market, is soliciting applications to serve as a municipal advisor representative on the Board of Directors. The selected candidate would fill a vacancy that will be created when Jill Jaworski leaves the Board to assume the role of Chief Financial Officer for the City of Chicago.

"The MSRB congratulates Jill on her appointment to serve as the CFO of the City of Chicago," said MSRB Chair Meredith Hathorn. "Jill's new role creates an opportunity for qualified individuals to consider applying to serve on the Board and work with us to advance the organization's long-term strategic goals to continually modernize the market's rules, technological infrastructure and data."

Applications from non-dealer municipal advisors will be accepted from May 15, 2023 through June 16, 2023, via the MSRB's [Board of Directors Application Portal](#). At least one letter of recommendation must be submitted with the application. The selected candidate is expected to join the Board on October 1, 2023, and serve the remaining three years of Jaworski's term. Separately,

the Board is continuing its current nominating process to elect two public and two regulated representatives to join the Board on October 1, 2023 to serve a four-year term.

“We welcome interested municipal advisors to reach out to us with questions about Board service,” said Thalia Meehan, Chair of the MSRB Nominating Committee, which leads the process of nominating new Board members. “The Nominating Committee is seeking candidates who will best represent the diversity of perspectives within the municipal advisory profession.” [Hear Meehan and other Board members share their reflections on what it means to serve on the Board.](#)

The Board of Directors of the MSRB is charged with setting regulatory policy, authorizing rulemaking, enhancing market transparency systems and overseeing operations for the organization. The Board is currently overseeing the execution of the MSRB’s long-term strategic goals of modernizing the MSRB rule book, enhancing market transparency through investments in technology, fueling innovation through data, and upholding the public trust.

The Board is composed of 15 total members. Eight members are representatives of the public, including investors, municipal entities and other individuals not regulated by the MSRB, and seven members are from firms that are regulated by the MSRB, including representatives of broker-dealers, banks, and non-dealer municipal advisors.

Additional details on the Board application process, information about Board service requirements and FAQs are available on the [MSRB’s website](#). Questions regarding the application and selection process should be directed to Jake Lesser, General Counsel, at 202-838-1395 or jlesser@msrb.org.

Date: May 15, 2023

Contact: Leah Szarek, Director of Communications
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[SEC Sets Comment Deadline for MSRB Extension of Remote Office Inspection Relief.](#)

The SEC set a [comment deadline](#) of May 30, 2023 for an MSRB rule proposal to (i) extend remote office inspection relief until June 30, 2024 and (ii) remove references to expired pandemic-related relief for brokers-dealers and municipal securities dealers.

The MSRB initially provided the relief during the pandemic to allow dealers to conduct remote inspections of municipal offices of supervisory jurisdiction, branch offices or non-branch locations under MSRB Rule G-27 (“Supervision”) Supplementary Material .01 (“Temporary Relief for Completing Office Inspections”). Under this MSRB proposal, dealers must make and maintain the required records for all offices or locations remotely inspected, including any offices or locations for which the dealer imposed additional supervisory procedures or more frequent monitoring. The proposal also removes outdated references to relief provided by the MSRB during the pandemic under MSRB Rule G-16 (“Periodic Compliance Examination”).

The proposed rule change is scheduled to become operative on July 1, 2023.

Fried Frank Harris Shriver & Jacobson LLP

May 8 2023

Remarks at the 2023 SEC Municipal Securities Disclosure Conference - Commissioner Jaime Lizárraga

Thank you, Adam [Allogrimento], for that kind introduction. I would also like to thank Dave Sanchez, director of the Office of Municipal Securities, and SEC Chair Gensler for convening today's conference. To OMS staff and all of today's panelists, thank you for contributing your time and expertise.

The market for municipal securities plays a critical role in U.S. capital markets and in our economy. State, city, local, tribal, and territorial governments and other jurisdictions depend on the securities they issue to finance their priorities - hospitals, roads, schools, affordable housing, and other infrastructure. A well-functioning municipal market benefits issuers through lower borrowing costs. The public also benefits through lower project costs and fees.

The municipal securities market is primarily a retail market. Of the \$4 trillion in outstanding municipal bonds at the end of 2022, 40 percent were held by individual investors. An additional 26 percent were held by mutual funds. Protecting these retail investors and ensuring full and effective disclosure in a market as large, diverse, important, and complex as the municipal securities market is an important goal.

As you covered in this morning's panel, President Biden signed into law the Financial Data Transparency Act, or FDTA, included in the National Defense Authorization Act of 2022. The FDTA was designed to update the standards for data collection and dissemination by financial regulators. The goal was to make financial data more accessible and uniform, and more useful to investors and other market participants. It also requires the federal financial regulators to pursue interoperability across agencies to streamline compliance. This congressional mandate requires financial regulators to engage in a joint rulemaking to achieve these goals.

The FDTA requires the SEC to consult market participants in establishing data standards for the municipal market. Constructive, consistent and extensive engagement between the Commission, issuing jurisdictions, investors, and advocates can yield effective standards that provide more accessible and useful information to investors.

Congress gave the SEC, and the other federal financial regulators, two years to develop and publish data standards through a joint rulemaking. After those standards are finalized, the SEC will have up to two more years to issue rules for municipal securities. This means that municipal issuers and other market participants may have up to four years to prepare before any data standards adopted under FDTA are issued. Moreover, any SEC structured data rule will be subject to notice and comment rulemaking. I encourage all stakeholders in the municipal market, including investors, advocates and issuers, to participate meaningfully and constructively in the rulemaking process.

The FDTA allows for scaling of disclosure for smaller issuers - state, local, tribal, and territorial governments and other relevant authorities. This flexibility may address some of the concerns about costs for smaller municipal issuers.

In addition to your discussions on FDTA, it is encouraging that you have panels focused on meaningful and effective voluntary disclosures related to ESG and cybersecurity.

We have seen strong demand from investors for ESG disclosures that incorporate comparability and robust metrics. In the absence of these effective disclosures, the result is inconsistency and lack of comparability. Aiming for the highest-quality, most investor-useful information regarding ESG risk disclosures is good for investors and for the municipal securities markets.

Your perspectives on best practices for cybersecurity disclosures for municipal issuers are also important. The SEC has proposed a set of cybersecurity rules. Similar to our ESG rules, these proposed rules will not apply to municipal issuers. But there is significant overlap between the emerging cyber risks these rules are designed to address and the risks facing municipal issuers, who operate in an environment where cyber incidents are growing in frequency and sophistication.

Cyberattacks and data breaches can cause irreparable and irreversible damage to individuals whose personal information is compromised and/or stolen. They may also impose significant costs on municipalities. In light of this, effective disclosures regarding cybersecurity practices protect investors, ensure that an issuer's critical systems are secure, and instill confidence that issuers have taken steps to mitigate identified cyber risks. Timely disclosures to the public regarding significant cybersecurity incidents and to individuals if their personal information is compromised are also critical.

Thank you again for your participation in today's conference, and for your contributions to this important market.

May 10, 2023

Remarks before the Municipal Securities Disclosure Conference - Chair Gary Gensler

Good morning. It's a pleasure to welcome you to the Securities and Exchange Commission's Municipal Securities Disclosure Conference—our first in nearly three years.

I'd like to start with a disclosure of my own: My views are my own as Chair of the SEC, and I am not speaking on behalf of my fellow Commissioners or the staff.

On May 27, we will mark the 90th anniversary of the Securities Act of 1933, the first of the federal securities laws.

When President Franklin Roosevelt signed that law, he understood that our capital markets work best if investors get to decide which risks to take as long as issuers raising money make what Roosevelt called "complete and truthful disclosure."

Our capital markets depend, ultimately, on the trust that full, fair, and truthful disclosure helps to build. As Roosevelt put it: "Those who seek to draw upon other people's money must be wholly candid regarding the facts on which the investor's judgment is asked." [1]

When crafting the federal securities laws, Congress and Roosevelt also understood the importance of the bond markets. Among the many terms they included within the definition of a security were "bond," "note," and "debenture." [2]

With a focus on protecting investors in the bond markets, Congress later passed the Trust Indenture Act of 1939. One might say it's like the Rodney Dangerfield of the securities laws: important, and

discussed not often enough.

Initially, municipal securities were exempt from many of the federal securities laws except with respect to antifraud protections.

Things changed, however, in 1975, after New York City nearly went bankrupt. Congress acted by establishing a regulatory scheme for intermediaries in the municipal securities markets, requiring broker-dealers in these markets to register, and creating the Municipal Securities Rulemaking Board (MSRB).

Based on these authorities, in 1989 the Commission adopted—and as recently as in 2018 amended—Rule 15c2-12.[3] The rule ensures that those acting as underwriters of municipal securities confirm that issuers agree to make continuous disclosures to investors, and that the disclosures are available in a manner designated by the SEC.

Further, under the rules, brokers must confirm that issuers agree to make disclosures with respect to official statements, annual financial information, and 16 relevant material events. These important disclosure rules both help protect investors and facilitate capital formation by municipal issuers.

We also have a role as a cop on the beat. We recently charged four underwriters for disclosure-related violations while offering municipal bonds.[4]

Given that markets, technology, and business models continue to evolve, it's helpful to hear from this conference today about ways to enhance disclosure in this part of the markets.

I look forward to hearing from the panel talking about voluntary disclosures. Such disclosures can help build greater trust in the marketplace. That can benefit investors as well as lower the cost of capital for issuers.

I am also pleased you will have the opportunity to discuss the Financial Data Transparency Act, which became law late last year.

Overseen by the SEC, the MSRB maintains an important data repository for the municipal markets. I think, though, that it could benefit investors, issuers, and markets alike when we consider ways to enhance the efficient submission and processing of data in these markets. Further, it helps ensure that the public has ready access to that data.

Before I close, I'd like to note how critical this \$4 trillion market is. It provides access to the markets for local governments to provide basic services for their communities—building roads, schools, parks, bridges, hospitals, and more.

While the SEC oversees more than 7,000 public company issuers, there are around 50,000 municipal securities issuers.[5] Strikingly, there are approximately one million different outstanding municipal securities—more than 30 times the number of outstanding corporate bonds.[6]

We at the SEC benefit from your participation today, and your continued engagement with our Office of Municipal Securities.

Thank you.

[1] See Franklin D. Roosevelt, "Statement on Signing the Securities Bill" (May 27, 1933), available at

<https://www.presidency.ucsb.edu/documents/statement-signing-the-securities-bill>.

[2] See “Securities Act of 1933,” available at <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/48/STATUTE-48-Pg74.pdf>.

[3] See Securities and Exchange Commission, “SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure” (Aug. 20, 2018), available at <https://www.sec.gov/news/press-release/201-158>.

[4] See Securities and Exchange Commission, “SEC Charges Four Underwriters in First Actions Enforcing Municipal Bond Disclosure Law” (Sept. 13, 2022), available at <https://www.sec.gov/news/press-release/2022-161>.

