
BDA to Submit Petition for SEC Rulemaking: Amendments to Form ADV.

Today, Bond Dealers of America will submit a letter that petitions the SEC to engage in a rulemaking to amend Form ADV. BDA's recommendations, if adopted, would make client prospecting more efficient for dealer sales personnel.

BDA's letter recommends three changes to Form ADV:

Recommendation 1: Harmonize the client and client-related asset under management percentages in Item 5, section D2 with the percentage-breakdowns in section D1. This would allow for a more detailed understanding of not only who an adviser's clients are, but what percentage of AUM is related to each client type.

Recommendation 2: Often investment advisers will input AUM attributable to credit unions in the section (m) for "other". BDA believes it would be more valuable to report those assets under (c) so that all AUM attributable to financial institutions be reported in a single line item. Therefore, BDA recommends 'credit unions' be explicitly added to section (c).

Recommendation 3: BDA recommends adding a new section titled F3 to Item 5, which would add a percentage breakdown of adviser AUM by asset type. While it is important to have the total value of AUM reported in section F, BDA believes that adding a section that shows the types of assets, including fixed-income assets, held would be valuable.

We hope this information is helpful. Please contact the BDA with questions or comments.

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Municipal Advisors: Mark Your Calendars with Annual Compliance Dates.

As regulated entities, municipal advisors have multiple obligations throughout the year to maintain their registration status with the MSRB and ensure compliance with MSRB rules. Municipal advisors should be aware of the following key compliance dates in 2017.

2017: Rule G-44 Compliance Certification
On an annual basis, the chief executive officer or equivalent officer at each municipal advisor firm

must certify that it has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable rules. [See MSRB Rule G-44.]

January 1-26, 2017: Annual Registration Affirmation
Each January, all municipal advisor firms registered with the MSRB are required to affirm or correct their registration information on MSRB Form A-12. [See MSRB Rule A-12.]

January 31, 2017: Form MA-I
Recognizing that the MSRB's professional fees are calculated based on the number of Forms MA-I a municipal advisor firm has on file with the Securities and Exchange Commission as of January 31 each year, the MSRB recommends firms verify the accuracy of their Forms MA-I by January 31, 2017. [See MSRB Rule A-11.]

April 30, 2017: Annual Municipal Advisor Professional Fee
Invoices for the MSRB's municipal advisor professional fee, which is equal to $300 per Form MA-I on file with the SEC as of January 31 of each year, are sent the first week of April, and payment is due by April 30. [See MSRB Rule A-11.]

September 12, 2017: Series 50 Grace Period Ends
Municipal advisor professionals have until September 12, 2017 to take and pass the MSRB's Municipal Advisor Representative Qualification Examination (Series 50) to continue to engage in municipal advisor activities.

October 31, 2017: Annual Registration Fee
Each municipal advisor firm registered with the MSRB must pay an annual fee of $1,000 by October 31. Invoices are sent the first week of October. [See MSRB Rule A-12.]

[Dealers, MAs Push for MSRB to Fix Proposed Rule Changes on Complaints.]

WASHINGTON – Market groups and firms are asking the Municipal Securities Rulemaking Board to rethink proposed rule changes related to complaints, saying they should be adapted to better fit the differences in the relationships that municipal advisors have with clients and dealers have customers.

The groups and firms made their requests in letters sent to the Securities and Exchange Commission, which must approve the rule changes.

The MSRB, which proposed changing three of its rules to amend the complaint process for dealer customers and then extend that process to MA customers, did not solicit comments before submitting to the SEC, to the chagrin of dealers and MAs.

The proposal would amend MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records.

The National Association of Municipal Advisors, in a letter authored by its executive director Susan Gaffney, said that the regulation, in some ways, "is trying to fit a square peg into a round hole."

"While we have stated on numerous occasions that the new MA regulations should mirror current broker/dealer regulations whenever possible, this is an example where an alternative approach is warranted due to the difference between the nature of a broker/dealer 'customer' and a municipal advisor 'client,'" Gaffney wrote.

The PFM Group agreed with NAMA, saying that the amendments are a "mismatch of good intention" and a lack of "effective execution."

"This important distinction between the respective relationships is evidence by the disparate treatment of municipal advisors as a fiduciary under the Dodd-Frank Act and the ensuing Municipal Advisor Rule when compared to the regulatory standard of suitability for broker-dealers," PFM wrote.

The non-dealer advisory firm added: "Regrettably, the proposed rule changes do not include needed input from municipal market participants," referring to the MSRB's decision not to go out for public comment before submitting to the SEC.

Bond Dealers of America said the MSRB "is proceeding with unnecessary haste" in not first asking for public comment and, like NAMA and PFM, pointed out the "wholly different" business relationships that dealers and MAs have with their clients.

The proposed amendments would change Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint. They would eliminate the need to send a brochure and instead require other disclosures for dealer customers and MA clients. The dealer and MA requirements would mandate the firms give notification of: their registration with the MSRB and the SEC; the MSRB's website address; and the brochure available on the MSRB's website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers would be required to notify customers with that information annually and MAs would have to share the information "promptly," but no less than once a calendar year over the course of the MA relationship.

NAMA and PFM proposed that instead of using G-10 to require that information, the MSRB should have MAs send the information along with the conflicts of interest and disciplinary disclosures that are required under MSRB Rule G-42 on core duties of MAs. PFM said that path "would be immensely more effective and less burdensome."

The firm and NAMA additionally asked for specific information about the contents of the MA brochure as well as a chance for input. BDA urged that a new brochure be created specifically for MAs instead of trying to repurpose the existing one for dealers.

The proposed revisions to Rule G-8 would require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log would have to include information about the identity of a client and the timing of the complaint as well as a description of the complaint and the action, if any, the dealer or MA took in response. NAMA is asking that the MSRB more specifically describe what it means by "complaints" and "action" while also providing examples of how to create and maintain the logs.

All complaints would be coded using a standard set of product and problem codes that the MSRB would make available, similarly to current SEC and Financial Industry Regulatory Authority requirements. PFM and NAMA requested that the MSRB allow MAs to give input on those codes. BDA asked that the MSRB work with FINRA to ensure that the problem codes are uniform and harmonized so that they do not lead to a heightened regulatory burden on firms registered with both self-regulators.

Rule G-9 would be amended to require both dealers and MAs to retain their complaint records for six years. Both NAMA and PFM argued the MSRB should keep the MA requirement at five years.

The MSRB has said the amendments would be effective six months after they are approved. BDA, citing other regulatory adjustments that dealers are currently facing, asked that the MSRB extend the effective date to one year after approval.

The Bond Buyer

By Jack Casey

December 14, 2016

SEC Ends MCDC Settlements, Turns to Violators That Didn't Participate.

WASHINGTON – The Securities and Exchange Commission will not bring any more settlements under its Municipalities Continuing Disclosure Cooperation initiative and will instead focus on those underwriters and issuers that did not voluntarily disclose violations under the MCDC.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, told The Bond Buyer about the unit's shift in focus on Tuesday, ending months of speculation about the future of the MCDC.

"We currently do not expect to recommend enforcement action against any additional parties under the initiative," she said. "We now think it is appropriate to turn our attention to issuers and underwriters and obligors that didn't participate."

The unit's enforcement lawyers view the underwriters and issuers who may have committed violations but did not self-report as part of MCDC as a high risk for future violations, Gaunt said, adding, "That is a group of particular interest to us and we intend to devote significant resources to identifying violations by those parties."

The enforcement lawyers would also like to learn about any instances where some violations were not self-reported even though the issuer or underwriter self-reported others, according to Gaunt.

There have been indications in the past that the commission may also pursue individuals that were associated with the violations that were reported under the initiative.

Market participants had been waiting for an indication from the SEC about MCDC's future since the commission released its round of issuer settlements in late August.

The SEC's decision to conclude the initiative was guided by the knowledge that MCDC both raised the level of awareness of continuing disclosure problems in the market and led to improvements to be put in place for "the key gatekeepers" in the market, according to Gaunt. MCDC also raised the quality of disclosure and due diligence in the market, she added.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements. In total, the initiative led to settlements with 72 issuers from 45 states, including a 2014 settlement with California's Kings Canyon Joint Unified School District. In addition, 72 underwriters representing 96% of the underwriting market by volume paid a total of $18 million in MCDC settlements.

Issuers that settled under the initiative did not have to pay penalties but agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding their continuing disclosure obligations to ensure compliance with federal securities laws. They also agreed to designate an individual or officer to be responsible for ensuring they are compliant with their policies and procedures. The designated individual is also responsible for implementing and maintaining a record of the issuer's disclosure training.

The issuers also have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Underwriters that settled paid fines based on their size and number of violations, up to a maximum of $500,000, and agreed to hire an independent consultant. The consultant was tasked with analyzing the underwriters' policies and procedures and submitting a report to the underwriter detailing recommendations for changes or improvements to the policies and procedures. The underwriters, which were announced in a series of three settlements between June 2015 and February 2016, paid a total of $18 million.

At the time MCDC was announced, some market participants had said continuing disclosure problems were mostly concentrated among small, infrequent issuers. They said most issuers had cleaned up their act after the SEC's Office of Compliance, Inspections, and Examinations issued a risk alert in 2012. The risk alert highlighted due diligence and disclosure failings OCIE had uncovered and urged market participants to establish adequate procedures to help them stay in compliance with federal securities laws related to disclosure.

"Among the things that I think the initiative revealed is that these kinds of failures were committed by issuers of all types and sizes, not just small, infrequent issuers," Gaunt said. "I think the initiative also revealed that this was not a historical problem, but rather, involved misconduct as recent as 2014, when the [MCDC] initiative was announced."

The Bond Buyer

By Jack Casey

December 13, 2016

GFOA Members Warn Disclosure Bill Could Push Some Issuers Out of Market.

WASHINGTON – A bill introduced by Rep. Gwen Moore, D-Wis., that would shift municipal disclosure responsibilities to issuers and borrowers from underwriters could drive some localities out of the market, issuer officials warned Moore's chief of staff on Thursday.

The warnings came from members of the Government Finance Officers Association's debt committee at a meeting here after the bill was introduced earlier in the day.

Jonas Biery, the debt committee's chair, said that hears from small issuers throughout the nation that over the past three or four years there has been continued confusion and fear about the increased complexity of regulatory and enforcement actions in the muni industry.

"I think there's some anecdotal, if not data supported, evidence that some of those issuers are backing out of the market," Biery said. "Smaller, typically rural issuers are saying they can't comply and take the risk so they're not going to enter the market."

He added that he thinks there is a valid concern that initiatives like the bill are going to continue to push this "important sector" out of the market.

Ben Watkins, an ex-officio member of the committee and the bond finance director for Florida, said that the bill is "obviously something that from an institutional standpoint [GFOA has] a long history of resisting." GFOA's position won't change, he said.

"It's very difficult for us to reconcile what has historically been a record of support for the muni industry and state and local governments with this proposal," Watkins said. "I believe the consensus in the room would be that this is extraordinarily misguided and counterproductive."

Watkins said the bill is the beginning of a snowball that rolls downhill and has a logical conclusion of creating "a tremendous obstacle and impediment for state and local governments' access to very efficient and inexpensive financing, which really finances the infrastructure of the country."

Moore's bill would authorize the SEC to establish baseline mandatory disclosure requirements, including on content and timing, for primary offerings. But it would leave room for the commission to vary the requirements for different classes of issuers or borrowers.

That is a complete reorientation from the current disclosure regime, which puts disclosure responsibilities on underwriters. Under the Securities and Exchange Commission Rule 15c2-12, firms cannot underwrite an issuer's bonds unless that issuer has contractually agreed to disclose financial and operating information at least annually as well as material events as they occur.

Sean Gard, Moore's chief of staff, told the committee members that the bill didn't come out of Moore's mind all of a sudden because she wanted to come down hard on the muni market. Instead, Moore sees the bill as a way to strengthen the market, he said.

"If you look at the legislation, you will see that it is well-drafted. It's not a Hail Mary," Gard said. "For most issuers, there's nothing in this legislation that comes out of left field," Gard said.