[5] See MSRB, “Self-Regulation and the Municipal Securities Market” (Jan. 2018), available at <https://www.msrb.org/sites/default/files/MSRB-Self-Regulation-and-the-Municipal-Securities-Market.pdf>

[6] See MSRB, “Muni Facts: Municipal Market by the Numbers” (Sept. 2022), available at <https://msrb.org/sites/default/files/2022-09/MSRB-Muni-Facts.pdf>.

May 10, 2023

[MSRB Amendment to Rules G-12 and G-15 on Regular-Way Settlement: SIFMA Comment Letter](#)

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board’s (MSRB) filing.

[View the SIFMA comments.](#)

[April Issue of GFOA's GFR Now Available.](#)

The April issue of *Government Finance Review* highlights public engagement in budgeting with in-depth articles. Other topics inside the magazine include engaging diverse communities, cryptocurrency, reducing inequities of fines and fees, and much more.

[READ ONLINE](#)

[GFOA Accounting for Capital Assets: A Guide for State and Local Governments \(2nd Edition\)](#)

A “Must-Have” For Publication Every Government

Accounting for Capital Assets: A Guide for State and Local Governments (2nd edition) offers clear and straight-forward guidance to public-sector accounting professionals who must confront the practical challenges of accounting for capital assets and similar items on a daily basis.

Capital assets typically constitute the largest single item on a state or local government's statement of net position. Not only do capital assets need to be reported in the financial statements, but governments must track and maintain control over them. Accounting for Capital Assets offers clear and straight-forward guidance to public-sector accounting professionals who must confront the practical challenges of accounting for capital assets and similar items on a daily basis.

The book's eleven chapters cover the gamut of capital asset-related issues. Each comes with a handy "chapter in brief" summary and multiple-choice questions. The book also offers an extensive set of sample journal entries, a detailed index, and a full glossary.

[PURCHASE](#)

[MSRB Provides Additional Regulatory Relief by Further Extending the Temporary Timeframe for Remote Office Inspections and Files Amendments to Remove Expired Relief Under Rule G-16.](#)

[View the MSRB Notice.](#)

Notice 2023-04 - Informational Notice

Publication date: 04/27/2023

[MSRB Discusses Retrospective Rule Review Initiatives at Quarterly Board Meeting.](#)

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) met on April 26-27, 2023, for its third quarterly Board of Directors meeting of Fiscal Year 2023. The Board discussed regulatory initiatives in support of the organization's [long-term strategic goal](#) to review and identify opportunities to modernize the rules established to protect municipal bond investors and the state and local governments that rely on the municipal market to raise capital.

"In a healthy and dynamic municipal market, practices evolve over time, requiring regulators to continually review the rules and associated guidance to ensure they continue to meet their intended objectives effectively and efficiently," said MSRB Chair Meredith Hathorn. "The MSRB is advancing a series of regulatory proposals that will streamline and modernize the rule book, ensuring that our rules appropriately achieve their issuer and investor protection goals without placing undue compliance burdens on regulated entities. We are making significant progress toward this goal, while recognizing that we have a perpetual responsibility to assess our rules and adapt them as needed to advance our mission to promote a fair and efficient market and facilitate capital formation."

The [MSRB's rule book modernization](#) includes two distinct but related efforts: ongoing retrospective reviews of MSRB rules and a long-term comprehensive review of the MSRB's entire body of

interpretive guidance. The Board discussed next steps for several related initiatives described below. The Board also discussed the Securities and Exchange Commission's (SEC) rule proposals to address cybersecurity risks, which, if adopted, would establish new requirements for municipal market participants, including the MSRB.

One-Minute Trade Reporting

The Board received an update on staff's ongoing coordination with the SEC and Financial Industry Regulatory Authority (FINRA) on the MSRB's one-minute trade reporting proposal. The MSRB sought comment in August 2022 on [proposed amendments to MSRB Rule G-14](#) that would generally require that transactions in municipal securities are reported as soon as practicable, but no later than within one minute of the time of trade, down from the current 15-minute reporting requirement.

"The MSRB continues to analyze trade data and discuss stakeholder feedback to inform the development of rule amendments that would enhance price transparency in the municipal market for investors," said MSRB CEO Mark Kim. "We appreciate the coordination with fellow regulators and input from market participants to work toward a one-minute standard while remaining mindful of important considerations, such as the relationship between a shortened reporting timeframe and a firm's best execution obligations, potential impacts on smaller firms and operational considerations associated with manual trades."

Interpretive Guidance Review

As a next step in the MSRB's efforts to review the entire body of interpretive guidance, the Board approved seeking comment to codify or retire nearly 40 pieces of interpretive guidance related to [Rule G-12\(c\)](#) pertaining to inter-dealer confirmations.

"Through conversations with market participants, the MSRB sees a real opportunity to reduce substantially the volume of guidance in the rule book and facilitate compliance by distilling the relevant investor and issuer protection concepts into clear rule text," Kim said. "We anticipate broad market agreement that this provision of our rule book does not merit preserving 40 pieces of interpretive guidance dating back as far as the 1970s."

Professional Qualification

The Board authorized staff to seek SEC approval of [amendments on Rule G-3](#) to create an exemption for municipal advisor representatives from requalification by examination in certain circumstances that the Board believes would not reduce the protection for issuers who expect their municipal advisory professionals to have met established professional qualification standards. This initiative aims to provide greater regulatory flexibility and promote diversity, equity and inclusion in the municipal market for professionals who temporarily leave the municipal advisory business. The MSRB's rule filing will provide clarity around considerations raised by commenters.

Time of Trade Disclosure

The Board received an update on staff's ongoing review of comments received in response to the recently closed [request for comment](#) on proposed amendments to Rules G-47, on time of trade disclosure and D-15, defining the term "sophisticated municipal market professional."

Date: April 28, 2023

Contact: Leah Szarek, Director of Communications

An End to the Paper Chase? Proposed Bill Could Greatly Expand SEC Registrants' E-Delivery Use.

The House Committee on Financial Services passed the Improving Disclosure for Investors Bill of 2023 on April 26, 2023 with bipartisan support. If passed by Congress and signed into law, the bill could alter the regulatory landscape for electronic delivery (e-delivery) by US Securities and Exchange Commission (SEC) registrants by eliminating the requirement to obtain an investor's affirmative consent for e-delivery and allowing firms to implement a notice and optout approach to implementing e-delivery.

E-delivery of required regulatory documents to investors has been permitted for decades under SEC guidance from 1995 and the Electronic Signatures in Global and National Commerce Act (E-SIGN) enacted in 2000. However, the requirement in the SEC's guidance and E-SIGN to obtain a person's consent to e-delivery, combined with practical difficulties in obtaining such consent, has greatly limited how broadly SEC registrants have been able to implement e-delivery across their businesses. (The SEC's e-delivery guidance does not require consent to e-delivery if the SEC registrant has a reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. The SEC's guidance states that obtaining an investor's informed consent to e-delivery through a particular medium would constitute satisfactory evidence of delivery.)

Key Features

- **Scope.** The bill would apply to "covered entities," including registered investment advisers, broker-dealers, investment companies, municipal securities dealers, transfer agents, and funding portals, and business development companies that elect to be regulated as registered investment companies, and their delivery of "regulatory documents" that are required to be delivered under the US federal securities law (including prospectuses, shareholder reports, confirmations, customer account statements, Form CRS, Form ADV Part 2, and privacy notices, among others).
- **Affirmative consent not required.** The bill would preempt existing requirements under E-SIGN to obtain a person's affirmative consent to e-delivery (as well as other procedural aspects of E-SIGN) and allow covered entities to, subject to certain requirements, use e-delivery as their default method of delivering regulatory documents, unless an investor opts out.
- **Notice and optout process.** The bill requires the SEC to adopt rules setting forth a process that would permit covered entities to transition investors to e-delivery of all regulatory documents by (1) delivering an initial communication, in paper form, about e-delivery, (2) observing a transition period (not to exceed 180 days), and (3) delivering an annual notice (for a period not to exceed two years) in paper form reminding investors of their right to opt out of e-delivery. Investors would have a right to opt out of e-delivery at any time.
- **Permitted means of e-delivery.** Permitted means of e-delivery would include (1) direct delivery to an investor's electronic address, (2) posting the regulatory document to a website in conjunction with the direct e-delivery to the investor of a notice of the availability of the regulatory document, and (3) other electronic methods reasonably designed to ensure the investor's receipt of the regulatory document.
- **SEC rulemaking.** The SEC would be required to propose rules covering the above (as well as requirements around remediation of failed e-delivery and certain other details) within 180 days of

enactment of the bill and finalize such rules within one year of the enactment of the bill. If the SEC fails to adopt rules by this deadline, the provisions of the bill would become automatically effective.

Commentary

While the fate of the bill remains to be seen, if signed into law, it could dramatically expand the use of e-delivery by SEC registrants. We would expect many firms to take advantage of the bill, and the notice and optout process set forth in the bill would likely yield much higher adoption of e-delivery by investors.

While the bill would represent a significant modernization of the e-delivery requirements under the US federal securities laws, it would not solve all practical and interpretive challenges of e-delivery. Notably, it is not clear what direct delivery to an “electronic address” might encompass, and the definition of e-delivery in the bill likely would not extend to delivery of regulatory documents to investors by posting them on a website without some form of direct notice to the investor. What would satisfy these standards could be open to interpretation, and different types of investors obtaining services from different types of financial institutions may reasonably have different expectations (e.g., would an in-app popup notification constitute good delivery?).

In addition, many firms may not have email addresses (or equivalent means of direct electronic communication) for certain legacy customers and may have difficulty obtaining them from others. As such, it may be advisable for firms to undertake broader efforts to obtain email addresses from investors now, even if they are unsure whether they would rely on e-delivery with those investors at this time.

Some lawmakers and investor advocacy groups have raised concerns about the bill, particularly its impact on seniors, and the SEC may share some of those concerns. While the SEC could potentially use its rulemaking authority to address some of those concerns if the bill is signed into law, the bill limits the extent of the SEC’s rulemaking authority.

Morgan, Lewis & Bockius LLP – Steven W. Stone, James E. Doench, Nicole M. Alkire and Kyle D. Whitehead

April 28 2023

[FAF Standards-Setting Process Oversight Committee Meeting.](#)

[View the Meeting Notice.](#)

[04/26/23]

[Financial Accounting Foundation Trustees Enhance Stakeholder Feedback Procedures and Transparency for Standard-Setting Boards .](#)

[View the News Release.](#)

[04/26/23]

BDA Comments on MSRB G-47 and D-15 Proposal.

BDA today filed a [comment letter](#) with the MSRB on their [proposal](#) to amend Rules G-47 and D-15. BDA did not oppose the G-47 changes and we supported the D-15 proposed amendments.