He also cited ongoing conversations among a number of market groups, including GFOA through its best practices, that there is market focus on improving disclosure.

"This is just our addition to that [disclosure] discussion," Gard said.

He noted that the bill and industry discussions follow SEC enforcement division findings through its Municipalities Continuing Disclosure Cooperation initiative that found 72 issuers, including two states, did not comply with their continuing disclosure requirements and then lied to investors about that.

"The industry wouldn't be having these conversations around disclosure if there wasn't something there," Gard said.

At the same time, Gard said, it is important for industry participants to recognize that the bill was introduced on the last day of the congressional session, meaning it will not get a committee hearing in the session and won't move forward.

"[Moore] doesn't have any plans to sneak this in," Gard said. "She does want to engage the issuer community and have this conversation."

The legislation, which aims to codify recommendations made in the SEC's 2012 Report on the Municipal market, would not repeal the Tower Amendment of the Securities Exchange Act of 1934, which prohibits the SEC and Municipal Securities Rulemaking Board from requiring issuers to file bond-related documents with them before the sale of those bonds.

Issuers and borrowers with more than $10 million of outstanding municipal securities would have to adopt internal controls and systems, including written policies and procedures that, at a minimum, identify each official responsible for each aspect of disclosure as well as the process by which official statements are drafted and reviewed.

The bill would authorize the SEC to adopt a rule allowing issuers and borrowers to comply with those provisions through a state-wide system of disclosure controls and education.

It would also authorize the SEC to prescribe accounting methods for state and local bond documents and bond-related financial information. Alternatively, the SEC could require issuers to use the reporting and accounting standards from a standards-setting body, such as the Government Accounting Standards Board. The bill does not specifically mention GASB or any other standards-setting body.

The bill as drafted provides a safe harbor for forward-looking statements made by issuers and borrowers.

In addition to the new disclosure requirements, the bill would remove the muni exemption from registration for private activity bonds so PAB transactions would either have to be registered with the SEC or fall under some other exemption such as the one for private placements. Bonds for nonprofit hospitals and universities would continue to be exempted from registration under their 501(c)(3) exemption.

The SEC has recommended that PAB or conduit deals that involve corporate borrowers be registered, since corporations must register corporate deals.

Laura Lockwood-McCall, director of the debt management division of the Oregon State Treasury, questioned why corporate deals would need to be registered.

"You just increase the cost to communities across the country that are working with the private sector to spur our economies," she said.

The legislation includes twelve types of information an issuer would be required to include in an official statement but gives the SEC the discretion to require more disclosures.

The OS would need to identify and describe any issuer or other borrower with respect to the securities being offered as well as provide a description of any legal limitations on the incurrence of indebtedness by the issuer, borrower, or taxing authority of the issuer. It would also need to describe the issuer's or borrower's debt structure, including information with respect to amounts of authorized and outstanding debt, estimated short-term debt, security of debt, and debt service requirements, as well as the nature and extent of their other material contingent liabilities or commitments.

Other information would have to be disclosed about: defaults; whether securities are supported by taxes; the issuers' financial statements if they are material; the intended use of the proceeds of the offering; and any material conflicts of interest of the issuer or other obligated person and any other party involved in the offering.

The Bond Buyer

By Jack Casey

December 8, 2016

SIFMA Continuing to Work to Improve Disclosure.

The Securities Industry and Financial Markets Association will be focused on several municipal bond industry initiatives in including disclosure in 2017, the group said at its annual "State of the Industry" briefing in New York on Wednesday.

SIFMA will be working with issuers, underwriters, bond counsel, investors, auditors and credit analysts to improve transparency in the wake of the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, said SIFMA's President and CEO Kenneth Bentsen.

"We have been working with all the various stakeholders … trying to develop an industrywide initiative to improve issuer disclosure," Bentsen said, "including having the states take a greater role in regulating and policing local government issuer disclosure."

Additionally, Bentsen said SIFMA was looking at a revisions and updates to SEC rule 15c212; disclosure regarding bank loans and direct placements; the SEC guidance with respect to the outstanding continuing disclosure agreements; and improvements to the Municipal Securities Rulemaking Board's EMMA online website.

Some of the other initiatives the group will be focused on are backing the SEC's proposal on a shortened settlement cycle (T+2), working to aid senior citizen investors with the Senior $afe Act, and promoting cyber security and preparedness, he added.

Timothy Scheve, chair of SIFMA's Board of Directors, said that he would be focused on promoting the benefits of the U.S. capital markets, pushing for a comprehensive best interest standard for retail investors, and preserving equal access for its members to all SIFMA business models.

The Bond Buyer

By Chip Barnett

December 7, 2016

NFMA Municipal Analysts Bulletin.

The National Federation of Municipal Analysts Municipal Analysts Bulletin, Vol. 26, No.3, is now available. All officers, active committees and societies contribute to the newsletter – it's the best way to learn about what is happening at the national level and locally.

Click here to open the newsletter.

Muni Disclosure Responsibility Would Shift to Issuers from Underwriters in New Bill.

Rep. Gwen Moore (D-WI) has introduced a bill that would make state and local government issuers or borrowers responsible for bond-related information disclosure, rather than underwriters. Under current SEC rules, muni issuers are not regulated with regards with muni disclosures. The bill would also allow the SEC to establish baseline mandatory disclosure requirements for primary offerings.

Bill Text

Judge Slashes SEC's Proposed Fine for Ex-Miami Budget Director.

NEW YORK — A federal judge has rejected the U.S. Securities and Exchange Commission's request for a record $450,000 penalty against a former Miami budget director found liable for misleading municipal bond investors, fining the man $15,000 instead.

In an order on Monday, U.S. District Judge Cecilia Altonaga said the SEC has already made an example of former budget director Michael Boudreaux in its first municipal securities fraud case to go to trial.

Boudreaux and the city of Miami were found liable by a jury in September for shifting money among accounts to hide the city's worsening financial condition from investors who bought over $150 million of Miami's bonds in 2009.

Though a jury found Boudreaux acted with severe recklessness, he did not gain financially from his conduct, Altonaga said, adding that the fine the SEC was seeking appeared "overreaching and punitive."

The SEC's 2013 lawsuit alleged the city's "shell game" helped it win favorable ratings for its bonds and exposed bondholders to substantial risk of losses.

Penalties were not part of the jury trial. Miami reached an agreement with the SEC in October to pay $1 million to settle its case.

A $450,000 penalty against Boudreaux would have been the largest ever against a municipal official by the SEC. In a motion in October, the SEC said the penalty was justified because Boudreaux orchestrated the fraud and directed multiple transfers of money over a two-year period.

In a statement on Monday, Boudreaux's lawyer Benedict Kuehne said his client was relieved by the reduced penalty.

SEC spokesman Ryan White declined comment.

In a motion in November, Kuehne had argued that the proposed penalty was "massively unfair." Boudreaux had already been financially ruined by the SEC's case and could no longer find work in municipal government, his lawyer said.

In Monday's order, Altonaga said the SEC failed to present any evidence that Boudreaux's conduct caused investor losses or a substantial risk of losses. It was also unreasonable to expect Boudreaux to individually pay almost half the amount paid by the city itself, she said.

The judge also rejected the SEC's request for a permanent injunction barring Boudreaux from future violations of securities laws, saying there is "little to no chance" he will ever work for a municipality again, let alone with securities or bonds.

The case is Securities and Exchange Commission v City of Miami, U.S. District Court, Southern District of Florida, No. 13-22600

By REUTERS

DEC. 6, 2016, 11:39 A.M. E.S.T.

(Reporting by Dena Aubin; Editing by Anthony Lin and Tom Brown)

Republican Groups, FSI Urge Federal Court to Vacate Rule G-37 Changes.

WASHINGTON – The Financial Services Institute has joined three state Republican groups in urging federal appeals court judges to vacate the Securities and Exchange Commission's approval of Municipal Securities Rulemaking Board rule changes that they say restrict political contributions for municipal advisors.

The Republican groups, which are requesting an oral argument before the Sixth Circuit Court of Appeals in Cincinnati, are also asking the judges to then order the SEC to disapprove the rule. The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee made their requests in a brief filed earlier this month. FSI recently filed a friend-of-the-court brief in support of the Republican groups' arguments. The group represents independent financial advisors and financial services firms.

The Sixth Circuit Court had halted proceedings in the case pending an order on a motion to dismiss from the SEC. A panel of three judges from that court referred the case to a merits panel, which received the groups' most recent motion and will handle upcoming filings expected from the SEC. The SEC will have until Dec. 19 to submit its response.

The state parties' suit against the SEC and MSRB claims the revised MSRB Rule G-37 unconstitutionally forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The rule took effect on Aug. 17.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, are barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional or a municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Republican groups' lawyers, led by Christopher Bartolomucci, a partner with Kirkland & Ellis here, said that the process of getting the rule changes approved showed that the MSRB and SEC believe "the SEC may supplant Congress' limits with a broad, prophylactic rule of its own in an effort to deter so-called 'pay-to-play' activities in the provision of advisory services for public assets."

Bartolomucci added that, as the groups told the MSRB and SEC in comment letters during the rulemaking process, "that contention is flatly foreclosed by federal campaign finance law, the statute under which the SEC purports to be acting, the Administrative Procedures Act, and, ultimately, the First Amendment."

FSI's friend-of-the-court brief similarly argues that the rule, both in its original and amended forms, "has curtailed the constitutional rights of independent broker-dealers (IBDs) and registered representatives while failing to take into consideration IBD firms' unique structure, and in particular their remoteness from any articulated 'pay-to-play' threat."

The group said that, unlike non-IBD firms, IBD firms generally operate through a wide network of independent contractors that are not employees and are given almost complete freedom to act as solo practitioners. The rule, however, treats the independent contractors as employees, allowing for "the action of a single independent financial advisor or registered representative to pollute the whole IBD network." That limits "the First Amendment rights of individuals who neither control nor profit from the governmental business obtained by a financial advisor they may never have met, operating in another jurisdiction," FSI argued.

FSI also noted that some of the rule's phrasing is vague and runs the risk of further limiting political speech. It said the rule regulates financial support that may indirectly influence hiring while not giving useful guidance as to what indirect influence might be. It also refers to indirect communication with a municipal entity as a part of its solicitation definition without explaining what that could entail, according to the group. Both examples of vague language are likely to cause firms to be overly careful and restrict individuals' activities more than might be necessary, FSI argued.

The financial group said the MSRB and SEC could have considered alternatives like levying tougher penalties for pay-to-play corruption or providing additional whistleblower protections. Instead of doing that, the "MSRB leapt without looking, and the SEC unfortunately ratified that decision," FSI said.

The three Republican groups added their own complaints in their brief on top of the First Amendment concerns, arguing that Congress "never intended to grant an agency like the SEC – much less the MSRB – the authority to tinker with contributions to political parties and candidates for federal office." Congress determined the contribution limit should be $2,700 per federal candidate per election and $10,000 per year for political party federal accounts and left no room for the SEC to second-guess its judgment, Bartolomucci and the other lawyers wrote.

The lawyers also argued that the SEC violated congressional appropriations language for 2016 that prohibited the commission from finalizing, issuing, or implementing any rule, regulation, or order regarding the disclosure of political contributions. The SEC has said it did not violate the rule because it never acted. Instead, the rule was deemed approved at the end of a 45-day period as happens under federal law when the SEC does not act. The groups and SEC have been arguing whether the course of events meet the qualifications for a final order or agency action, either of which would help the Republican groups' case.

The Bond Buyer

By Jack Casey

November 28, 2016

MSRB Instructs Dealers to Disclose Existence of Market Discount in Municipal Bond Transactions: Chapman and Cutler

Client Alert

The Municipal Securities Rulemaking Board ("MSRB") recently issued an interpretive notice announcing its interpretation that if a dealer engages in a transaction with a customer in a municipal security that bears market discount, the dealer must disclose the existence of market discount to its customer as part of the "time of trade disclosure" required under MSRB Rule G-47. Rule G-47 already includes original issue discount ("OID") in the rule's non-exhaustive list of information that may be material and require time of trade disclosures to a customer. Both market discount and OID impact the tax treatment of municipal bonds and can be particularly relevant for "tax-exempt" municipal bonds. The MSRB notice is available here.