Rule G-47 is the MSRB's time of trade disclosure rule. It requires dealers to obtain and provide to customers certain material information about an issue at the time they buy or sell the bond. The MSRB's proposal, part of their ongoing retrospective rule review, would make mostly organizational changes to Rule G-47 and related guidance including incorporating guidance into rule text and consolidating or retiring some guidance. The most significant substantive change is a proposal to include three new data items among those that may be material and require customer disclosure: when there is no Official Statement or the OS is available only from the underwriter; whether the issuer has committed to ongoing financial disclosures; and the yield to worst.

Proposed amendments to Rule D-15, the MSRB's rule defining Sophisticated Municipal Market Professional (SMMP), would remove the requirement with respect to a SEC-Registered Investment Advisor (RIA) for a dealer to obtain an attestation from the customer as a condition of that investor having the status of SMMP.

On the G-47 proposed changes, BDA told the MSRB we are "generally not opposed to the Proposal." "Many of the proposed changes reflect codification or reorganization of existing guidance or practices and would not impose significant new burdens," we said. We also told the MSRB "BDA supports the proposed changes to MSRB Rule D-15. We agree with the Proposal that SEC-registered RIAs 'are typically very sophisticated' and 'the burdens associated with obtaining an attestation from these professionals' are not supported 'by the protections afforded to them.'"

Bond Dealers of America

April 17, 2023

MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on their Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals.

[Read the Comment Letter.](#)

April 17, 2023

Financial Accounting Foundation Board of Trustees Notice of Meeting.

Meeting Notice.

[04/17/23]

MSRB Seeks Candidates for Visiting Scholar Program.

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today announced that it is seeking candidates to be the organization's next Visiting Scholar. The MSRB's Visiting Scholar Program, introduced in 2018, provides academics with an opportunity to conduct research, with support from MSRB staff, in order to generate insights that may advance the understanding of municipal securities market structure and efficiency. Applications will be accepted through June 20, 2023.

The MSRB's most recent visiting scholar, Lourdes Germán, J.D. of the Harvard University Graduate School of Design, leveraged MSRB data to research Environmental, Social and Governance (ESG) trends in official statement disclosures and now is working on a second part of the study focused on pricing trends visible across ESG issuances in public finance. "Having access to the MSRB's data sets and the expertise of MSRB staff has been invaluable to my research and to helping me refine my methodology," said Germán. "I look forward to sharing my working paper in the coming months with stakeholders outside of the MSRB and to contributing to the understanding of the evolving impact of ESG considerations in the municipal bond market."

The MSRB collects and disseminates municipal market trade data and disclosure documents through its free Electronic Municipal Market Access (EMMA®) website. To support external research, the MSRB provides data sets to universities and other research institutions at no or reduced cost. For years, the MSRB has provided the academic and research community with access to historical sets of trade data, primary market and continuing disclosures, and information related to variable rate securities. Access to municipal market trading data is also available through an agreement with WRDS, a service of the Wharton School of the University of Pennsylvania, which provides financial and economic data to various corporate, academic, government and nonprofit users.

"The MSRB has seen an increase in requests for our data sets from academics in recent years, and we are pleased to have provided data sets to 66 academic institutions since 2020, including 15 so far in 2023," said MSRB Senior Director of Research and Market Transparency Marcelo Vieira. "The market benefits from the enhanced attention of researchers exploring thoughtful questions about municipal bond issuance, trade patterns, disclosure trends and much more. We encourage academics who have worked with MSRB data before as well as those who would bring a new perspective to our data to consider applying for the Visiting Scholar role."

Applicants interested in the Visiting Scholar position are required to submit a brief cover letter outlining their desired area or topic of study, as well as relevant experience or past research in the municipal market to visitingscholar@msrb.org.

- [Learn more about the Visiting Scholar program.](#)
- [Learn more about data sets available to academics from the MSRB.](#)

Date: April 18, 2023

Contact: Leah Szarek, Director of Communications
202-838-1500
lszarek@msrb.org

[Comment Deadline Set for MSRB Proposal to Align Muni Trade Settlement with SEC Rules.](#)

Comments on the MSRB proposal to amend MSRB Rule G-12 (“Uniform Practice”) and MSRB Rule G-15 (“Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers”) must be submitted by May 3, 2023. The proposal was published in the [Federal Register](#).

As [previously covered](#), the proposed amendments would “define regular-way settlement for municipal securities transactions as occurring one business day after the trade date” and (ii) align with recent SEC rule amendments to shorten the settlement cycle.

Under amended SEA Rule 15c6-1 (“Settlement Cycle”) the regular settlement cycle for most broker-dealer transactions was shortened from two business days after the trade date (“T+2”) to one business day after the trade date (“T+1”). The MSRB stated that the regular-way settlement cycles for municipal securities should be consistent with those for equity and corporate bond transactions, and said that shortening this period is consistent with its strategic goal of modernizing the MSRB rulebook.

Fried Frank Harris Shriver & Jacobson LLP

April 12 2023

[SEC Commissioner Peirce Offers Guiding Principles on Implementing Structured Data Requirements.](#)

SEC Commissioner Hester M. Peirce offered [guiding principles](#) to address concerns about the implementation of the structured data requirements in the Financial Data Transparency Act (“FDTA”)

In her remarks before the RegTech 2023 Data Summit, Commissioner Peirce expressed concern about structured data requirements under the FDFTA (i.e., “data that is divided into standardized pieces that are identifiable and accessible to both humans and computers”). These concerns include (i) compliance costs for smaller entities, (ii) the utility of structured data for the public, (iii) the possibility for technologically embedded rules to become outdated and (iv) the increasing demands by government to collect further data. To address these concerns, she outlined guiding principles for the SEC and regulators to follow in their implementation of the FDFTA:

- **Strategic Planning.** Ms. Peirce advised regulators to have a “strategic vision” for structured data usage that identifies where structured data requirements would be most beneficial. She stated that a strategic approach should incorporate initiatives that improve structured data’s utility and relevance for investors. Ms. Peirce also suggested that agencies avoid insisting on standardized tags if they would diminish the accuracy of the reported data.

- **Cost.** Ms. Peirce emphasized the importance of cost considerations before enacting new structured data requirements, especially for small firms and municipal issuers. Ms. Peirce said that she was “hopeful” that the costs of implementation will not be a significant concern based on the (i) FDTA’s preservation of regulators’ “tailoring” authority to scale data reporting requirements and “minimize disruption” for firms affected by new requirements, (ii) decrease in structured data costs and (iii) reduction in long-run compliance costs for firms that integrate Inline XBRL into their operations.
- **Data Collection.** Ms. Peirce maintained that regulators must “constrain their appetite for data,” notwithstanding that data has become “cheaper and easier to collect, store, and analyze.” Ms. Peirce said that regulators should only collect data with the purpose to perform their limited statutory missions.
- **Changing Technologies.** Ms. Peirce urged regulators to specify standards that allow for flexibility to keep pace with “rapidly changing technology.” To the extent that regulators are not afforded such flexibility in their implementation of the FDTA, Ms. Peirce recommended (i) notice-and-comment rulemakings to consider cost reductions on market participants and/or (ii) providing reporting standards in a free-standing section of rulemakings to allow for updates as technologies evolve.

Ms. Peirce said that future regulatory initiatives could help entities follow structured data requirements. She said that potential machine-readable rules and machine-executable rules could assist in automating compliance for firms.

Fried Frank Harris Shriver & Jacobson LLP

April 11 2023

[Comment Deadline Set on MSRB Amendment to Allow Testimonials in Muni Advisor Advertisements.](#)

Comments on an MSRB proposed amendment to Rule G-40 (“Advertising by Municipal Advisors”) that would allow for the use of testimonial statements in municipal advisor advertisements are due by April 26, 2023. The Notice was [published](#) in the Federal Register.

As [previously covered](#), the proposal would also (i) establish supervisory obligations specific to testimonial use, (ii) modify the definition of “municipal advisory client” with regard to soliciting municipal securities businesses to align with MSRB Rule G-38 (“Solicitation of Municipal Securities Business,”) and (iii) create a conforming obligation under MSRB Rule G-8 (“Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors”) to keep any records relating to testimonial advertising, including any record of payment for testimonials.

In response to comments received during the initial comment period, the MSRB filed an amendment to its proposal that would include (i) clarifying language to “enhance readability and understanding” and (ii) social media guidance consistent with the proposed changes to Rule G-40.

Fried Frank Harris Shriver & Jacobson LLP

April 11 2023

When the “Back Door” is Closed: Muni Bond Underwriter Sanctioned

I have previously written about the peculiar structure of disclosure obligations with respect to municipal securities in my Sept. 22, 2020 Blog “SEC Focus on Municipal Securities Disclosure and Enforcement.” As I detailed there:

When the two key Federal Securities Laws (the Securities Act of 1933 [the “33 Act”] and the Securities Exchange Act of 1934 [the “34 Act”]) were enacted, municipal securities (the bonds, notes, etc., issued by states, counties, municipalities, and municipal authorities) were exempt, both from the registration requirement of the 33 Act and from the oversight under the 34 Act of the professionals who underwrote and dealt in the purchase and sale of these securities. These exemptions resulted from policy (municipal securities were generally seen as more secure than those issued by corporations and other private sector entities) and political considerations. More individual investors sought to buy municipals by the early 1970s, to reduce federal and state tax liabilities at a time of ever-increasing inflation. This in turn led to an extraordinary proliferation of municipal security products. Then Congress passed the Securities Act Amendments of 1975, creating the Municipal Securities Rule Making Board (“MSRB”) as a self-regulatory body subject to the oversight of the U.S. Securities and Exchange Commission (“SEC”).

In 1989, the SEC adopted Rule 15c2-12 under the 34 Act, which requires an underwriter of municipal securities to obtain a written agreement from the issuer requiring the issuer (and any related obligor, as in the case of conduit issuers), to deliver an OS within seven days of issuance. Under the Rule, underwriters are also required to review the POS and the OS for the adequacy and completeness of the disclosures. In 1994 the SEC amended Rule 15c2-12 to also require the underwriter to obtain a written agreement (a Continuing Disclosure Agreement [“CDA”]) from an issuer of a municipal security, under which the issuer (and any related obligor) commits to provide annual updates on the issuer’s financial condition. In addition, both the Rule and the CDA require the issuer to file “timely reporting of material events” affecting the issuer (or any related obligor). Originally both the OS and disclosures under the CDA were filed with designated depositories. In 2002 the MSRB required that these filings be done electronically. In 2008, the MSRB launched the Electronic Municipal Market Access (“EMMA”) website. All OS’s and CDA disclosures are now filed on EMMA. Any market professional dealing in municipal securities is required to review those filings prior to effecting transactions.

This is the so-called “back door” to securities registration for municipal securities, and the CDA system does work, although it is a tad cumbersome. However, there is an exemption from the CDA requirement in Rule 15c2-12 for limited offerings of municipal securities placed with a small number of sophisticated investors who intend to hold the purchased securities for their own accounts. The exemption is rather similar to the exemptions from registration for private placements by non-governmental issuers before the adoption of Regulation D. The private placement of municipal securities does not require a CDA IF:

1. the securities are sold in denominations of \$1 million or more;
2. there are no more than 35 purchasers; and
3. the underwriter has a reasonable belief that each purchaser...