MSRB Rule G-47

Rule G-47 requires brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose to their customers, at or prior to the time of a municipal bond trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market. Information is considered to be material under Rule G-47 if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor making an investment decision. The rule currently includes a non-exhaustive list of information that is generally considered material, including OID and other factors. While market discount is not listed in the rule, the MSRB interpretation now puts dealers on notice that the MSRB believes the existence of market discount to be an issue that is required to be disclosed to a customer under Rule G-47 at or prior to the time of trade.

Why is Market Discount and OID Disclosure Relevant?

Generally speaking, accretion of OID over the life of a tax-exempt municipal bond is treated as tax-exempt interest under federal tax law while market discount is taxable income at a taxpayer's ordinary income tax rate (i.e., not as tax-exempt interest or at the capital gain rate). On the other hand, both OID and market discount are generally treated similarly to taxable interest income for taxable municipal bonds and are taxed at a taxpayer's ordinary income tax rate. These factors can impact an investor's decision to buy or sell a bond and the assessment of the bond's price. Tax treatment and computation of OID and market discount is very complex. Investors and dealers should consult their tax advisors for complete information.

Why is the MSRB Concerned with Market Discount Now?

The recent steep rise in municipal bond yields appears to be behind the MSRB market discount disclosure guidance and also has initiated other recent MSRB action. The MSRB recently issued a statement cautioning investors about the potential risks to bond positions and bond portfolios related to rising interest rates. The MSRB also recently submitted a letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern. The MSRB letter is available here.

The MSRB is concerned that an investor might not be aware that all or a portion of his or her investment return represented by accretion of market discount is taxable as ordinary income. The MSRB is concerned that this might result in an investor purchasing securities at an inappropriately high price (i.e., a price not reflecting the potentially higher tax rate applicable to the discount). The existence of market discount might also impact an investor's decision to purchase or sell a bond or determination of what price to pay or accept for a bond. As a result, the MSRB is now notifying dealers that it believes the fact that a security has market discount is material information that is required to be disclosed to a customer under Rule G-47.

What Should Dealers Do Now?

Dealers should review their existing policies and procedures to ensure that financial advisors disclose the existence of market discount to applicable customers in connection with municipal security transactions. Note that firms do not have any time of trade disclosure obligation under Rule G-47 with respect to customers that are sophisticated municipal market professionals, or SMMPs, as defined in MSRB Rule D-15.

November 29, 2016

SIFMA Warns Fed Basel Capital Standards for Trading Would Hurt Munis.

WASHINGTON – The Securities Industry and Financial Markets Association wants bank regulators to avoid adopting harsh international capital standards for trading that could have a chilling effect on the municipal market and hurt liquidity.

The dealer group made a plea for more flexible standards in a letter it sent to the Federal Reserve Board about the final rule on Minimum Capital Requirements for Market Risk, also known as Fundamental Review of the Trading Book (FRTB), published in January by the Basel Committee on Banking Supervision.

The Fed and other bank regulators are charged with U.S. implementation of the international framework that the Basel Committee adopted, which among other things, is meant to ensure that banks have adequate capital relative to risks on their trading books. SIFMA plans to send similar letters to other bank regulators as well.

Michael Decker, managing director and co-head of munis at SIFMA who authored the letter, said that the FRTB would increase the amount of capital required to trade munis by three to six times the current levels. "The higher costs of holding trading inventory would have a chilling effect on all dealers' ability to trade bonds and would materially erode liquidity in the market," Decker wrote in the letter. The decrease in liquidity would ultimately lead to increased borrowing costs for state and local governments, he added.

"SIFMA is very concerned about the potential effects of significantly higher capital requirements on the municipal market and the potential material harm to liquidity," he wrote. "Past Basel capital regimes have long recognized the lower historical market risk and default probability of municipal securities in rulemaking, and FRTB as drafted would reverse this treatment and potentially penalize trading in municipal securities relative to other asset classes."

The goal of SIFMA's letter, Decker said, is to try to raise concerns with U.S. banking regulators before they get too far along in the process of drafting regulations.

Decker detailed the changes SIFMA would like to see in the two different approaches a bank could take under the framework, the sensitivity based approach (SBA) and the internal model approach (IMA), which allows banks to devise their own model subject to regulatory approval. He called the SBA "the default method for calculating capital charges for securities held by banks or bank-affiliated broker-dealers for trading" and wrote it will likely be what most dealers choose when working to comply.

"Many dealers will need to capitalize municipal security trading using SBA, either because they cannot justify the added administrative cost of implementing IMA or if some IMA requirements, such as the back-testing requirement, themselves prove too difficult to implement," Decker wrote.

The part of the SBA that SIFMA believes would most affect munis is the approach's measurement of default risk. Decker said the approach assumes default risk rates of 0.5% to 6% for investment grade securities, which is more closely aligned with corporate securities and thus much higher than the 0.03% to 0.42% that municipal market participants experience.

"Using risk weights based on corporate default rates would imply that default risk weightings would be 750 times too large for general obligation municipal bonds and 37.5 times too large for revenue bonds," Decker wrote. He added that the default rate risk, among other parts of the approach, "reflects a lack of attention or a lack of understanding on the part of the Basel committee of the way the municipal market behaves relative to other products."

SIFMA would also like to see the SBA's treatment of general interest rate risk (GIRR) altered. GIRR is designed to measure the interest rate risk associated with a bank's trading portfolio and measures how much more or less volatile a particular security is in relation to general interest rates.

SIFMA is concerned that the currently proposed method of evaluating GIRR would overstate the interest rate risk associated with munis because it would not capture the reduction in risk that banks realize when they hedge their muni positions, such as by shorting treasuries.

Additionally, Decker said SIFMA believes the SBA's approach to credit spread risk, a separate part of the SBA, also overstates the risk associated with a municipal product. Munis are "a very safe product" in "a very safe market" where there tends to be relatively little volatility associated with changes in credit risk, Decker wrote.

Without SIFMA's changes, Decker said, banks would need to have roughly seven times more capital for triple A-rated bonds and nine-and-a-half times more capital for those that have a triple B-rating. Even with the changes though, required capital for munis would still be from two to 20 times the current standardized capital requirements, according to Decker. It would be 2.3 times higher for triple-A bonds and 3.6 times higher for those rated triple-B.

Decker also asked the Fed to change some guidelines for the IMA so that it would designate municipal credit risk as a 20-day horizon for investment grade and a 40-day horizon for sub-investment grade instead of the 40-day and 60-day horizons the guidelines currently have, respectively. The liquidity horizons refer to the time required to exit or hedge a risk position without materially affecting market prices in stressed market conditions.

He also raised concerns that the IMA guidelines have a floor default rate probability of 0.3% while many munis have default rates that are much lower than 0.3%.

The Bond Buyer

By Jack Casey

December 2, 2016

SIFMA Submits Comments to the Federal Reserve System on FRTB.

On November 30, SIFMA submitted comments to the Board of Governors of the Federal Reserve System on the effects of the Fundamental Review of the Trading Book (FRTB) framework on municipal securities. The letter reviews potential effects of the FRTB on the municipal securities market and offers suggestions for certain clarifications and changes.

SIFMA Comment Letter

Basel Committee’s Release on the FRTB

MSRB's Markup Disclosure Requirements to Take Effect in May 2018.

WASHINGTON – Dealers will have until May 14, 2018 to get ready for requirements that they disclose their markups and markdowns in certain transactions, the Municipal Securities Rulemaking Board announced on Tuesday.

The requirements are the result of MSRB rule changes the Securities and Exchange Commission approved, along with parallel rule changes from the Financial Industry Regulatory Authority, on Nov. 17.

The effective date gives dealers approximately a year and a half to implement the changes necessary to comply with the revised rules. The MSRB had originally recommended a one-year implementation timeline. But dealers complained that they would be facing several other large undertakings during that time period, such as shifting to a two-day settlement cycle from the current three-day cycle, and would have trouble completing everything on time.

Bond Dealers of America said dealers should have been given at least two years to implement the rule while the Securities Industry and Financial Markets Association had pushed for at least three years.

The MSRB will hold a webinar on the rule changes on Jan. 12, 2017.

MSRB chair Colleen Woodell has said that the muni market “will gain an unprecedented level of transparency” when the rule changes become effective.

The changes are to MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The amendments will require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security in an amount that in aggregate equals or exceed the size of the customer trade, to disclose its markups and markdowns in the confirmation it sends the customer. Markup disclosures will have to be given as a total dollar amount and a percentage of the prevailing market price.

There are three exceptions to the rule under which markup disclosure will not be required: an offsetting trade done by a functionally separate trading desk; primary market trades at the list offering price; and trades of municipal fund securities.

The amendments also establish a waterfall of factors for determining prevailing market price, which dealers are to use to calculate their compensation. Dealers initially are to look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They will then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of “non-exclusive factors” like credit quality, size of the issue, and comparable yield that can be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

The main dealer complaint about the rule changes is that it will be difficult to automate a compliance system to take into account the waterfall of factors, with some saying the regulators do not understand the complexity and cost associated with implementing the changes.

The SEC said in its approval order that the MSRB’s changes were reasonably designed to ensure their purpose while limiting the impact of operational challenges for dealers. The commission also concluded that it is feasible for dealers to automate the determination of prevailing market price in accordance with the self-regulator’s guidance and that the changes reflect the lowest overall cost approach to achieving a worthy regulatory objective.

Under the rule changes, dealers will not be allowed to label their markups or markdowns on confirmations as “estimated” or “approximate” but can include explanatory language or disclosures on the confirmations to give context or help investors understand how the markups are calculated. The MSRB has also acknowledged that different dealers can reasonably reach different conclusions as to whether securities are similar for use in the prevailing market price determination.

Dealers are allowed to rely on third-party services as part of their reliance on economic models at the bottom of the waterfall. However, the MSRB has said that if a dealer chooses to do that, it still keeps the ultimate responsibility to ensure the fairness and reasonableness of a price and any markup or markdown under the prevailing market price calculation.

The Bond Buyer

By Jack Casey

November 29, 2016

MSRB Provides Guidance on Application of Rules to Transactions in Managed Accounts.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today provided interpretive guidance for municipal securities dealers to address questions about the application of certain MSRB rules to municipal bond transactions with registered investment advisers having full discretion to purchase or sell municipal securities on behalf of their investor clients.

"The MSRB is offering this guidance in response to questions from dealers about the applicability of disclosure requirements and other MSRB rules to transactions in managed accounts," said MSRB Executive Director Lynnette Kelly. The MSRB's policy on providing interpretive guidance is available on its website.

Specifically, the guidance clarifies certain obligations for dealers that execute transactions with a registered investment adviser that is classified as a "sophisticated municipal market professional" under MSRB rules and authorized to exercise full discretion on behalf of its clients. The guidance makes clear that, for purposes of complying with the rules addressed in MSRB Rule G-48, dealers do not owe obligations to clients of such registered investment advisers beyond those under Rule G-48, which outlines modified obligations for dealers when transacting with sophisticated municipal market professionals.

Date: December 1, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Reminds Dealers of Time of Trade Disclosure Obligations Related to Market Discount Bonds.

The Municipal Securities Rulemaking Board (MSRB) today published a regulatory notice to remind municipal securities dealers of their obligations under MSRB Rule G-47 to disclose to their customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. In periods when interest rates rise, municipal bonds may frequently be sold in the secondary market for less than par value at a market discount. The MSRB's notice states its interpretation that the fact that a municipal security bears a market discount is material information that must be disclosed under Rule G-47 to a customer that is not a sophisticated municipal market professional (SMMP). The existence of market discount may have significant tax implications and therefore impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond.

Read the regulatory notice.

SEC Seeks Record Penalty Against Former Miami Budget Director: Holland & Knight

After a federal jury found the City of Miami's (City) former budget director guilty of defrauding investors in connection with a 2009 bond offering, the U.S. Securities and Exchange Commission (SEC) is seeking a record $450,000 civil penalty against the former official – an amount that is nine times greater than any previous fine against a municipal official.1

In addition, the SEC is seeking a permanent injunction that would bar the City's former budget director from violating anti-fraud provisions of federal securities laws in the future.