- has the knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment, and
- is buying the securities for its own account and not for anyone else or to distribute the securities to others. BUT the exemption does REQUIRE diligence by the underwriter.

On Tuesday, March 7, 2023, the U.S. Securities Exchange Commission (“SEC”) issued an [Order Instituting Administrative and Cease-And-Desist Proceedings](#) (the “Order”) against Keybank Capital Markets Inc., an Ohio corporation (“KBCM”). KBCM, headquartered in Cleveland, Ohio, and a wholly owned subsidiary of KeyCorp, is the 20th largest U.S. banking institution based on assets. KBCM provides a wide range of capital market functions and is registered with the SEC as both a broker-dealer and a municipal advisor. According to the Order, from September 2017 to December 2021, KBCM served as the sole underwriter in at least 47 limited offerings. The exemption requirements are hardly complex, but they do require attention. First, an underwriter of a limited offering of municipal securities must have “policies and procedures reasonably designed to determine if purchasers” of the underwritten securities meet the exemption requirements. Second, the underwriter must follow those policies and procedures in the course of conducting a limited offering. That typically means obtaining written representations from a purchaser covering the following:

1. the purchaser’s experience in financial and business matters, especially any relevant to the particular municipal security involved;
2. confirmation that the purchaser is buying the security for their own account and not on behalf of others; and
3. an undertaking that the purchaser will not resell the security to third parties, unless a substantial period of time has elapsed. Third, the underwriter must have written supervisory procedures in place to ensure compliance with these requirements.

As the Order reports, KBCM simply sold the municipal securities in the 47 limited offerings “to broker-dealers and/or investment advisers with separately managed accounts.” The Order asserts that “KBCM did not have a reasonable belief that the broker-dealers and investment advisers were purchasing the securities for investment.” Moreover, KBCM “did not inquire, or otherwise determine, if the broker-dealers and investment advisers were purchasing the securities for more than one account or for distribution.” Indeed, it does not appear that KBCM made any analysis of whether the purchasers or any ultimate purchaser had the knowledge and experience “to evaluate the merits and risks of the investment[s].” Accordingly, the exemption was not available for any of these 47 offerings. Furthermore, KBCM had no adequate supervisory procedures to ensure compliance.

The SEC concluded that “[a]s a result of the conduct...” KCBM “willfully violated Exchange Act Rule 15c2-12 and MSRB Rule G-27,” namely G-27, of the Municipal Securities Rule Making Board. As a result of violating Rule G-27, KBCM also violated Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended. Pursuant to the Order to which KBCM agreed, KBCM must pay disgorgement of the \$267,607.66 it earned as fees for underwriting the securities in the 47 offerings and prejudgment interest of \$33,528.55. KBCM was also censured and ordered to pay a civil penalty of \$100,000 and to cease-and-desist from further violations of the cited rules and statutes.

How does a large, sophisticated institution like KeyCorp and its capital market subsidiary give so little attention to a rather simple and obvious rule requirement? And what other shortcomings in compliance might it portend on the shores of Lake Erie, a divisional branch far away from the chaotic events in Silicon Valley?

by Peter D. Hutcheon

April 3, 2023

Norris McLaughlin P.A.

BDA Opposes SEC's Best Execution Proposal.

BDA today filed a comment letter with the SEC in opposition to their proposed Regulation Best Execution. In the letter we ask the SEC to abandon the initiative because it is unnecessary, overly restrictive, and needlessly expensive. If the SEC moves forward with the proposal, we asked that it be amended to make it more workable with the following changes:

- Remove riskless principal trades from the definition of conflicted trade.
- Define institutional investor to encompass existing definitions in FINRA and MSRB rules and clarify the scope and focus of the institutional investor exemption in the context of fixed income.
- Make it clear that last look and internalizing fixed income trades to the benefit of customers would not violate Regulation Best Execution or cause a trade to be treated as "conflicted."
- For conflicted trades, eliminate the requirement to survey a broader range of markets beyond material potential liquidity sources and to separately document the best execution analysis for every trade.
- Eliminate the requirement to provide annual best execution reports to firms' boards of directors.
- Permit dealers to use the introducing broker partial exemption when its executing broker is affiliated.

The SEC's proposal would impose a new best execution rule across the capital markets, including the fixed income markets. The new rule would be in addition to, not instead of, existing FINRA and MSRB best execution rules. The proposed rule would impose significant new requirements on broker-dealers especially for "conflicted trades," which would include all principal trades, including riskless principal.

BDA's comment letter is available [here](#). The SEC proposal is available [here](#). Please call or write if you have any questions.

Bond Dealers of America

March 31, 2023

GFOA GASB 87 and 96 Resource Center.

As GFOA members continue to have questions related to GASB 87 and GASB 96, we've compiled a list of resources in one place on GFOA's website. The GASB Resource Center includes recent articles and do-it-yourself tools and templates to help in the learning and implementation process. As we develop new resources and future educational opportunities covering these topics, we'll add them to this page.

[LEARN MORE](#)

[GASB Requests Proposals for 2023 Crain Research Grants.](#)

[View the Request for Research.](#)

03/10/23

[Proposed Regulation Best Execution: SIFMA Comment Letter](#)

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the SEC's Proposed Regulation Best Execution in the context of fixed income trading.

[View the SIFMA Comment Letter.](#)

March 31, 2023

[MSRB Proposes to Align Muni Trade Settlement with SEC Rule.](#)

The MSRB [proposed](#) to amend [MSRB Rule G-12](#) ("Uniform Practice") and [MSRB Rule G-15](#) ("Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers") "to define regular-way settlement for municipal securities transactions as occurring one business day after the trade date". The proposed MSRB amendments would align with recent SEC rule amendments to shorten the settlement cycle ([see previous coverage](#)).

Under amended [SEC Rule 15c6-1](#) ("Settlement Cycle,"), the regular settlement cycle for most broker-dealer transactions was shortened from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). The MSRB believes that the regular-way settlement cycles for municipal securities should be consistent with those for equity and corporate bond transactions and said that shortening this period is consistent with its strategic goal of modernizing the MSRB Rule Book.

The MSRB is requesting the proposed rule change be approved with an effective date of May 28, 2024, to align with the effective date of amended Rule 15c6-1.

Fried Frank Harris Shriver & Jacobson LLP

March 29 2023

[SEC Approves MSRB Solicitor Muni Advisors Rule Amendments.](#)

The SEC [approved](#) the MSRB rule amendments to establish core standards of conduct and duties for "solicitor municipal advisors."

As [previously covered](#), the rule amendments establish new [MSRB Rule G-46](#) (“Duties of Solicitor Municipal Advisors”) to provide standards of conduct for solicitor municipal advisors when “engaging in solicitation activities that would require them to register with the SEC and the MSRB.”

MSRB Notice 2023-03 states that Rule G-46 requires solicitor municipal advisors to (i) provide full and fair written disclosure regarding any material conflicts of interest and material legal or disciplinary events to solicitor clients and (ii) disclose material facts related to the solicitation including the advisor’s role and compensation and material conflicts of interest. The new rule also prohibits such advisors from (i) publishing any materially false or misleading information regarding the capacity, resources or knowledge of the solicitor client and (ii) delivering inaccurate invoices or making payments for the purpose of retaining a municipal advisory activity engagement.

The adopted rule amendments also codify previously issued interpretive guidance concerning the requirements applicable to solicitor municipal advisors under [MSRB Rule G-17](#) (“Conduct of Municipal Securities and Municipal Advisory Activities”), [MSRB Rule G-42](#) (“Duties of Non-Solicitor Municipal Advisors”) and [IAA Rule 206\(4\)-1](#) (“Investment Adviser Marketing”). Further, it adds specific recordkeeping obligations for solicitor municipal advisors under [MSRB Rule G-8](#) (“Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors”) with respect to solicitation of advisory services.

The compliance date for Rule G-46 and the related amendments to Rule G-8 will be March 1, 2024.

Fried Frank Harris Shriver & Jacobson LLP

March 31 2023

[SEC Approves New MSRB Rule G-46 on Duties of Solicitor Municipal Advisors and Related Amendments to MSRB Rule G-8.](#)

[Read the MSRB Notice.](#)

[SEC Proposes New Cybersecurity Rule and Amendments: Paul Hastings](#)

On March 15, 2023, the SEC issued proposed amendments and a proposed rule addressing cybersecurity. Specifically, the SEC proposed Rule 10, which addresses cybersecurity risks, and proposed to amend Regulation SCI and Regulation S-P.

Affected entities and institutions may submit comments until 60 days after the date of publication of the proposed release in the Federal Register. Affected entities should continue to monitor the SEC’s increased regulation of cybersecurity to determine whether their current policies and procedures comply with the SEC’s latest proposals.

The proposed rule and both sets of proposed amendments each apply to a different set of entities. We have outlined the various requirements for each below—

SEC Proposed Rule 10

The SEC's proposed Rule 10 would include various requirements for addressing cybersecurity risks.

The proposed rule would apply to "Market Entities," which include broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board (MSRB), national securities associations, national securities exchanges, security-based swap data repositories (SBSDRs), security-based swap entities, and transfer agents. A subgroup of these Market Entities are referred to as "Covered Entities," which include the MSRB, certain broker-dealers, all clearing agencies, national securities associations, national securities exchanges, SBSDRs, security-based swap entities, and transfer agents. Under proposed Rule 10, these Covered Entities would have certain additional requirements. The proposed rule would require the following:

- **Policies and Procedures.** Market Entities would be required to implement written policies and procedures that address cybersecurity risks. Covered Entities would need to implement policies and procedures that specifically address user security, information protection, vulnerability management, and incident response. All Market Entities would be required to annually review and "assess their policies and procedures." Additionally, Covered Entities would be required to prepare a report, while Non-Covered Entities would be required to prepare a record of their review.
- **Notification and Reporting of Significant Cybersecurity Incidents.** Market Entities would need to provide the SEC "immediate written electronic notice" of a "significant cybersecurity incident upon having a reasonable basis to conclude that the incident has occurred or is occurring." Covered Entities would also need to file, on a confidential basis, the proposed Form SCIR within 48 hours and provide any significant updates thereafter
- **Disclosure of Cybersecurity Risks and Incidents.** The proposed rule would also require a Covered Entity to make public disclosures on the proposed Form SCIR. Specifically, Covered Entities would need to summarize their cybersecurity risks and provide summaries for any significant cybersecurity incidents experienced during the current or previous calendar year.
- **Recordkeeping.** The proposed rule would set forth preservation and maintenance requirements for Market Entities, such as retaining certain records for three years.

Amendments to Regulation SCI

The SEC also proposes to update Regulation Systems Compliance and Integrity ("Regulation SCI") to address intensified cybersecurity risks in the U.S. securities market. Some of the core amendments include:

- **Expanded Definition of SCI Entity.** The SEC proposes to expand the definition of "SCI entity" to include SBSDRs, certain registered broker-dealers (i.e., SCI broker-dealers), and additional clearing agencies exempted from registration.
- **Strengthening Obligations of SCI Entities.** The SEC also proposes a number of amendments to enhance the cybersecurity provisions of Regulation SCI, such as updating the requirements for penetration testing and SCI reviews, expanding the definition of "system intrusions" and notification requirements, and requiring the implementation of a program to prevent unauthorized access of SCI systems.

Amendments to Regulation S-P

Finally, the SEC proposes to amend Regulation S-P to require broker-dealers, investment companies, and investment advisers registered with the SEC to have incident response programs and notify individuals in the event of a data breach. Key updates include:

- **Incident Response.** Covered institutions would be required to implement incident response programs "reasonably designed to detect, respond to, and recover from" unauthorized access to

and unauthorized use of customer information. Additionally, covered institutions would be required to “assess the nature and scope of any incidents involving unauthorized access” and implement procedures for containing and controlling an incident.

- **Customer Notification.** Covered institutions would be required to notify affected individuals whose sensitive customer information was reasonably likely to have been accessed or used without authorization, as soon as practicable, but no later than 30 days, after becoming aware that sensitive customer information was accessed/used or is reasonably likely to have been accessed/used.
- **Scope of Information under Safeguards Rule and Disposal Rule.** The SEC proposes broadening the scope of information covered to include “customer information.”
- **Recordkeeping.** Covered institutions would be required to “make and maintain written records documenting compliance” with the requirements of Regulation S-P’s safeguards and disposal rules.

The SEC’s public comment period for all of these updates will remain open until 60 days after the date of publication of the proposed release in the Federal Register, and interested entities may submit comments.

These recent SEC updates would require covered institutions and entities to enhance and update their cybersecurity policies and procedures. The Paul Hastings Privacy and Cybersecurity practice will be closely monitoring these updates and, as always, is available to assist clients.

Paul Hastings LLP - Aaron Charfoos and Jacqueline Cooney

March 27 2023

[DC Update: Legislation to Reinstate Tax-Exempt Advance Refundings Introduced in House](#)

Today, the Investing in Our Communities Act was introduced in the House, legislation that would reinstate tax-exempt advance refundings . The bill was sponsored by House Ways and Means Republican David Kustoff (TN), and House Municipal Finance Democratic Chair Dutch Ruppersberger (MD). **The introduction of the long-standing BDA priority comes after extensive advocacy from the BDA and the Public Finance Network to recruit bill sponsors and a bipartisan list of co-sponsors.**

The press release can be viewed [here](#).

The legislative text can be viewed [here](#).

Original Co-sponsors:

Rep. Andy Barr (R-KY),
Rep. Brian Fitzpatrick (R-PA),
Rep. Andrew Garbarino (R-NY)
Rep. Dan Kildee (D-MI),
Rep. Derek Kilmer (D-WA), and
Rep. Gwen Moore (D-WI).

****Companion legislation is expected to be introduced in the Senate in the coming weeks.**

While the bill faces strong political and legislative headwinds this Congress, it can not be understated how important the addition of a Ways and Means Republican as a sponsor is to the trajectory of the provision.

The BDA along with the broader Public Finance Network is planning additional outreach to the Hill in an effort to gain support of additional co-sponsors, as well work to identify a legislative vehicle that AR could be added onto for passage.

The BDA will continue to provide updates as they become available.

Bond Dealers of America

March 28, 2023

[SEC Office of Municipal Securities Issues FAQs for Registration of Municipal Advisors.](#)

Washington D.C., March 20, 2023 — The U.S. Securities and Exchange Commission's Office of Municipal Securities today announced that it updated its [Registration of Municipal Advisors Frequently Asked Questions](#) webpage to add a section, entitled [Completion of Form MA, Form MA-I, and Form MA-NR](#), which provides additional staff guidance on the required information and timelines regarding:

- Form MA, for an application for municipal advisor registration, annual update of municipal advisor registration, and an amendment of a prior application for registration;
- Form MA-I, for information regarding natural persons who engage in municipal advisor activities; and
- Form MA-NR, for designation of U.S. agent for service of process for non-residents.

"In our efforts to make the municipal advisor registration process as transparent and efficient as possible, the Office of Municipal Securities published new staff guidance to address common questions regarding Forms MA, MA-I, and MA-NR," said Dave A. Sanchez, Director of the Office of Municipal Securities. "This update will offer more clarity to registrants and help streamline the process."

State and local governments frequently use advisors to help them decide how and when to issue municipal securities and how to invest proceeds from the sale of such securities. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act required these advisors to register with the SEC like other market intermediaries. On September 20, 2013, the Commission adopted final rules for municipal advisor registration and municipal advisor registration forms, including Form-MA, Form MA-I, and Form MA-NR.

[Finra: Firm Short Positions and Fails-to-Receive in Municipal Securities](#)

Regulatory Obligations and Related Considerations

Regulatory Obligations

As detailed in *Regulatory Notice 15-27* (Guidance Relating to Firm Short Positions and Fails-to-Receive in Municipal Securities), customers may receive taxable, substitute interest instead of the tax-exempt interest they were expecting when a member firm effects sales to customers of municipal securities that are not under the firm's possession or control.¹ This can occur when firm trading activity inadvertently results in a short position or a firm fails to receive municipal securities it purchases to fulfill a customer's order.

Member firms must develop and implement adequate controls and procedures for detecting, resolving and preventing these adverse tax consequences to customers. Such procedures must include closing out fails-to-receive within the time frame prescribed within Municipal Securities Rulemaking Board (MSRB) Rule [G-12\(h\)](#); **taking prompt steps to obtain physical possession or control of municipal securities that are short more than 30 calendar days in accordance with Exchange Act Rule 15c3-3(d)(4)**;² and confirming that their communications with customers regarding the tax status of paid or accrued interest for municipal securities are neither false nor misleading, in accordance with MSRB [Rule G-17](#).

Related Considerations

- Does your firm use exception reports to monitor its municipal securities' short positions, fails-to-receive and **fails-to-deliver**? If so, how does your firm use such reports, and which departments are responsible for monitoring and responding to them?
- When municipal securities short positions are identified, does your firm start the process of covering the shorts, or does your firm wait until the trades have settled?
- What is your firm's process to close out fails-to-receive **and fails-to-deliver** in accordance with the methods and time frame prescribed under MSRB G-12(h)?
- How does your firm detect instances that would require them to pay customers substitute interest? In those circumstances, what is your firm's process for notifying impacted customers and paying them substitute interest in a timely manner? If a customer does not want to receive substitute interest, what alternatives does your firm offer (e.g., offering to cancel the transaction and purchase a comparable security that would provide tax-exempt interest)?
- **How does your firm handle inbound or outbound account transfers sent through ACATS that are delivered with no corresponding municipal bonds in possession or control?**

Findings and Effective Practices

Findings

- **Inadequate Supervisory Controls and Procedures:** Not maintaining procedures and controls reasonably designed to prevent, identify and resolve **short positions in municipal securities and the potential adverse consequences** to customers when a firm does not maintain possession or control of municipal securities that a customer owns.
- **Inadequate Lottery Systems: Opting to use a random lottery system as its primary means for addressing the consequences of existing short positions, given that these systems may not fairly or reasonably account for or allocate the associated and accrued substitute interest, or may result in the random allocation of the substitute interest to customer accounts that may not have contributed to the short position.**
- **Not Complying with the Prescribed Close-Out Timing:** Failing to follow the close-out timeline under MSRB Rule G-12(h)—including the initial 10 days, the 10-day extension and the maximum close-out period of 20 days—and under Exchange Act Rule 15c3-3(d)(4), which requires a firm to take possession and control of such instruments within 30 days.
- **Excluding Institutional Customers:** Operating under the erroneous assumption that firms

are not required to provide institutional (i.e., Delivery-versus-Payment or DVP) customers with the same level of care in preventing, detecting and resolving adverse tax consequences when the firm does not have possession and control of a tax-exempt municipal security (e.g., not addressing these customers in firm controls, procedures, WSPs or exception reports).

Effective Practices

- **Preventative Controls:** Maintaining processes to prevent or timely remediate municipal positions from settling short (e.g., covering these positions, finding a suitable alternative, cancelling the customer's purchase) and **reviewing or auditing the effectiveness of the processes.**
- **Review of Fail Reports:** Municipal securities principals performing regular, periodic reviews of Fail Reports as part of firms' efforts to comply with the close-out requirements of MSRB Rule G-12(h).

Additional Resources

- *Regulatory Notice [15-27](#)* (Guidance Relating to Firm Short Positions and Fails-to-Receive in Municipal Securities)

1 These regulatory obligations stem from Exchange Act Rule 15c3-3(d)(4) and MSRB Rules [G-17](#) and [G-27](#) (for firm shorts), and MSRB Rule [G-12\(h\)](#) (for fails-to-receive).

2 *Regulatory Notice [15-27](#)* reminds firms that “[w]hile the 30-calendar-day period begins upon allocating the security in deficit to a short position, firms should not view this 30-calendar-day period as a ‘safe harbor’ for resolving firm short positions in municipal securities.” If it were, the payment of taxable substitute interest would be unavoidable.

[SEC Obtains Court Judgment Against Unregistered Municipal Advisors.](#)

Fraudulent La. Bond Offering to Improve a City Sewer System

One of the consequences of the collapse of various portions of the financial markets in the Great Recession of 2007-2009 was the passage of the Wall Street Reform and Consumer Protection Act of 2010, better known as the Dodd-Frank Act. Among the Act's other innumerable provisions was a requirement that persons (with certain exceptions for professionals such as attorneys and accountants) register with the Municipal Securities Rulemaking Board (“MSRB”) as “municipal advisors.” The MSRB itself is both created and supervised by the U.S. Securities and Exchange Commission (“SEC”) under Section 15 B of the Securities Exchange Act of 1934, as amended (the “34 Act”). Section 975(a)(5) of the Dodd-Frank Act forbids a “municipal advisor” from engaging in any fraudulent, deceptive, and/or manipulative practice, because Congress found that they had. I have previously discussed these developments at length in my Sept. 29, 2020 blog [“What if the Adviser is Suspect? Municipal Securities Advisor Registration and Dereliction.”](#) That blog also reports on a series of SEC and MSRB enforcement actions where “municipal advisors” failed to register as required and/or engaged in fraudulent, deceptive, and/or manipulative practices.