The official was found guilty on three of four counts involving violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and that he aided and abetted the City's violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The jury found that both the City and its former budget director hid the City's declining financial position by using inter-fund transfers to cover up a general fund deficit, information that was not disclosed to rating agencies or in three separate bond issues in 2009, totaling $153.5 million.2

Through a settlement, attorneys for the SEC secured an injunction and a $1 million civil penalty against the City for its role in the fraud.3 The SEC now argues that the former official should be fined $150,000 for each of the three 2009 bond issues at question in the civil case.4

In its brief, the SEC stated that "a complete absence of both the sincerity of the former official's assurance against future violations and recognition of the wrongful nature of his conduct dictate that a penalty must be imposed." The SEC gave no indication that the court should reduce the penalty because the former official "remains gainfully employed, earning, per his counsel, about the same amount as he did when he was the budget director."5

The attorney representing the former budget director pushed back on that notion, saying in a court filing that his client "is a man of limited means who has no assets" and that "he has been financially ruined" fighting securities fraud charges.6

The significant penalties sought by the SEC against an employee of a governmental entity reflect the SEC's changing approach in holding individuals accountable. This is a relatively modern trend of the SEC, but the penalties sought against the City's budget director are unprecedented in the municipal context. This is consistent with the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative in which it stated that settlements with a governmental entity did not preclude the SEC from seeking enforcement actions against the staff of such entity. The SEC is clearly signaling that it will hold not only an issuer accountable for bad disclosure but will seek personal penalties against staff as well.

Footnotes

1. See The Bond Buyer article "SEC Seeks a Record $450,000 Penalty Against Miami Official."

2. *Jury Verdict, Securities and Exchange Commission v. City of Miami and Michael Boudreaux, Case No. 13-22600-CIV-ALTONAGO/O'Sullivan, (S.D. Fla. September 14, 2016.)*

3. See Miami Herald article "SEC wants $450,000 penalty against former Miami budget director."

4. Id.

5. See The Bond Buyer article "SEC Seeks a Record $450,000 Penalty Against Miami Official."

6. See The Bond Buyer article "Former Miami Official Says SEC Penalty Would Mean Financial Ruin."

Last Updated: November 22 2016
Article by Michael R. Millett

Holland & Knight

Michael R. Millett is an Associate in our Tampa office.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

SEC Approves MSRB's Markup Rule, Drawing Criticism From Dealers.

WASHINGTON – The Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's proposal to require dealers to disclose their markups and markdowns in certain transactions, drawing criticism from dealers.

The SEC approved the proposal late Thursday along with a parallel one by the Financial Industry Regulatory Authority.

"The commission believes the establishment of a requirement that dealers disclose markups/markdowns to retail investors, as proposed, will advance the goal of providing retail investors with meaningful and useful information about the pricing of their municipal securities transactions," the SEC said in its approval order.

The commission added that the changes will promote transparency of dealers' pricing practices and potentially promote price competition among dealers.

Colleen Woodell, chair of the MSRB's board of directors, said the muni market "will gain an unprecedented level of transparency" when the new rule is put in place roughly a year and a half after the approval date.

"We have been working tirelessly to improve transparency for municipal bond investors and the changes set in motion today will allow them to assess their municipal bond transaction costs in a way similar to other markets," Woodell said.

The MSRB is amending its Rules G-15 on confirmation and G-30 on prices and commissions. The changes will require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

The amendments also establish a waterfall of factors for determining prevailing market price, which dealers will then use to calculate their compensation. Dealers will initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of “non-exclusive factors” like credit quality, size of the issue, and comparable yield that could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Bond Dealers of America and the Securities Industry and Financial Markets Association have consistently criticized the rule changes as overly complex and potentially harmful to market liquidity. The main dealer complaint is that it will be difficult to automate a compliance system to take into account the waterfall of factors.

John Vahey, managing director of federal policy with BDA, said that the group doesn’t believe that regulators fully appreciate the extent to which automating the waterfall is “a serious and complex and costly project for dealers.”

He added that the SEC’s approval follows a recent MSRB letter that said liquidity is a risk to retail investors.

Vahey said complex and costly regulation is a contributing factor to the consolidation of dealers and thus liquidity concerns for the market, which already has 19% fewer dealers today than it did in 2012. The MSRB, in its filings on the rules changes, has acknowledged the possibility that the amendments could lead some firms to exit the market or merge with other firms.

Leslie Norwood, managing director and co-head of municipal securities with SIFMA, said the SEC’s approval of the requirements represents a “monumental change” for dealers and a significant change for investors.

“Now the hard work begins, as the devil is in the details of implementing such a significant change,” she said. “Over the next 18 months, our members will continue to work with the MSRB regarding necessary guidance on this historic new rule,” particularly as dealers work on a number of compliance issues.

Despite the dealer complaints, the SEC concluded that the changes were reasonably designed to ensure their purpose “while limiting the impact of operational challenges for dealers.” It added that it believes it is feasible to automate the determination of prevailing market price in accordance with the proposed MSRB guidance. The SEC also noted that the MSRB has said that the changes reflect the lowest overall cost approach to achieving a worthy regulatory objective.

In addition to the issues with automating the waterfall, dealers had also posed several other compliance-related questions to the MSRB.

The firms had asked about whether they could be allowed to disclose the markups or markdowns on a confirmation as “estimated” or “approximate” given the level of subjectivity involved in some levels of the waterfall. The MSRB said such labelling would not be allowed because it could suggest that the amount listed is unreliable and might diminish the value of having the markup listed. However, the board said dealers could include explanatory language or disclosures on the confirmations to give context or help investors understand how the markups were calculated.

Dealers also questioned how the changes applied to fair pricing determinations. The MSRB said that if a dealer that uses reasonable diligence to determine the prevailing market price of a muni in accordance with the MSRB's guidance discloses a markup based on that determination, it should generally be able to rely on that determination for fair pricing purposes.

The MSRB also acknowledged that different dealers can reasonably reach different conclusions as to whether securities are similar for use in the prevailing market price determination.

Dealers had also questioned whether the reliance on economic models at the bottom of the waterfall could include use of third-party pricing services. The MSRB said that while a dealer can choose to rely on third-party services, the dealer still keeps the ultimate responsibility to ensure the fairness and reasonableness of a price and any markup or markdown under the prevailing market price calculation. The self-regulator also said that a dealer should have a reasonable basis to believe that the third-party pricing service produces evaluated prices that reflect actual prevailing to use it.

The Bond Buyer

By Jack Casey

November 18, 2016

MSRB to Dealers: Inform Investors About Market Discount Bonds at Time of Trade.

Read the MSRB Notice.

NABL: SEC Chair White Expresses Possibility of Issuer Regulation.

On November 14, the House Financial Services Committee held a hearing on the U.S. Securities and Exchange Commission's (SEC) Fiscal Year (FY) 2018 Preliminary Authorization Request. The SEC, in its preliminary request, has asked for $2.227 billion, a $445 million increase over the FY 2017 request. When questioned by members on the request, Chair White emphasized that the increase in funding would help the SEC adapt to its growing complexity and extensive responsibilities. Representative Gwen Moore (D-WI) questioned Chair White on whether Congress should take action relating to SEC regulation over issuers, in light of the 2012 Report on the Municipal Securities Market and the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. Chair White said that while the MCDC Initiative has been successful in increasing awareness of continuing disclosure obligations, the SEC staff is continuing to examine whether the SEC should have greater authority.

Chair White's testimony is available here. A recording of the hearing is available here.

Justice Mulls False Claims Act Charges Against Issuers, Borrowers, MAs.

WASHINGTON — The Justice Department is considering filing civil lawsuits under the False Claims Act against at least five issuers and borrowers, as well as two municipal advisors, for allegedly misusing the Treasury Department's state and local government series securities to exploit interest rates and obtain tens of millions of dollars.

The issuers and borrowers include: Greenville County, S.C., School District; Nationwide Children's Hospital in Franklin County, Ohio; Gulf Breeze, Fla.; the Louisville and Jefferson County Metropolitan Sewer District in Kentucky; and The University Financing Foundation in Georgia, according to documents obtained by The Bond Buyer, bond-related disclosures, and sources.

The municipal advisors are Christopher Monaghan and Michel Garner, who were principals of the now-defunct Enhanced Financial Solutions LLC and are now principals at Echo Financial Products, both based in Pennsylvania. EFS set the five issuers and borrowers up in proprietary "yield enhancement programs" for state and local government series securities (SLGS), according to filings with the Securities and Exchange Commission by Echo.

EFS was affiliated with Pottstown, Pa.-based Investment Management Advisory Group (IMAGE), which shut down following a Justice Department antitrust investigation of bid-rigging of guaranteed investment contracts and other muni bond investments.

EFS' yield management program monitored interest rates and purchased SLGS for the issuers and borrowers, then redeemed and/or modified them when rates changed to obtain redemption premiums.

An issuer, for example, would buy 20-year SLGS, hold them for 30 days, and, if interest rates dropped, sell them back to Treasury at higher prices.

The issuers made huge amounts of money over several-year periods. Greenville County School District, the largest school district in South Carolina, made $67.7 million from 2007 through 2012, the Louisville and Jefferson County MSD made $114.60 million from 2008 through 2011, and Gulf Breeze made almost $64.2 million between 2007 through 2012, according to Treasury documents obtained through the Sunshine Act.

DOJ earlier this year sent letters to the issuers, borrowers and MAs saying it had opened a civil investigation into whether the yield enhancement programs' alleged violation of SLGS rules "implicated" the False Claims Act (FCA).

The FCA imposes liability on persons and companies who defraud governmental programs. It is the federal government's primary litigation tool to combat fraud against the government.

Sources believe Treasury asked DOJ to help it recover some of the ill-gotten gains from the SLGS transactions.

If DOJ filed False Claims Act charges against the issuers, borrowers and MAs and prevailed, it could obtain triple damages as well as $5,500 to $11,000 per claim.

DOJ told the issuers, borrowers, and MAs that it could take other action, such as filing suits charging them with common-law breach of contract, fraud, or unjust enrichment.

But DOJ's preference, according to the letters it sent the alleged violators, would be to settle the disputes over the SLGS transactions without resorting to litigation.

The issuers and one borrower said they are cooperating with DOJ.

"The investigation remains in its early stages, and the hospital has had only preliminary discussions with DOJ to this point," Nationwide Children's Hospital said in the official statement for $129.3 million of revenue refunding bonds Franklin County, Ohio sold for it. "At this point the hospital cannot predict the outcome of the DOJ investigation, including the potential materiality of any monetary consequences."

All but one of the other issuers and borrowers made similar disclosures in bond documents. Some made statements to The Bond Buyer and provided documents under the Sunshine Act.

Officials with The University Financing Foundation refused to comment and did not make any disclosures. Nationwide Children's Hospital officials said they could not comment further than their disclosure because of the ongoing investigation.

A Treasury spokesman said the department probably would not be able to provide documents because of an ongoing investigation and privacy issues. But some issuer officials talked about the DOJ probe.

Doug Webb, general counsel for the Greenville County School District, told The Bond Buyer, "The school district participated in the [SLGS] program from 2007 to 2013. This program was administered by a financial services provider on behalf of the school district and was also utilized by other municipal bond issuers. The school district used this investment program for the sole benefit of its students and constituents."

Gulf Breeze city manager Edwin Eddy said, "We are not taking it lightly. We hired a law firm, and determined that other agencies received the same legal advice we did. We're taking it seriously to make sure we are prepared."

The issuers, borrowers and MAs, who don't think they did anything wrong, have hired lawyers that specialize in tax and government controversies, as well as the False Claims Act. The Greenville County School District is being represented by Bryan Cave, their lawyers said. The Louisville and Jefferson County MSD has hired Brad Waterman, a lawyer with his own tax controversy practice. Gulf Breeze has hired Jenner & Block. Several other bond counsel and law firms are involved. Michael Schwartz, a former U.S. attorney who is now a partner at Pepper Hamilton in Philadelphia, represents Monaghan and Garner and EFS. Most of these lawyers, with the exception of Schwartz, either could not be reached for comment or declined to comment.