In 2017 and 2018, the small city of Sterlington, Louisiana, a town of some 2,600 residents, sold two

issues of revenue bonds “to finance the development of a water system and improvements to its existing sewer system,” according to a Sept. 19, 2022 SEC Press Release. As spelled out at length in my June 27, 2022 blog [“Serving the Public? SEC Charges Two Municipalities and Their Leaders with Bond Fraud.”](#) bond issuances in Louisiana require prior presentation to, and approval by, the Louisiana State Bond Commission. That process is an effort to prevent fiscally unwise and even unsustainable borrowings. In the end, though, the process is dependent upon the quality of financial information, including projections submitted to the Bond Commission. In the case of Sterlington, the historical and projected number of sewer customers was “substantially overstated” in order to support the bond issues when, in fact, the actual sewer system revenues would not be sufficient to cover the debt service on the bonds. The Public Finance Abuse Unit of the SEC, created in 2010 to deal with the ever-growing instances of inadequate disclosure and fraud involving municipal securities, took the lead in investigating the Sterlington sewer financings.

As reported in my “Serving the Public?” blog, after the SEC sued Sterlington, its former mayor, and its unregistered municipal advisor, the town consented to the entry of a judgment against it while the former mayor continued to litigate the matter. Now comes news that the unregistered municipal advisor, Twin Spires Financial, LLC, and its principal, Aaron B. Fletcher, consented to the [entry of a judgement against them](#), which was entered by the Court on Aug. 2, 2022. Although Twin Spires Financial, LLC, is headquartered in Frisco, Texas, Fletcher is a graduate of the University of Kentucky, hence the reference in his company’s name to the “Twin Spires” of Churchill Downs, the Louisville home of the Kentucky Derby. The Sept. 19, 2022 SEC Press Release in this matter reports that after the defendants consented to the entry of a judgment enjoining them from future violations of the anti-fraud and municipal advisor registration, ordering disgorgement of their ill-gotten gains plus prejudgment interest, and imposing a civil money penalty, the Court ordered that they (jointly and severally) pay disgorgement of \$26,303 plus interest of \$6,642.88, and pay a penalty of \$200,000. A poor return (even in pure economic, let alone reputational, damage) from activity that generated only \$26,303 of gain.

By Peter D. Hutcheon

Monday, March 20, 2023

Norris McLaughlin P.A.

[GFOA Launches GASB Resource Center.](#)

As GFOA members continue to have questions related to GASB 87 and GASB 96, we’ve compiled a list of resources in one place on GFOA’s website. The GASB Resource Center includes recent articles and do-it-yourself tools and templates to help in the learning and implementation process. As we develop new resources and future educational opportunities covering these topics, we’ll add them to this page.

[LEARN MORE](#)

[MSRB: Ways to Buy Municipal Bonds](#)

[View Publication.](#)

[Proposed Rule Change Consisting of Amendments to MSRB Rule G-40, on Advertising by Municipal Advisors, and MSRB Rule G-8, on Books and Records: SIFMA Comment Letter.](#)

SUMMARY

SIFMA provided comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB's) Filing of a Proposed Rule Change Consisting of Amendments to MSRB Rule G-40, on Advertising by Municipal Advisors, and MSRB Rule G-8, on Books and Records.

[Read the SIFMA Comment Letter.](#)

[Proposed Rule Change to Create New MSRB Rule G-46, on Duties of Solicitor Municipal Advisors, and to Amend MSRB Rule G-8, on Books and Records: SIFMA Comment Letter.](#)

SUMMARY

SIFMA provided comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB's) Proposed Rule Change to Create New MSRB Rule G-46, on Duties of Solicitor Municipal Advisors, and to Amend MSRB Rule G-8, on Books and Records.

[View the SIFMA Comment Letter.](#)

[NFMA Newsletter March, 2023.](#)

The NFMA's Municipal Analysts Bulletin, Vol. 33, No. 1, is [available here](#).

Included in this issue is the platform of 2023 NFMA Chair, Mark Capell, a call for applicants to the New Member Advancement Committee's 2023 Mentorship Program, and reports from committees and societies.

[MSRB Proposes Regulation of Solicitor Municipal Advisors.](#)

The MSRB [proposed](#) new MSRB Rule G-46 ("Duties of Solicitor Municipal Advisors") that would "establish the core standards of conduct and duties of 'solicitor municipal advisors' when engaging in solicitation activities that would require them to register with the SEC and the MSRB as municipal advisors."

The proposal would:

- require such solicitors to provide full and fair written disclosure regarding any material conflicts of

- interest and material legal or disciplinary events to solicitor clients;
- prohibit solicitor municipal advisors from publishing any materially false or misleading information regarding the capacity, resources or knowledge of the solicitor client. Solicitors must also have a reasonable basis for making any material representations;
- require solicitors to disclose material facts related to the solicitation including (i) the advisor's role and compensation and (ii) material conflicts of interest; and
- prohibit solicitor municipal advisors from delivering inaccurate invoices or making payments for the purpose of retaining a municipal advisory activity engagement.

In addition, the proposal would codify previously issued interpretive guidance concerning the requirements applicable to solicitor municipal advisors under MSRB Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities"), MSRB Rule G-42 ("Duties of Non-Solicitor Municipal Advisors") and IAA Rule 206(4)-1 ("Investment Adviser Marketing"). The proposal would also amend MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors") to add specific recordkeeping obligations relating to a solicitor municipal advisor's solicitation of advisory services.

Fried Frank Harris Shriver & Jacobson LLP

February 1 2023

[SEC Proposes New Regulation Best Execution – Brokers Must Achieve “Most Favorable Price” for Customers; Heightened Obligations for Conflicted Retail Transactions](#)

The proposal would codify for the first time the federal-level best execution standard for brokers and related obligations. New Regulation Best Execution would result in a pivot from what has been a principles-based approach to achieving and regulating best execution, to a prescriptive, rules-based regime that heavily emphasizes brokers' policies and procedures. If adopted, the regulation will reshape the landscape for order routing, execution, and broker economics. Despite that, the Commission seems to rely on significant conjecture to support the proposal, often referring to “may,” “could,” and “might” when describing concerns with existing practices and potential ameliorative effects of the proposed requirements. This could prove pivotal to the outcome of inevitable judicial challenges after likely adoption in late 2023.

On December 14, 2022, the SEC proposed [new Regulation Best Execution](#), encompassing new Exchange Act Rules 1100, 1101, and 1102. Regulation Best Execution would codify a federal best execution standard pursuant to which broker-dealers must achieve the “most favorable price” for customers. This means that broker-dealers would be required to use reasonable diligence to ascertain the best market for the security, and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Regulation Best Execution would also require broker-dealers to establish related robust policies and procedures, particularly for firms engaging in “conflicted transactions” with or for retail customers, including principal trading, routing customer orders to affiliates, and receiving payment for order flow (PFOF).

The operative words in the proposed best execution standard are identical to those in FINRA Rule 5310. Nevertheless, and as the SEC acknowledges, key aspects depart from the current best execution regulatory regime and will require significant industry adjustments. Introducing brokers,

brokers with PFOF arrangements, and executing brokers accustomed to internalizing retail order flow or executing retail trades for affiliates will feel particularly affected by this proposal.

Public comments are due by March 31, 2023.

Regulation Best Execution at a Glance

Regulation Best Execution would apply to transactions in “securities” products (including equities, options, corporate and municipal bonds, government securities, and “crypto asset securities”) and would, among other things:

1. Codify a federal rules-based best execution standard for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers (proposed Rule 1100 series) and establish exceptions similar to those available today.
2. Require broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the best execution standard (proposed Rule 1101) while providing a limited exemption for introducing brokers (proposed Rule 1101(d)).
3. Require enhanced policies and procedures for broker-dealers that engage in certain “conflicted transactions” for or with retail customers (proposed Rule 1101(b)).
4. Require broker-dealers to review the execution quality of their customer transactions at least quarterly (proposed Rule 1101(c)).
5. Require broker-dealers to review their best execution policies and procedures at least annually and present a report detailing the results of such review to their boards of directors or equivalent governing bodies (proposed Rule 1102).

The term “market” is interpreted broadly for purposes of existing requirements and would be broadly defined under Regulation Best Execution as well, including other broker-dealers, exchanges, alternative trading systems (ATs), and other venues that become known. The scope may also include a variety of mechanisms operated by markets used by broker-dealers to transact for or with customers (including auction mechanics and other execution protocols).

[Continue reading.](#)

Goodwin Procter LLP

By Nicholas J. Losurdo, Peter W. LaVigne, David G. Adams. Lauren A. Schwartz & Christopher Grobbel

MARCH 3, 2023

[MSRB Publishes 2022 Fact Book of Municipal Securities Data.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today published its annual Fact Book, the definitive compilation of the most recent five years of statistics on municipal market trading, interest rate resets and disclosures. The data in the 2022 Fact Book can be further analyzed to identify market trends.

“The MSRB is issuing the 15th edition of its Fact Book as part of its longstanding commitment to equip municipal market participants, policymakers, regulators, academics and others with information to understand long-term and emerging trends in our market,” said MSRB Director of

Research and Market Transparency Marcelo Vieira. “The year 2022 in the municipal bond market was extraordinary on many levels, most notably the surge in trading volume and the return of individual investors to the market following many years of historically low yields.”

The MSRB collects real-time municipal securities trade data, as well as primary market and secondary market disclosures. In addition to making the data and disclosures available for free on its Electronic Municipal Market Access (EMMA®) website and compiling quarterly and annual statistics, the MSRB conducts independent research and analysis to support understanding of market trends. Recent MSRB research reviews the developments in the municipal market in 2022, examines the impact of the COVID-19 crisis on competitive and negotiated offerings, analyzes customer trading using alternative trading systems, and more.

Highlights from the 2022 Fact Book corroborate findings from the [MSRB’s 2022 Municipal Market Year in Review](#) published in January:

- Trading volume in municipal bonds reached record levels, increasing 66% from 2021 and surpassing the previous record set in 2008.
- As interest rates rose during the year, individual investor-purchases of municipal bonds soared, contributing to the record trading volume.

The 2022 Fact Book includes monthly, quarterly and yearly aggregate market information from 2018 to 2022, and covers different types of municipal issues, trades and interest rate resets.

[Download the 2022 Fact Book.](#)

Date: March 01, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

[Financial Accounting Foundation Debuts Enhanced Free Access to Online Accounting Standards Codification and Governmental Accounting Research System.](#)

Norwalk, CT, February 27, 2023 — The Financial Accounting Foundation (FAF) has launched its free, enhanced online access to the Accounting Standards Codification® and the Governmental Accounting Research System™, implementing a change announced to stakeholders last month.

The Accounting Standards Codification® (“the Codification”) is the complete and official version of Generally Accepted Accounting Standards (GAAP) published by the Financial Accounting Standards Board (FASB) and used by public companies, private companies, nonprofit organizations, and employee benefit plans in the United States. The Governmental Accounting Research System™ (“GARS”) is the complete and official version of GAAP published by the Governmental Accounting Standards Board (GASB) and used by states, cities, and other governmental entities in the United States.

While free versions of both the Codification and GARS have been available online for years, the new system provides enhanced features compared to the former free offering. These include enhancements to navigation, search, printing, and copy/paste.

As a result of this change, the former “Professional View” paid subscription service has been eliminated. Current Professional View subscribers have been transitioned off the system and pro-rated refunds will be issued for those subscribers whose paid terms extend beyond today’s cutover date.

The URLs to access the updated websites are:

- Accounting Standards Codification®: <https://asc.fasb.org>
- Governmental Accounting Research System™: <https://gars.gasb.org>

[Financial Accounting Foundation Trustees to Begin Livestream of Oversight Sessions.](#)

Norwalk, CT, February 28, 2023 — The Board of Trustees of the Financial Accounting Foundation (FAF) today announced it will begin to livestream portions of its Oversight Committee meetings with the chairs of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB).

The first livestream of an Oversight Committee meeting will take place May 9, 2023.

“We seek continually to enhance confidence in the oversight of the FASB and GASB,” said FAF Trustee Timothy Ryan, co-chair of the Oversight Committee. “Increasing stakeholder opportunities to observe the oversight process is a natural evolution of this important journey we are on.”

Details about the Oversight Committee meeting time and a link to the livestream will be posted on the FAF website the week before the meeting.

[SIFMA Research Quarterly: Fixed Income - Issuance and Trading](#)

Fixed income markets are an integral component to economic growth, providing efficient, long term and cost effective funding.

The U.S. fixed income markets are the largest in the world, comprising 41.3% of the \$123 trillion securities outstanding across the globe, or \$51 trillion (as of 2Q22). This is 2.2x the next largest market, the EU. U.S. market share has averaged 38.9% over the last 10 years, troughing at 37.5% in 2013 and peaking at 40.4% in 2016.

[LEARN MORE](#)

[Treasury Reopens ‘Help Desk’ for States and Localities.](#)

The call center, which fielded 300 calls and about 2,000 emails a week before it was shut down, provided governments with assistance on the handling of various pandemic-related programs.

States and cities are once again able to get the support they need when it comes to following the complex rules set by Congress for Covid recovery money.

The Department of the Treasury on Tuesday reopened a popular call center that provided assistance to state and local governments on the handling of various pandemic-related programs after being forced to shut it down in October when the agency ran out of money.

“This is a huge win for all cities, towns and villages. The process for filing an annual report, required of more than 26,000 [Coronavirus State and Local Fiscal Recovery Funds] grantees, can be complicated and overwhelming to municipal staff unfamiliar with federal filings,” the National League of Cities said in a [recent blog post](#).

[Continue reading.](#)

ROUTE FIFTY

by KERY MURAKAMI

FEBRUARY 22, 2023

[SEC Division of Examinations' 2023 Exam Priorities - A Continued Focus on Private Funds, Regulation Best Interest, ESG, and Crypto.](#)

On February 7, 2023, the Securities and Exchange Commission's (SEC) Division of Examinations (EXAMs) announced its 2023 Examination Priorities (the "Priorities"), which highlight areas it expects to target in 2023 examinations. The Priorities reinforce many of the same areas of interest from the 2022 Priorities, including investment advisers to private funds, Regulation Best Interest ("Reg BI") compliance, ESG-related investments and strategies, and crypto assets and identify additional areas of focus based on SEC rules which recently went into effect. Registered investment advisers (RIAs), registered investment companies ("funds"), and broker-dealers should carefully review the Priorities to ensure that their compliance systems and policies are up to date, monitored, and enforced. Indeed, given the SEC's history of pursuing enforcement actions in areas highlighted in prior years as Examination Priorities, appropriate attention to these Priorities today can save regulated entities considerable resources down the road.

Key Takeaways

- The Priorities highlight three recently adopted rules as new risk areas for 2023: (1) Rule 206(4)-1 (the "Marketing Rule")^[1] under the Investment Advisers Act of 1940 (the "Advisers Act"); (2) Rule 18f-4 (the "Derivatives Rule") under the Investment Company Act of 1940 (the "1940 Act"); and Rule 2a-5 ("Fair Valuation Rule") under the 1940 Act. RIAs and funds should prepare for the EXAMs staff to closely assess the effectiveness of their practices and compliance programs under these new rules, as applicable.
- Registrants should be vigilant about identifying, mitigating, and disclosing inter-affiliate conflicts of interest that can impact clients and customers. Throughout the Priorities, EXAMs stresses conflicts of interest among affiliates as presenting significant risks, especially related to the use of affiliated service providers, recommendations of proprietary products and services, and revenue sharing arrangements. The Staff notes EXAMs' interest in continuing to leverage data provided to the SEC in various regulatory filings, including fund registration statements, Form ADV, Form PF, Form CRS, and other reports. Given the SEC's focus on using technology to analyze and assess

data across these various filings, registrants should continue to ensure that they include accurate and consistent information across their filings or risk flagging attention from SEC examiners.

- The Priorities state that RIAs and funds that have not been examined previously or have not been examined in a number of years will be a focus area for 2023. Such firms should consider conducting a self-audit of their compliance program and regulatory filings to ensure they are prepared for any forthcoming examination.

[Continue reading.](#)

Morrison & Foerster LLP – Kelley A. Howes, Derek N. Steingarten, Aaron J. Russ, Jina Choi and Michael D. Birnbaum

February 21 2023

[Announcing the Public Finance Journal from GFOA and a Call for Submissions.](#)

Public Finance Journal (PFJ) is a biannual journal publishing peer-reviewed research that examines and analyzes contemporary issues in budgeting and finance and explores the applicability of solution sets. The journal will serve as a forum for discussion on significant issues related to the advancement of our scientific understanding. Articles are chosen for publication based on their originality, importance, interdisciplinary interest, timeliness, and accessibility.

[LEARN MORE](#)

[Public Finance Network Letter Regarding Financial Data Transparency Act.](#)

Dear Secretary Yellen and Chairman Gensler:

The organizations listed below, collectively the Public Finance Network, represent state and local governments, governmental entities, authorities, and issuers of municipal securities. We are deeply interested in the law signed by President Biden last December – P.L. 117-263, TITLE LVIII—FINANCIAL DATA TRANSPARENCY ACT of 2022– that requires federal Departments and regulators to develop machine readable data standards for our members in the public sector. Both Subtitle A and Subtitle B, Section 5823 of the Law (Data Transparency Relating to Municipal Securities) will affect the way governments, entities, authorities and all municipal securities issuers prepare their own financial statements and submit information to the Municipal Securities Rulemaking Board.

[VIEW FULL LETTER](#)

Publication date: February 2023

[MSRB Seeks Comment on Draft Amendments to Its Rules Regarding Time of](#)

Trade Disclosure and Sophisticated Municipal Market Professionals.

Initiative Part of the MSRB's Rule Book Modernization Efforts

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) issued a Request for Comment (RFC) today, opening a 60-day comment period on draft amendments to two MSRB rules to assess whether the rules are meeting their intended investor protection objectives and to assist brokers, dealers and municipal securities dealers in understanding and complying with MSRB rules relating to information that must be disclosed to an investor at or prior to the time of trade.

The RFC will seek input on draft amendments to [Rule G-47](#), on time of trade disclosure, designed to:

- Codify certain existing guidance;
- Add new supplementary material to identify disclosures that could be material in certain scenarios;
- Retire and consolidate certain pieces of interpretive guidance; and
- Make certain other clarifying changes to the rule, among other changes.

The RFC also includes questions specific to 529 savings plans to further the MSRB's thinking on other areas related to the MSRB's rule book modernization efforts.

Additionally, the RFC will seek input on draft amendments to [Rule D-15](#), defining the term sophisticated municipal market professional (SMMP), to exempt investment advisers registered with the Securities and Exchange Commission from having to make certain affirmations in order to qualify for status as an SMMP under MSRB rules.

"As part of the MSRB's rule book modernization efforts, we are finding opportunities to modernize certain rules in light of evolving market dynamics and to streamline our rule book by codifying certain guidance into the relevant rule and retiring guidance that no longer reflects market practices," said Saliha Olgun, Interim Chief Regulatory Officer. "We believe that today's draft amendments are reflective of our commitment to issuer and investor protection while being mindful of compliance burdens on regulated entities. We look forward to input from market participants."

Comments should be submitted no later than April 17, 2023.

[Read the request for comment.](#)

Date: February 16, 2023

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

SEC Releases 2023 Examination Priorities for Registered Investment Advisers and Broker-Dealers.

On February 7, 2023, the U.S. Securities and Exchange Commission ("SEC") Division of Examinations (the "Division") released its annual Priorities Report¹ for upcoming examinations of registered investment advisers ("Advisers") and broker-dealers ("BDs" and, together with Advisers, "Firms"). To help ensure compliance with federal securities laws, the Division uses a risk-based approach that accounts for market growth, technological advancements, and new forms of risk to

investors. By identifying these priorities, the Division strives to achieve its four goals of promoting compliance, preventing fraud, monitoring risk, and informing policy. The Division identified the following specific areas of focus for Advisers and BDs.

Mutual Areas of Focus for Advisers and BDs

Standards of Conduct

The Division is continuing to prioritize the examination of Firms for compliance with applicable standards of conduct, including fiduciary duties for Advisers and Regulation Best Interest² for BDs. Both standards of conduct obligate Firms to put the interests of investors ahead of their own personal, financial, and professional interests. In relation, the Division will be focusing on investment advice and recommendations in connection with specific products, investment strategies, and account types. The Division is concerned with products that are complex, high cost, illiquid, proprietary, or unconventional. Such products may include derivatives, leveraged exchange-traded funds, exchange-traded notes, variable annuities, non-traded real estate investment trusts, and microcap securities. The Division may also focus on recommendations and advice provided to certain investors, such as senior investors and those saving for retirement. Moreover, the Division noted it may prioritize review of specific account recommendations, including retirement account rollovers and 529 college savings plans.

[Continue reading.](#)

by Scott H. Moss, Ethan L. Silver, William Brannan and Vincent R. Scala

February 16 2023

Lowenstein Sandler LLP

[SIFMA Requests Comment Extension on SEC's Equity Market Reforms; Calls for Release of Data](#)

SIFMA [requested](#) an extension of the comment period for four rule proposals targeting equity market reform. SIFMA's comment letter concerns proposals on (i) a best execution regulatory framework, (ii) variable minimum pricing increments for quoting and trading NMS stocks, (iii) enhanced order competition and (iv) disclosure requirements regarding order execution information. SIFMA also [submitted a FOIA request](#) calling on the SEC to supply certain data relied upon and referenced in the proposed rulemakings.

Rule Proposals

As [previously covered](#), in December 2022, the SEC issued four rule proposals aimed at reforming the structure of U.S. capital markets:

1. "Regulation Best Execution" (i) [providing](#) a best execution regulatory framework for broker-dealers, government securities broker-dealers and municipal securities dealers, and (ii) enforcing written policies and procedures designed to comply with the best execution standard;
2. amendments to Regulation NMS [adopting](#) minimum pricing increments (i.e., "tick sizes") for the quoting and trading of NMS stocks;
3. new Regulation NMS Rule 615 (the "Order Competition Rule") [establishing](#) regulations to

- “promote a more competitive, transparent, and efficient market structure for NMS stocks”; and
4. amendments to Regulation NMS Rule 605 (“Disclosure of Order Execution Information”) updating the disclosures required for order executions in NMS stocks.