SLGS Program

The SLGS program was created in 1972. SLGS are non-marketable special purpose securities issued by Treasury and purchased by state and local governments to help them comply with yield restriction and rebate requirements on their investments of bond proceeds.

SLGS are often purchased by issuers for their advance refunding escrows as alternatives to open-market Treasuries. Their maturity dates can be tailored to those of the bonds being refunded. But issuers can invest other bond proceeds in them as well.

In Gulf Breeze, reserve funds and replacement funds were invested in SLGS, documents show. The city also purchased SLGS with some of the proceeds from a $500 million variable-rate local government pool bond program that began in 1985 to provide loans to municipalities across the state.

In 1996, Treasury revised its rules to make SLGS more flexible for issuers. A year later, Treasury amended the SLGS rules to halt perceived abuses. The preamble to the rules said the amendments were to prohibit issuers from purchasing both SLGS and open-market Treasuries for the same advance refunding escrow as a “cost-free interest rate hedge or option for speculation in open market securities.” The rules contained examples of impermissible transactions involving purchase of both SLGS and open-market Treasuries.

In 2005, Treasury published final SLGS rules that expanded the examples of impermissible transactions, but all of the examples involved interest rates exploited through the use of SLGS and open-market Treasuries. None of the examples involved just SLGS.

SLGS Transactions

In September 2006, March 2008 and February 2012 letters, C. Willis Ritter, a lawyer at Ungaretti & Harris at that time who served as both special tax counsel and special SLGS counsel to Gulf Breeze and helped prepare its SLGS agreement, assured Gulf Breeze and later other issuers that the yield investment program did not violate SLGS rules and would not warrant any enforcement action from Treasury, according to documents.

Ritter had said in an earlier brief sent to clients and obtained by The Bond Buyer that the 2005 final SLGS rules “indicated” it was permissible to do these transactions. He could not be reached for comment.

Treasury became aware of EFS’ yield enhancement program and in October 2013 it began an administrative process to determine if the program violated SLGS rules. Treasury officials created a SLGS working group comprised from departmental staff to review the transactions done under the program and to submit a report and recommendations on those transactions. The department gave the issuers, borrowers and MAs the opportunity to tell it why their investment programs didn’t violate SLGS rules.

In December 2013, the late Frederic “Rick” Ballard, with Ballard Spahr, responded to Treasury on behalf of EFS, the Greenville County, S.C. School District, Gulf Breeze and Nationwide Children’s Hospital. He, like Ritter, said that Treasury had given an “implied” approval to these SLGS deals when it specifically proposed prohibiting them in the Notice of Proposed Rulemaking for the final rules, but then deleted that section from the final 2005 rules.

Ballard also said the issuers and borrowers had relied on counsel and that the transactions took place over an extended period of years, openly in filings with Treasury’s Bureau of Fiscal Service.

“EFS and the [SLGS] purchasers were not trying to hide anything from anyone,” he said.

Treasury Probe and Sanctions

In 2014, then-Treasury Fiscal Assistant Secretary Richard Gregg sent letters informing the issuers, borrowers and MAs that EFS’ yield enhancement program violated SLGS rules when they: purchased a long-term SLGS security and redeemed it before maturity to capture a redemption premium; changed the maturity or interest rate of a SLGS security already subscribed for to take advantage of interest rate movements; and changed the SLGS subscription amount, in response to movements in interest rates, in order to maximize redemption premiums or minimize potential losses.

Based on the SLGS Working Group recommendations, Treasury suspended the issuers and borrowers from the SLGS program for five years. Treasury permanently barred Monaghan and Garner from the program, according to disclosure documents and Echo’s filings with SEC.

Then earlier this year DOJ opened up its investigation.

Defenses
The issuers, borrowers and MAs are pushing back against DOJ on several fronts. First, they don't think they did anything wrong. They had opinions from bond counsel, special tax counsel, SLGS counsel and financial advisors that the SLGS transactions did not violate SLGS rules. They say they relied on these opinions.

"When it comes to dealing with the Justice Department, if you have an opinion that was written in good faith, there is no basis to go after the person relying on that opinion for any kind of fraud or improper conduct," Schwartz said.

The issuers, borrowers and MAs also say they openly bought and sold the SLGS over many years and Treasury never questioned the purchases and sales.

In addition, they said that, when informed by Treasury that their transactions violated SLGS rules, they stopped doing them and that Treasury sanctioned them with the suspensions. They thought this meant the case was closed.

"When we received word back from the Department of the Treasury that we shouldn't be doing that, we said, 'OK, we'll stop immediately,'" said Eddy.

In letters sent to them regarding the suspensions, Treasury said, "This constitutes the FINAL AGENCY ACTION in this matter. The decision will not be reconsidered and may not be appealed to any other officials in the department of the Treasury." It said, however, that the issuers and borrowers could seek judicial review of Treasury's findings and actions.

The issuers and MAs said they didn't agree with Treasury but didn't contest the suspensions.

But sources said federal officials contend Treasury had no way to impose penalties or recoup ill-gotten gains for the SLGS violations under the SLGS rules. The 2005 rules list the remedies available to Treasury for abuses. They include rejections of SLGS subscriptions and suspension or revocation from the SLGS program. The rules don't permit Treasury to seek penalties, sources said.

"You've got to remember that this is a Treasury borrowing program," said one source who did not want to be identified.

Some lawyers representing the issuers and borrowers argue that DOJ will never be able to file charges against the issuers and borrowers under the FCA because it bars tax claims. They said the SLGS program involves tax rules because it is designed to help issuers comply with arbitrage and yield restriction rules.

They point to Michael Lissack's False Claims Act suit against Sakura Global Capital Markets, which was shot down by the U.S. Court of Appeals for the Second Circuit in New York City because it involved tax claims.

Lissack accused Sakura of yield burning, which means selling issuers open-market Treasuries at inflated prices to "burn" down their investment yields. Appeals court judges dismissed the suit because the FCA contains a "tax bar" that excludes coverage of all "claims, records, or statements made under the Internal Revenue Code of 1986."

But Lissack was successful in filing FCA charges against broker-dealers for yield burning and his charges involved SLGS. Lissack argued that by getting issuers to invest in open-market Treasuries, the broker-dealers deprived Treasury of SLGs subscriptions and the revenue from that program that it normally would have had.

In April 2000, 17 regional and national broker-dealers and investment advisors agreed to a total of $140 million to settle the charges. Lissack made millions of dollars from the settlements.

In this latest SLGS controversy, Schwartz said, "We are fully cooperating with the Department of Justice and expect that when it thoroughly reviews all of the evidence it will determine that there is no basis to believe that Enhanced Financial did anything improper."

The issuers and borrowers are also hoping DOJ will decide not to take any action against them.

The Bond Buyer

By Lynn Hume and Shelly Sigo

November 15, 2016

Municipal Securities Investors to Gain Access to Dealer Compensation Information.

Washington, DC – Ushering in an historic change for transparency of the municipal market, the Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to require municipal securities dealers to disclose their compensation when transacting with retail investors. The MSRB has worked in coordination with the Financial Industry Regulatory Authority (FINRA), and the SEC also approved a similar rule proposed by FINRA for the corporate and agency debt markets, which harmonizes the new requirements across these fixed-income markets.

"The municipal bond market will gain an unprecedented level of transparency when this new rule is put in place," said Colleen Woodell, Chair of the MSRB Board of Directors. "We have been working tirelessly to improve transparency for municipal bond investors and the changes set in motion today will allow them to assess their municipal bond transaction costs in a way similar to other markets."

Retail investors in municipal securities receive less information on their written transaction confirmations about the cost of their transactions than investors in, for example, equities. The rule approved by the SEC will provide municipal retail investors with meaningful and useful pricing information to help them better evaluate the overall cost of their municipal securities transactions. The new MSRB rule will go into effect in 18 months.

When the rule is in place, municipal securities dealers will be required to provide retail investors information about dealer compensation, in the form of a mark-up or mark-down, for certain transactions. The MSRB expects the disclosure to affect an estimated 8,000 retail investor municipal securities transactions each day. "Disclosure of dealer compensation to investors will go a long way to helping municipal securities investors better understand the cost of buying or selling a bond," Chair Woodell said.

The specifics of the MSRB's rule focus on when a dealer in a principal capacity (for the dealer's own account) purchases from or sells to a retail customer and on the same day has an offsetting sale or purchase of the same security to or from a third party. The rule requires that a dealer disclose on the customer's confirmation the dealer's compensation, in the form of a "mark-up" or "mark-down" from the "prevailing market price" of the security. In addition to providing the dollar amount and percentage of the dealer's compensation on a trade, the confirmation would include the investor's time of the trade and a link to trade price data about the security on the MSRB's Electronic Municipal Market Access (EMMA®) website.

The rule changes include guidance for dealers on establishing the prevailing market price of a security, from which a dealer's mark-up or mark-down is determined. The guidance builds on existing guidance under the MSRB's fair pricing rules, which requires dealers to use reasonable diligence in establishing the prevailing market price of a municipal security, and is also generally harmonized with prevailing market price guidance previously adopted by FINRA and applicable to other fixed income securities.

The MSRB's detailed explanations in its rulemaking materials are designed to assist dealers in understanding the MSRB's regulatory intent for the application of the mark-up disclosure rule and prevailing market price guidance to different trading situations and the unique characteristics of the municipal market, which has more than one million individual bonds, most of which do not trade frequently. For example, the MSRB's materials specifically address establishing the prevailing market price by reference to contemporaneous customer transactions; the ability of dealers to calculate their compensation at the time of disclosure to a customer; the frequent absence of pricing information for sufficiently comparable municipal securities; and the implications of transactions with affiliated dealers.

Date: November 18, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Files Amendment to Mark-up Disclosure Proposal.

The Municipal Securities Rulemaking Board (MSRB) has filed with the Securities and Exchange Commission (SEC) an amendment to its rule proposal to require the disclosure of mark-ups and mark-downs to retail customers on certain principal transactions and to provide guidance on prevailing market price. The original proposed rule change, filed on September 2, 2016, consisted of proposed changes to MSRB Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, and MSRB Rule G-30, on prices and commissions.

The amendment addresses comments received by the SEC on the original proposal. The amendment extends the proposed implementation period from one year to 18 months and makes several minor technical changes and clarifications as follows:

- Clarifies that the proposed rule change requires disclosure only in cases where the retail customer trade has an offsetting same-day principal trade;
- Replaces the requirement that dealers disclose a link to a specific existing page on EMMA (i.e., the "Security Details" page) with a more generic requirement to disclose a link in a format specified by the MSRB to a webpage on EMMA that contains trading data for the security;
- Requires dealers to disclose the time of execution only for retail customer confirmations, rather than for both retail and institutional customer confirmations; and
- Clarifies that a dealer, when considering relevant factors to determine the degree to which a municipal security is similar to another, may look to the spread over U.S. Treasury securities of a

similar duration or over an "applicable index," to account for the guidance's applicability to both taxable and tax-exempt municipal securities.

View the full amendment.

MSRB Announces February 27, 2017 Effective Date of Academic Historical Data Product.

The Municipal Securities Rulemaking Board (MSRB) announced today that its Academic Historical Transaction Data product, comprised of post-trade municipal securities transaction data collected through the Real-Time Transaction Reporting System (RTRS), will be effective February 27, 2017. As of that date, the RTRS Academic Data Product will be available to academic institutions for a fee and will improve their ability to perform research by enabling them to distinguish transactions executed by different dealers through the use of anonymized identifiers. Read the full regulatory notice.

The MSRB currently makes municipal securities trade data available to academics through a partnership with Wharton Research Data Services. RTRS data is made available to the public at no charge on the Electronic Municipal Market Access (EMMA®) website.

MSRB Academic Trade Data Product Available Feb. 27.

WASHINGTON – The Municipal Securities Rulemaking Board announced on Thursday that starting Feb. 27, academic institutions will be able to request one-year data sets from a new data product that will identify dealers in some way without naming them.

The data in the product will come from post-trade municipal securities transaction information collected through the Real-time Transaction Reporting System (RTRS) and will be three years old at the time it is provided. Academic institutions will be able to request the data sets on a rolling basis for a fee of $500 for each year of data, with a one-time initial set-up fee of $500.

The MSRB said last month in an SEC filing announcing the fee that while it usually waives fees associated with MSRB subscription services or historical data products for nonprofit organizations, it feels the fees for the new product are appropriate and not overly burdensome given the additional legal and operational effort that establishing the new product required.

"The establishment of the RTRS Academic Data Product adds to the MSRB's current offering of data products and furthers the MSRB's mission to improve the transparency of the municipal securities market by facilitating access to municipal market data for academic institutions," the MSRB said in its regulatory notice announcing the effective date.

The data product is the result of changes to MSRB Rule G-14 on reports of sales and purchases, which requires dealers to report municipal security trade information to the MSRB's RTRS within 15 minutes of the time of trade. The SEC approved the rule change in September.

The MSRB already makes much of the data reported to RTRS publicly available through its EMMA system as well as through subscription services or historical data sets, but none of the currently available data differentiates between dealers. The lack of dealer identifiers limits a researcher's ability to fully understand secondary market trading, according to the MSRB.

The self-regulator said the new data, which will not include information about list offering prices and takedown transactions, is the result of requests certain academics have made for an enhanced version of RTRS trade data that includes dealer identifiers.

Academics showed their support for the new product in comment letters sent to the MSRB after the self-regulator first announced the idea in July 2015. However, Bond Dealers of America and the Securities Industry and Financial Markets Association said they were concerned that the identifiers would open their members up to harmful reverse engineering.

The MSRB responded to those concerns by strengthening the conditions that would apply to academics who use the product. Any academic institution that wants access to the data product will have to agree: not to attempt to reverse engineer the identity of any dealer; not to redistribute the data in the product; to disclose each intended use of the data; to ensure that any data presented in work products be sufficiently aggregated to prevent reverse engineering of any dealer or transaction; and to return or destroy the data if the agreement is terminated.

The data will also only be available to academics associated with institutions of higher education.

Lynnette Kelly, the MSRB's executive director, has said the self-regulator took measures to make the data "as rich as possible for researchers while guarding against the potential for reverse engineering to identify the dealers in a particular transaction."

However, SIFMA and BDA, in their last comment letters to the SEC before the rule changes to create the product received approval, said they still had concerns.

SIFMA appreciated the MSRB's changes to strengthen the protections against reverse engineering, but Leslie Norwood, SIFMA managing director and co-head of municipal securities, said the group felt its concerns "were largely dismissed in the adoption of the changes" and did not believe the suggested MSRB's limitations in the user agreement are sufficient to prevent potential misuse of data.

BDA said that it still thinks it is very likely that private and non-educational entities will end up getting the full trade history, including dealer names, for every trade released through the product. John Vahey, managing director for federal policy with BDA, urged regulators to be vigilant in protecting the integrity of the marketplace in the future.

The Bond Buyer

By Jack Casey

November 17, 2016

MSRB Extends Effective Date, Clarifies Provisions in Markup Filing.

WASHINGTON – The Municipal Securities Rulemaking Board wants to amend its proposal to require dealers to disclose their markups and markdowns in certain transactions by lengthening its implementation timeline and clarifying provisions that market participants have criticized.

The MSRB filed its proposed amendments, which also made two changes in what a dealer would have to disclose on the confirmations, with the Securities and Exchange Commission late Monday.

The MSRB's original proposal, filed with the SEC for approval on Sept. 2, would modify MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The modifications would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

They also would establish a waterfall of factors for determining prevailing market price, which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Dealers had said in past comment letters that the one-year implementation timeline the MSRB had proposed would not give them adequate opportunity to address the complex changes that would be needed to automate compliance with the waterfall. They also pointed out that they will be dealing with other large market changes like the shift to a two-day settlement cycle at the same time.

The MSRB is now proposing to extend that timeline by six months in an effort to "assist dealers in meeting the requirements of the proposed rule change and mitigate the costs of implementations," according to the self-regulator.

John Vahey, managing director of federal policy for Bond Dealers of America, said that BDA is "happy to get an additional six months," but said dealers "could have used a longer time in light of all the rules that are out there."

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA appreciates the extended implementation period to deal with the "monumental set of operational changes for dealers" under the rule.

The MSRB's amendments would also make two changes to the information dealers would have to include on their customers' confirmations. Dealers would only have to include the time of execution on confirmations to retail investors and not on confirmations for institutional customers as they would have been required to do before. The MSRB said it concluded that the likely costs of requiring dealers to give the information on institutional confirmations may exceed the benefits of the disclosure.

Dealers would also now be required to disclose, in a format specified by the MSRB, a reference and, if the confirmation is electronic, a hyperlink, to a webpage on EMMA that contains publicly available trading data for the specific security that was traded. That language is more generic than the original filing, which would have required dealers to disclose a link to a specific existing page on EMMA.

The MSRB said that using the slightly more general language would allow it to continue trying to make the landing page for investors that access EMMA more retail investor-friendly.

Two other changes the MSRB proposed would serve to clarify provisions of the rule. One would make clear that the rule would be triggered only when a customer trade for a non-institutional account has an offsetting principal trade. Another would modify the inclusion of spread in the non-exclusive list of relevant factors a dealer could use to determine whether a security is similar for purposes of calculating prevailing market price.

The original filing used the example of a spread between munis and U.S. Treasury securities of a similar duration for a prevailing market price determination, but market participants noted that Treasuries are most relevant to taxable munis, not tax-exempt bonds. In response, the MSRB is clarifying that dealers can consider the extent to which the spread over an "applicable index" at which the similar municipal security trades is comparable to the spread at which the subject security trades.

The Bond Buyer

By Jack Casey

November 15, 2016

N.Y. Audit Firm Settles SEC Charges Of Issuing Fraudulent Reports.

A New York audit firm agreed to settle SEC charges that it had issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, N.Y. and its local development corporation.

The SEC found that the firm and its senior partner:

- allowed Ramapo to record a $3.08 million receivable in its general fund for a property sale that the senior partner knew had not occurred;
- ignored red flags and relied upon what turned out to be false representations by Ramapo officials about certain other receivables, interfund transfers and liabilities; and
- failed to take appropriate steps to mitigate the risk of material misstatements even after senior management became aware that Ramapo's financial statements were the subject of multiple law enforcement investigations and the senior partner received complaints about possible fraud.

The firm agreed to: (i) forfeit approximately $380,000 in audit fees and interest and pay a $100,000 penalty; and (ii) engage an independent consultant. In addition, the senior partner agreed to pay a $75,000 penalty and be suspended from practicing public company accounting. Further, he is prohibited from acting as the engagement partner or engagement quality control reviewer on any municipal audit for five years.

Commentary

While one cannot say that there has been a flood of enforcement actions in which the activities of municipal officials have been scrutinized, there is enough to make it clear that the SEC is paying attention.

Last Updated: November 10 2016

Article by Steven D. Lofchie

Cadwalader, Wickersham & Taft LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Groups Want MSRB to Focus on EMMA, Market Costs as Strategic Goals.

WASHINGTON – The Municipal Securities Rulemaking Board should focus its future strategic priorities on improving EMMA, increasing transparency of board operations and costs, and doing more cost-benefit analyses of its rulemaking, municipal market groups and participants told the MSRB.

The groups made their recommendations in response to the self-regulator's call for input about where it should direct its long-term strategic plan.

Mike Nicholas, Bond Dealers of America's chief executive officer, said that BDA believes the MSRB is entering into a new regulatory phase and that "this is the time for the MSRB to focus on ways to improve the municipal securities market that do not involve the types of sweeping and burdensome rulemakings that the MSRB has worked to adopt in recent years."

He said that future MSRB technological changes should focus on narrowing the gap between the corporate and muni markets.

"For all the rhetoric of the need of the municipal securities market to parallel the corporate securities market, the most obvious difference between the two … remains the antiquated technological infrastructure" of the muni market, Nicholas said.

BDA pointed out that issues in the corporate market are organized along industry categories while munis are almost exclusively organized by CUSIP number.

"This provides no organization to the types of issuers within the market and reduces the value of pricing disclosures for investors," Nicholas said. He added that while EMMA currently has issuers post their disclosures to EMMA using relevant CUSIP numbers and allows investors to receive notice of those filings based on CUSIPs, it does not allow an issuer-based disclosure system. The lack of such a system prevents an investor from being notified when for example the issuer of bonds the investor owns publishes a preliminary official statement relating to the same credit as the bonds the investor holds, BDA said.

The National Federation of Municipal Analysts also suggested changes be made to EMMA that could be useful to both its members and the market generally. NFMA recommended that the MSRB: improve EMMA's search function to allow for more narrow searches; provide more descriptive information in alerts; connect remarketing of securities to the original issue; and provide more transparency about issuers' compliance with parts of their continuing disclosure agreements like the timeframe for filing.

NFMA asked that the MSRB provide procedures to reduce errors on EMMA and correct already existing errors like misfiled or mislabeled postings.

The Government Finance Officers Association similarly asked the MSRB to make it easier for issuers to correct or modify the data it has already submitted to the system.

“Changing or correcting data is often unreasonably difficult or sometimes impossible for issuers attempting to provide timely, relevant and accurate disclosure of information,” said Emily Brock, director of GFOA’s federal liaison center.

NFMA also recommended the MSRB change EMMA to: link bonds not only by the issuer but by the ultimate borrower and project; encourage more uniform electronic submissions of data; and provide a mechanism to identify active material events and those that have been resolved.

The Securities Industry and Financial Markets Association said that one of the MSRB’s focuses should be on ensuring that a “robust cost-benefit analysis” is a key factor in evaluating the application of regulatory actions. Michael Decker, managing director and co-head of munis with SIFMA who wrote the group’s letter, asked that the self-regulator report the data, assumptions, and models from which it derives its cost-benefit conclusions when describing its rulemaking proposals.

BDA similarly said that there needs to be a deeper review of the cost-benefit analysis of the MSRB’s rulemakings, specifically through a retrospective regulatory cost-benefit analysis that “would improve the quality of the regulatory process and ensure that competition is not necessarily harmed by new regulations.”

Nicholas recommended that the MSRB “conduct a study to consider how the cumulative regulatory changes have resulted in increased costs, burdens, and inefficiencies” and suggest needed changes.

Decker and SIFMA also asked that the MSRB both review its fee structure and budgeting process to make sure that costs are properly allocated across regulated entities and implement a longer-term outlook in its budget process.

“While we appreciate MSRB fee rebates, it would be better for the MSRB to set fees at a level that does not result in excessive surpluses, necessitating the need for rebates,” Decker said.

Additionally, SIFMA asked for guidance on how MSRB Rule G-34 on CUSIPs applies to bank transactions and how MSRB rules apply in accounts where investment advisers have full discretion. It also asked that the MSRB make a stronger commitment to harmonizing rules with other regulators and revise its approach to informal guidance to be more responsive to firms’ questions about MSRB rules.

GFOA asked for more transparency around MSRB operations, including making sure board meeting agendas and minutes are posted and that issuers have equal representation on the board with other market participants, such as dealers, investors and MAs.

The Bond Buyer

By Jack Casey

November 14, 2016

[SEC Approves FINRA Plan to Disclose Mark Ups in Bond Prices.]

The Financial Industry Regulatory Authority (FINRA) said the U.S. Securities and Exchange Commission had approved a plan that would require brokerage firms to disclose how much they mark up the price of most bonds they sell to retail customers.

The SEC also approved a similar plan by the Municipal Securities Rulemaking Board, which regulates municipal advisers and bond dealers, the Wall Street watchdog said on Friday.

The two controversial plans aim to help the public assess the fairness of prices charged by brokers for corporate and municipal bonds.

The securities industry had balked at the plan saying it would be expensive to implement, unnecessary and potentially confusing to investors.