The comments for each proposal are due by March 31, 2023.

FOIA Request

SIFMA submitted to the SEC a FOIA request concerning the following two types of data referenced in the proposals: (i) certain subsets of Consolidated Audit Trail (“CAT”) data not publicly available and (ii) publicly available data where the precise source of the data is unclear. SIFMA stated that the use of non-public CAT data in rule proposals is “highly problematic” because the public is then unable to evaluate and “meaningfully comment” on SEC economic analyses and conclusions. SIFMA stated, however, that unattributable CAT data used could help “facilitate the public’s review and validation of the [SEC’s] economic analyses.”

Extension Request

SIFMA requested the comment period be extended to at least 90 days following the SEC’s release of the data as requested in the FOIA request. SIFMA stated an extension is appropriate due to the public’s inability to fully evaluate the “purported costs, benefits, effects, and economic baselines” of the proposals because of its reliance on undisclosed CAT data. SIFMA added that an extension is also in order in light of the proposals’ “breadth and depth of the [] impact on today’s markets and market participants” and the lack of analysis as to the collective impact of the rulemakings.

Commentary

From a policy standpoint, the SEC should provide the requested information for transparency and public comment purposes. The SEC may face difficulty in presenting a convincing cost-benefit analysis, however, due to the complexity of the proposals and the assumed costs and benefits.

Hanging out there is a potential legal challenge to these proposals under the Administrative Procedures Act. The requested data would play a crucial role in such a challenge.

Fried Frank Harris Shriver & Jacobson LLP - Steven Lofchie

February 9 2023

[GASB Proposes Guidance to Assist with Application of Subscription-Based Information Technology Arrangement.](#)

Norwalk, CT, February 6, 2023 — The Governmental Accounting Standards Board (GASB) has issued proposed implementation guidance that is intended to clarify, explain, or elaborate on existing guidance on subscription-based information technology arrangements (SBITAs).

The [Exposure Draft](#), *Additional Proposal for Implementation Guidance Update—2023*, addresses the single issue of whether a cloud computing arrangement meets the definition of a SBITA as defined in GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*.

If cleared as final implementation guidance, the question and answer in this supplemental Exposure

Draft will be added to previously exposed questions and answers to result in a final Implementation Guide, *Implementation Guidance Update—2023*.

The guidance in Implementation Guides is cleared by the Board and constitutes Category B GAAP.

Stakeholders are asked to review the proposal and provide input to the GASB by March 10, 2023. Comments may either be submitted in writing or through an [electronic input form](#).

The End Is Near for Outdated Government Financial Reporting.

Changes to federal law will require state and local governments to do what they should have done years ago for the benefit of investors and other stakeholders.

By way of a few paragraphs inserted into the recently enacted 4,000-page 2023 National Defense Authorization Act, Congress mandated that state and local governments prepare their annual financial statements in a standardized format that is electronically searchable. The provision effectively drags state and local governments kicking and screaming into the 20th century, if not the 21st.

As worthy an accomplishment as this appears to be, it was resisted mightily by the state and local government financial community. Most prominently, they argue, the measure can potentially result in a major transfer of accounting and reporting regulatory authority from states to the federal government, thereby undercutting what many consider a fundamental principle of federalism. Moreover, state and local officials see it as one more costly unfunded mandate imposed upon their governments.

[Continue reading.](#)

Route Fifty

By Michael Granof and Martin J. Luby

FEBRUARY 8, 2023

Firm Fined for MSRB Registration Failures on Private Placement Offerings.

A broker-dealer [settled](#) FINRA charges for (i) conducting a municipal securities business without becoming a member of the MSRB and (ii) failing to amend its FINRA membership application prior to conducting private placement offerings.

According to FINRA, the firm offered customers tax-advantaged state-sponsored securities plans ("529 plans"), which are municipal securities, and collected commissions and fees without first joining the MSRB or employing a qualified municipal principal to supervise the municipal securities business. Additionally, FINRA found that the firm sold several private placements, although its membership agreement did not permit the sale of private placements without obtaining FINRA approval pursuant to FINRA Rule 1017 ("Application for Approval of Change in Ownership, Control, or Business Operations").

FINRA determined that the firm violated MSRB Rule G-2 (“Standards of Professional Qualification”), Rule G-3 (“Professional Qualification Requirements”), Rule G-27 (“Supervision”) and Rule A-12 (“Registration”). The firm also violated FINRA Rule 1017 and Rule 3110 (“Supervision”).

To settle the charges, the firm agreed to (i) a censure, (ii) a civil monetary penalty of \$45,000 and (iii) to certify within 180 days that it either registered with the MSRB or ceased its offering of municipal securities.

February 7 2023

Fried Frank Harris Shriver & Jacobson LLP

[Request for Comment on Draft Amendment to MSRB Rule G-32 to Streamline the Deadlines for Submitting the Information on Form G-32: SIFMA Comment Letter](#)

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on their Request for Comment on Draft Amendment to MSRB Rule G-32 to Streamline the Deadlines for Submitting the Information on Form G-32 (the Notice).

[View the SIFMA Comment Letter.](#)

MSRB Proposes Regulation of Solicitor Municipal Advisors.

The MSRB [proposed](#) new MSRB Rule G-46 (“Duties of Solicitor Municipal Advisors”) that would “establish the core standards of conduct and duties of ‘solicitor municipal advisors’ when engaging in solicitation activities that would require them to register with the SEC and the MSRB as municipal advisors.”

The proposal would:

- require such solicitors to provide full and fair written disclosure regarding any material conflicts of interest and material legal or disciplinary events to solicitor clients;
- prohibit solicitor municipal advisors from publishing any materially false or misleading information regarding the capacity, resources or knowledge of the solicitor client. Solicitors must also have a reasonable basis for making any material representations;
- require solicitors to disclose material facts related to the solicitation including (i) the advisor’s role and compensation and (ii) material conflicts of interest; and
- prohibit solicitor municipal advisors from delivering inaccurate invoices or making payments for the purpose of retaining a municipal advisory activity engagement.

In addition, the proposal would codify previously issued interpretive guidance concerning the requirements applicable to solicitor municipal advisors under MSRB Rule G-17 (“Conduct of Municipal Securities and Municipal Advisory Activities”), MSRB Rule G-42 (“Duties of Non-Solicitor Municipal Advisors”) and IAA Rule 206(4)-1 (“Investment Adviser Marketing”). The proposal would

also amend MSRB Rule G-8 (“Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors”) to add specific recordkeeping obligations relating to a solicitor municipal advisor’s solicitation of advisory services.

February 1 2023

Fried Frank Harris Shriver & Jacobson LLP

[MSRB Proposes Rule Amendments to Allow Testimonials in Muni Advisor Advertisements.](#)

The MSRB [proposed](#) to amend MSRB Rule G-40 (“Advertising by Municipal Advisors”) to allow for the use of testimonial statements in municipal advisor advertisements.

In addition to allowing the use of testimonials, the proposal would (i) establish supervisory obligations specific to testimonial use, (ii) modify the definition of municipal advisory client with regard to soliciting municipal securities business to align with MSRB Rule G-38 (“Solicitation of Municipal Securities Business”) and (iii) create a conforming obligation under MSRB Rule G-8 (“Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors”) to keep any records relating to testimonial advertising, including any record of payment for testimonials.

Fried Frank Harris Shriver & Jacobson LLP

January 31 2023

[SIFMA Urges MSRB to Broaden Proposed Exemption on Regualification.](#)

SIFMA asked the MSRB to broaden a [proposed exemption](#) to allow individuals who have been out of the securities industry for a limited time to requalify as municipal advisors without having to retake examinations. SIFMA urged the MSRB to harmonize the exemption with requirements for muni dealers and broker dealers.

In its comments, SIFMA said that such harmonization is important because many firms and individuals are dually registered with FINRA and the MSRB. SIFMA also requested that the MSRB’s relief be extended to municipal advisor principals.

Fried Frank Harris Shriver & Jacobson LLP

January 31 2023

[SIFMA Urges MSRB to Extend Filing Deadlines in Proposal to Streamline Primary Offering Form Submissions.](#)

In a Comment Letter on the MSRB’s [proposal](#) to standardize deadlines on Form G-32 requirements

in connection with primary offerings, SIFMA urged the MSRB to extend the window for underwriters to file official statements.

SIFMA recommended that the MSRB extend the deadline for underwriters to file official statements through the Electronic Municipal Market Access Dataport system (“EMMA”) to ensure that the finalized statements are accurate. SIFMA said that the current requirement to file the official statement “within one business day after receipt of the official statement from the issuer or its designee, but by no later than the closing date” does not consider that certain information may not be available until after the security is sold, nor does it account for statements received outside of normal business hours.

SIFMA recommended that the MSRB establish a single deadline no later than the closing date of an offering for underwriters to submit all applicable information to EMMA for both NIIDS-eligible and ineligible primary offerings. For transactions where no placement agent or underwriter is involved, SIFMA said that the municipal advisor involved should be required to submit a Form G-32 filing.

Fried Frank Harris Shriver & Jacobson LLP

January 30 2023

[Financial Accounting Foundation Announces Changes to Online Access to Accounting Standards Codification and Governmental Accounting Research System.](#)

Norwalk, CT, January 30, 2023 — The Financial Accounting Foundation (FAF) today announced it will provide free, enhanced online access to the Accounting Standards Codification® and the Governmental Accounting Research System™ in an effort to make financial accounting standards even more widely accessible to stakeholders and the public.

The FAF has not yet determined the firm date for this change to online access to the accounting standards, but it is expected to occur this spring.

The Accounting Standards Codification® (“the Codification”) is the complete and official version of Generally Accepted Accounting Standards (GAAP) published by the Financial Accounting Standards Board (FASB) and used by public companies, private companies, nonprofit organizations, and employee benefit plans in the United States. The Governmental Accounting Research System™ (“GARS”) is the complete and official version of GAAP published by the Governmental Accounting Standards Board (GASB) and used by states, cities, and other governmental entities in the United States.

While free versions of both the Codification and GARS have been available online for years, the new system will provide enhanced features compared to the current free offering (known as “Basic View”). These include enhancements to navigation, search, printing, copy/paste, and the ability to provide feedback.

As a result of this move, the “Professional View” paid subscription service will be eliminated and users who previously accessed Professional View can instead use the enhanced free versions of the Codification and GARS. Current Professional View subscribers will be transitioned off the current system. Pro-rated refunds will be issued for those subscribers whose paid terms extend beyond the

cutover date.

“We believe this move, which is consistent with a recent recommendation from the Investor Advisory Committee of the U.S. Securities and Exchange Commission, will increase our stakeholders’ access to these important resources, and thereby improve the understanding and implementation of financial accounting standards in the United States,” said FAF Executive Director John Auchincloss.