Individual dealers determine the price at which they sell or buy bonds, unlike stocks that have a price publicly available on an exchange.

FINRA said on Friday it would announce when the new rule would be implemented in an upcoming regulatory notice.

Reuters

Fri Nov 18, 2016 | 11:13am EST

(Reporting by Sruthi Shankar in Bengaluru; Editing by Shounak Dasgupta)

[Banker's Roles with Issuer-Related Charitable Groups Raise Questions.]

LOS ANGELES – A Wells Fargo Securities banker may not violate municipal bond rules by serving on the boards of school district charitable foundations and then obtaining the schools' underwriting business, but some securities lawyers say there is a perceived conflict of interest that should be disclosed.

The banker, Craig Brast, serves on the boards of two Houston-area charities, the Spring Independent School District Education Foundation and the Aldine Education Foundation. Brast doesn't live within school district areas, although he is a resident of Houston and he went to Westfield High School in Spring ISD.

The foundations are nonprofits that raise money for the Spring ISD and Aldine ISD through events such as golf tournaments as well as direct donations. The foundations are distinct entities governed by volunteer boards of directors that are separate from the school district. The school districts, however, publicly encourage support of the foundations.

Brast was a founding member of the Aldine foundation when it was created in 2012 and has served as a volunteer member of the board on the Spring foundation for about five years. He continues to serve on both boards.

Brast has personally given money to the foundations. Neither Wells Fargo nor the foundations would disclose the amounts. A Wells Fargo spokesman said the bank gave about $4,000 to the Spring

Foundation and $1,250 for the Aldine Foundation's golf tournament fundraiser last year.

Since 2012, when the Aldine foundation was created, the Aldine ISD has done two negotiated transactions and Wells Fargo was the lead underwriter on both, according to Thomson Reuters data.

The most recent was $266.84 million of school building and refunding bonds that the Aldine ISD issued in January of this year. In the other deal the school district issued $45.6 million of school building and refunding bonds in October of 2013.

Wells Fargo was involved in Spring ISD's most recent transactions as well. It was lead underwriter for $80 unlimited tax refunding bonds issued in June 2016 and a member of the underwriting syndicate for $136.9 million of unlimited tax refunding bonds issued in December 2015. The bank was not involved in five earlier negotiated transactions Spring ISD did dating back to July 2011.

Wells Fargo doesn't believe the contributions or Brast's involvement with the foundations and donations represent any conflicts of interest.

Municipal Securities Rulemaking Board rules do not bar bankers from giving to issuers' charitable groups.

Its Rule G-20 on gifts and gratuities prohibits dealers from giving, directly or indirectly, anything or service of value in excess of $100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer.

The MSRB's Rule G-37 on political contributions bars dealers and their municipal finance professionals from underwriting transactions with issuers for two years if they contribute to issuer officials who can influence the award of negotiated muni business. The rule states that dealers cannot do indirectly what they are prohibited from doing directly. But it only covers contributions to issuer officials.

The board's Rule G-17 on fair dealing requires that underwriters disclose to issuers with whom they do business any "potential or actual material conflicts of interest" inherent in the relationship.

Underwriters send issuers disclosure letters when they are engaged to do business, commonly called "G-17 disclosure letters" because they are designed to satisfy that rule's requirement that conflicts of interest or potential conflicts be disclosed.

Neither of the G-17 letters that Brast sent to the two school districts, which were obtained by The Bond Buyer through Freedom of Information Act requests, mentioned his involvement or contributions to the charitable foundations. The letter sent to Aldine ISD was dated Jan. 6, 2016 and the letter sent to Spring ISD was dated Nov. 30, 2015.

Securities lawyers who declined to be named in order to offer analysis of the circumstances said that pay-to-play rules such as the MSRB rules do not cover contributions to charitable foundations, even in cases where the gifts were at the request of, or to curry favor, with public officials.

But one of them said that such a banker's relationship with both an issuer and the issuer's money-raising foundation could be a problem.

"Even if it's not explicitly against G-37 or G-20, you still have to consider whether it's a conflict of interest," that attorney said.

That attorney said the situation in Houston is not unlike others around the country where charitable organizations serve as middlemen between issuers and dealers who obtain their negotiated municipal underwriting or advisory business.

He said that it was quite possible the Securities and Exchange Commission might find such relationships to be something that should be disclosed, because it could at least raise a question for investors about whether a firm is getting business because it also has another relationship with that issuer that is financially beneficial to the issuer.

“People should be weighing it,” the lawyer said. “If you’re not even thinking about it, that’s a problem.”

Wells Fargo spokesman Gabriel Boehmer said that the bank gives generously to non-profit organizations in Texas and nationwide, and gave about $9.4 million to Texas charities last year including the donations to the Spring and Aldine foundations.

Boehmer confirmed that Brast gives a small donation to both foundations annually, declining to specify the amounts. He added that Wells Fargo has business relationships with hundreds of Texas school districts and that Brast’s work covers issuers throughout the Southwest.

Boehmer said that Wells Fargo employees serve on the boards of many charitable organizations, and that Brast’s work to raise money for Spring and Aldine ISDs does not create a conflict of interest requiring a disclosure.

“In our view the education foundations, which are nonprofits, and the school districts are totally separate entities,” he said. “It might appear to the casual observer that the school district and the foundation have a relationship, but they do not have a business relationship at all.”

The Bond Buyer

By Kyle Glazier

November 18, 2016

NFMA Responds to MSRB's Request for Comment.

The National Federation of Municipal Analysts has submitted a response to the MSRB’s request for public input on its long-term priorities “to help guide the strategic direction of the organization”. The NFMA’s comment letter, dated November 10, 2016, can be found by clicking here.

MSRB Reminds Municipal Securities Dealers of the November 16, 2016 Effective Date of Amendments to Rule G-12 on Close-out Procedures.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal securities dealers that the amendments to MSRB Rule G-12 on uniform practice, regarding close-out procedures for municipal securities, will become effective on November 16, 2016. Among other changes, the amendments require that inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10-calendar day extension at the buyer's discretion. The changes seek to reduce the risk and cost associated with inter-dealer fails.

Read the regulatory notice.

View the approval order.

SEC Investor Advocate Recommends Approval of FINRA and MRSB Proposals on Mark-up Disclosure.

Earlier this week, the Investor Advocate of the U.S. Securities and Exchange Commission recommended to the SEC that they approve the proposals from the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) to require disclosure of mark-ups and mark-downs from prevailing market price on retail customer confirmations, relating to certain transactions in fixed income securities and municipal securities.

Comment Letter from the Investor Advocate

SEC Filing Published in Federal Register

SIFMA's Recent Comments to SEC on Proposed Rule Changes

BDA Submits Comment Letter to MSRB on Long-Term Strategic Priorities.

On November 10, 2016, BDA submitted a comment letter to the MSRB on its request for comment on its long-term priorities and initiatives related to its core activities and goals to promote a fair and efficient municipal market. You can view MSRB's request for comment here.

MSRB requested feedback from market stakeholders on areas where it should focus its strategic priorities and how it should prioritize its core activities. BDA's letter recommends that MSRB:

- After many years of significant regulatory change, focus on ways to improve the municipal securities market that do not involve sweeping and burdensome new rules
- Enhance EMMA to allow for users to search by issuer and not be a primarily CUSIP-based system
- Harmonize the requirements of Rule G-15 with the recently adopted changes to SEC Rule 10b-10
- Conduct a study to consider how the cumulative regulatory changes over the past five years have resulted in increased costs, burdens, and inefficiencies, and suggest changes it would recommend as a result of the study
- Increase issuer education efforts
- Encourage the voluntary filing of bank loan information by recognizing and mitigating disclosure liability concerns

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MSRB Identifies Potential Risks for Retail Municipal Market Investors.

Washington, DC – In a recent letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, the MSRB identified disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern.

“As the primary regulator for the municipal market, it is our responsibility to identify areas where we believe retail investors may be at risk,” said MSRB Executive Director Lynnette Kelly. “Our letter aims to communicate to the Investor Advocate our top concerns, in addition to highlighting what the MSRB is doing to address these concerns.”

The first area of concern involves issuer disclosure practices, including bank loan disclosures, the timeliness of submissions, selective disclosure practices and clarity of general obligation pledges in high-profile municipal bankruptcies and restructurings. The MSRB promotes the transparency and availability of municipal market information, and is continuing to emphasize the importance timely disclosures submitted to its Electronic Municipal Market Access (EMMA®) website by issuers.

The MSRB’s letter identifies price fairness and transparency in the municipal market as another area of concern. The MSRB has led multiple initiatives this area including implementing a best-execution rule for municipal market transactions and adding additional post-trade data to EMMA®, and additional initiatives are underway. The MSRB has asked the SEC to approve a proposed rule to help investors better understand the cost of buying and selling a municipal bond, and will continue to make enhancements to EMMA® to support pre-trade price transparency in the market.

The letter also warns that changes in the “ownership profile” of municipal bonds since 2010 have increased the risk that a rise in interest rates could lead to market dislocation and reduced liquidity in the municipal market. The letter cites greater mutual fund ownership and reduced dealer inventories as factors in the risk for investors, and highlights the decline in the number of municipal securities dealers, which has fallen 19 percent since 2012.

MSRB provides multiple free investor education resources related to interest rate risk including Impact of Market Interest Rate Movement on Municipal Bond Prices and Yields, Evaluating a Municipal Bond’s Interest Rate Risk and The Importance of Monitoring Municipal Bonds. “Municipal bond investors can use these resources to learn about the risks of interest rate changes and considerations to discuss with their financial professional,” Kelly said. The MSRB also makes available an online course aimed at financial professionals called Rules and Risks: Applying MSRB Rules in Relation to Municipal Market Risks.

The MSRB’s letter to the Investor Advocate also identifies protection of senior and vulnerable investors as an issue of increasing importance. The MSRB is focused on bringing awareness to existing protections for these investor groups, and helping financial professionals better understand the needs and risks surrounding these investors.

The MSRB wrote to SEC Investor Advocate Rick Fleming in response to a request that the MSRB identify products and practices within the municipal securities market that may have an adverse impact on retail investors.

Date: November 10, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Announces Members of Investor Advisory Group.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its 2017 Investor Advisory Group, which provides the MSRB's Board of Directors with access to additional expertise on municipal market practices, transparency and investor protection issues.

Members of the 2017 MSRB Investor Advisory Group are:

- Fred S. Cohen, SVP/Director, Municipal Bond Trading, AllianceBernstein LP
- Jim Ladge, COO and Portfolio Manager, Appleton Partners, Inc.
- Geoffrey L. Schechter, Investment Officer, MFS Investment Management
- Justin Schwartz, Head of Municipal Money Markets, Vanguard Group, Inc.
- Ben Smelser, Vice President and Senior Trader, Breckinridge Capital Advisors

"As the MSRB advances several significant investor protection proposals, the Investor Advisory Group will help ensure that the MSRB's policies are informed by the expertise and perspectives of a diverse group of investors," said MSRB Chair Colleen Woodell.

Among the topics the MSRB is addressing this year are primary offering practices and the potential addition of pre-trade data to the Electronic Municipal Market Access (EMMA) website. The advisory group, created in 2015, will meet periodically throughout the year, as directed by the Board.

Date: November 10, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Board Discusses Mark-up Disclosure and Other Topics.

The MSRB Board of Directors held its first quarterly meeting October 26-27, 2016 where it discussed multiple initiatives aimed at protecting investors and promoting a fair and efficient municipal securities market, and held annual meetings with leadership of the Securities and Exchange Commission and the Financial Industry Regulatory Authority. The Board also discussed the MSRB's mark-up disclosure proposal, improving pre-trade price transparency in the municipal market and primary market offering practice, among other topics.

Read the full meeting summary.

MSRB Files Proposed Rule Change to Extend MSRB's Proposed Customer Complaint and Related Rules to Municipal Advisors and to Modernize Those Rules.

The MSRB filed today with the Securities and Exchange Commission a proposed rule change consisting of amendments to MSRB rules related to existing customer complaints and recordkeeping requirements for brokers, dealers, and municipal securities dealers (collectively, dealers) and an extension of those requirements, as well as related record retention requirements, to municipal advisors. Amendments to MSRB Rule G-10, on delivery of investor brochure, Rule G-8, on books and records to be made by dealers and municipal advisors, and Rule G-9, on preservation of records, and an MSRB interpretation regarding electronic delivery and receipt of information by municipal advisors under Rule G-32, on disclosures in connection with primary offerings, are included in the filing.

Specifically, the proposed rule change would:

- extend the MSRB's customer complaint recordkeeping requirements to all municipal advisors (i.e., non-solicitor and solicitor municipal advisors) as well as align those recordkeeping requirements more closely with the customer complaint recordkeeping requirements of other financial regulators, by, in part, requiring an electronic complaint log of written customer or municipal advisory client complaints;
- require that all regulated entities retain their customer complaint records for six years;
- overhaul Rule G-10 so that the rule would more closely focus on customer and municipal advisory client education and protection as well as align that rule with customer education and protection rules of other financial regulators; and
- extend the MSRB's guidance under Rule G-32, *Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers* (Nov. 20, 1998) to municipal advisors.

MSRB Seeks New Complaint Process for MAs, Updated One for Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board wants to amend several of its rules to both create a municipal advisor client complaint process as well as update and streamline its current requirements related to dealer customer complaints.

The MSRB filed its proposed changes with the Securities and Exchange Commission on Tuesday. It would amend MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records.

The self-regulator is proposing to set an implementation date for the changes of six months after SEC approval.

Rule G-10 is designed to protect investors by giving them necessary information, through brochures given to them by dealers, about how to file a complaint about their dealers with the right regulatory entity, according to the MSRB. However, under the current rule, investors only receive the brochure information after they have already made a complaint, which can mean the information comes too late for the investor to make the best use of it.

The MSRB's proposed changes would eliminate the requirement to send a brochure and expand the rule to include municipal advisors and their clients. Dealers and MAs would have to notify their customers and clients, respectively, of: their registration with the MSRB and the SEC; the MSRB's website address; and the brochure available on the MSRB's website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers would be required to notify customers with that information annually and an MA would have to share the information "promptly," but no less than once a calendar year over the course of the MA relationship.

The definition of “municipal advisory client” in the G-10 changes would include the solicitation of an issuer or borrower, but would not include advertising by dealers and MAs or the solicitation of a borrower if the person is not acting in the capacity of a borrower or the solicitation isn’t in connection with issuing munis or municipal financial products.

The board said the changes will help investors and clients to get detailed and relevant information about regulated entities and how to make a complaint in a more timely and consistent fashion.

The MSRB is also proposing to extend 1998 guidance dealing with electronic delivery and receipt of information by dealers to municipal advisors as part of the changes. The guidance is under Rule G-32 on disclosure in connection with primary offerings.

In addition to the educational and informational changes, the MSRB is also seeking to enhance its recordkeeping requirements related to written complaints for dealers and then extend those enhanced requirements to MAs.

Under the current Rule G-8, dealers must keep a record of all written complaints from customers along with what action, if any, they have taken related to the complaint.

The revised Rule G-8 would require dealers and MAs to keep an electronic complaint log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients.

The log would have to include: the identities of the dealer customer or MA client; the date the complaint was received; the date of the activity that gave rise to the complaint; and the person whom the customer or client names in the complaint. The log would also have to include a description of the complaint and the action, if any, the dealer or MA has taken in response.

All complaints would be coded using a standard set of product and problem codes that the MSRB would make available, similarly to current SEC and Financial Industry Regulatory Authority requirements.

Rule G-9 will also be amended to require both dealers and MAs to retain their complaint records for six years. MAs would have otherwise only had to keep records for five years.

The definition of “municipal advisor client” in the G-8 and G-9 changes is also broader than the one used in the G-10 changes in order to allow for the capture of written complaints made by the full spectrum of MA clients of a solicitor municipal advisor, the MSRB said.

The self-regulator acknowledged that the changes would likely come with costs to the regulated entities, but noted that those entities that are already regulated with FINRA are already subject to similar requirements and therefore would not likely see significant cost increases.

The Bond Buyer

By Jack Casey

November 1, 2016

Reminder: Comments on the MSRB's Strategic Priorities are Due by November 11, 2016.

Read the Request for Comment.

SEC Approves FINRA Rules Addressing "Pay-to-Play" Practices: Ropes & Gray

The Securities and Exchange Commission (the "SEC") recently approved the Financial Industry Regulatory Authority, Inc. ("FINRA") proposal to adopt FINRA Rules 2030 and 4580, which set forth pay-to-play restrictions, and associated recordkeeping requirements, for broker-dealers engaged in distribution or solicitation activities for compensation with government entities1 on behalf of investment advisers or their managed funds. The Rules effectively enable broker-dealers to continue to engage in solicitation and distribution activity with government entities by bringing broker-dealers into the class of persons that investment advisers are permitted under SEC rules to hire to perform those activities. The Rules are expected to become effective some time between March and August of 2017.

Background

In 2010, the SEC issued Rule 206(4)-5 (the "SEC Pay-to-Play Rule"), which prohibits certain investment advisers and their covered associates from providing or agreeing to provide payment to a third-party placement agent to solicit a government entity for investment advisory services unless the placement agent is a "regulated person." A "regulated person," as defined in the SEC Pay-to-Play Rule, includes a registered broker-dealer subject to a FINRA rule determined by the SEC to be substantially equivalent to the SEC Pay-to-Play Rule. In light of this regulatory framework, FINRA proposed FINRA Rule 2030.

Scope of Rule

FINRA Rule 2030 will apply to broker-dealers acting on behalf of any investment adviser registered or required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"), as well as "foreign private advisers" exempt from registration under Section 203(b)(3) of the Advisers Act and "exempt reporting advisers" under Advisers Act Rule 204-4(a). Accordingly, FINRA Rule 2030 will not apply to a broker-dealer acting on behalf of an investment adviser registered with state securities authorities, or an investment adviser relying on another exemption from SEC registration. Moreover, FINRA Rule 2030 will not apply to a broker-dealer engaged in activities that would require municipal advisor registration and compliance with the pay-to-play rule of the Municipal Securities Rulemaking Board. A FINRA member that solicits a government entity on behalf of an affiliated investment adviser is not a municipal advisor and therefore would be subject to FINRA Rule 2030. The new FINRA rule would also apply to a placement agent that solicits a government entity to invest in a pooled investment vehicle such as a private investment fund or a mutual fund included as an investment option in a governmental plan. A broker-dealer to which FINRA Rule 2030 will apply is referred to herein as a "Covered Member."

FINRA Rule 2030 will also apply to the broker-dealer's "covered associates," which term includes (i) any general partner/managing member or executive officer of the broker-dealer, as well as any person with a similar status or function, (ii) any associated person of the broker-dealer who engages in distribution or solicitation activities, or supervises the distribution or solicitation activities, in respect of a government entity, and (iii) any political action committee controlled by the broker-dealer or one of its covered associates.

Restricted Activities

FINRA Rule 2030 seeks to prevent abusive practices in the placement activities of Covered Members acting on behalf of investment advisers. Key provisions of the Rule are as follows:

- A Covered Member and its covered associates are prohibited from, for a period of two years beginning on the date of a Prohibited Contribution, receiving compensation for distribution to, or solicitation of, a governmental entity on behalf of an investment adviser. A "Prohibited Contribution" is a greater-than-de minimis contribution by a Covered Member or any of its covered associates to any person who is an incumbent, a candidate, or a successful candidate for elective office of a governmental entity if that office has direct or indirect responsibility for, or can influence the outcome of, the hiring of an investment adviser to manage the governmental entity's investments or that office has authority to appoint any person who has such responsibility or influence.
    - Covered associates are permitted to make certain de minimis contributions, on a per-official, per-election basis, without violating the Rule (up to $350 if the covered associate is entitled to vote for the official and $150 if the covered associate is not entitled to vote for the official).
    - The two-year ban is also triggered by contributions made by a covered associate prior to the covered associate's association with the Covered Member, except where the covered associate both (i) made the contribution more than six months prior to becoming associated with the Covered Member and (ii) is not engaging or seeking to engage in distribution or solicitation activities with the government entity on behalf of the Covered Member.
- A Covered Member and its covered associates are prohibited from soliciting any person or political action committee to make contributions, or bundling smaller contributions into one large contribution, to (i) an official of a government entity in respect of which the Covered Member already provides, or is seeking to provide, distribution or solicitation services on behalf of an investment adviser, or (ii) a political party of a state or locality where the Covered Member is engaging in, or seeks to engage in, distribution or solicitation activities on behalf of an investment adviser.
- Cases in which a Covered Member engages in distribution or solicitation activities on behalf of a "covered pool" will be treated under FINRA Rule 2030 as though the Covered Member were acting directly on behalf of the investment adviser to the covered pool. The Rule defines the term "covered pool" to include (i) any investment company registered under the Investment Company Act of 1940 (the "1940 Act") that is an investment option of a plan or program of a government entity and (ii) any company that would be an investment company under Section 3(a) of the 1940 Act but for the exclusion provided by either Section 3(c)(1), Section 3(c)(7), or Section 3(c)(11) of the 1940 Act such as a hedge fund, private equity fund, venture capital fund, or collective investment trust.
    - The Rule will not apply in respect of a registered investment company that is not an option of a participant-directed plan of a government entity, even if there are government entities that hold shares in the registered investment company. Consistent with the SEC Pay-to-Play Rule, to the extent that mutual fund distribution fees are paid by a fund using fund assets pursuant to a Rule 12b-1 plan, such payments generally would not constitute payments by the fund's investment adviser.
- The Rule prohibits a Covered Member and its covered associates from doing anything indirectly that, if done directly, would violate the Rule.

Exemption for Returned Contributions

Subject to certain limitations, if a covered associate makes a small, inadvertent contribution that would otherwise trigger a two-year "time out," the time out will not apply if the Covered Member discovers the contribution within four months of the date of the contribution and the contribution is returned to the covered associate within 60 days of the discovery. A Covered Member may rely on this exemption a limited number of times. In the case of a contribution that cannot be cured under this exemption, a Covered Member may appeal to FINRA for specific relief.

Recordkeeping

FINRA Rule 4580 will require Covered Members to maintain records designed to allow FINRA to examine for compliance with FINRA Rule 2030. The required records include certain basic information in respect of the covered associates of the Covered Member, the investment advisers on behalf of whom the Covered Member has engaged in distribution or solicitation activities, and the government entities that the Covered Member has solicited or distributed to, as well as a chronological list of direct and indirect contributions made by the Covered Member or any of its covered associates, indicating the name and title of each contributor and each recipient of the contribution, as well as the amount and the date of the contribution, and whether the contribution was subject to the exception for returned contributions.

Next Steps

FINRA is expected to announce the effective date of FINRA Rules 2030 and 4580 in a Regulatory Notice to be published no later than the end of October 2016. The effective date of the Rules is expected to be no sooner than six months following the publication of the Regulatory Notice and no later than one year following the SEC's approval of the rules. During the period, FINRA members should consider identifying their covered associates and governmental entity clients, and modifying their supervisory procedures to address the requirements of the new rules.

For more information, please contact your usual Ropes & Gray attorney.

1 Government entities include all state and local governments, their agencies and instrumentalities, and all public pension plans and other collective government funds, including participant-directed plans such as 403(b), 457, and 529 plans.

Last Updated: October 21 2016

Article by Ropes & Gray LLP's Hedge Fund Practice Group, Ropes & Gray LLP's Investment Management Practice Group and Ropes & Gray LLP's Private Investment Funds

Ropes & Gray LLP

SEC Director Describes Enforcement Activities In The Public Finance Market: Cadwalader

SEC Enforcement Director Andrew J. Ceresney outlined agency enforcement activities in the public finance market. At the Securities Enforcement Forum 2016, he described current efforts as "essentially divided into two significant areas – municipal securities and public pensions."

Mr. Ceresney detailed SEC specialized enforcement activities in public finance as:

- creating the Public Finance Abuse Unit, which "has had a clear, measurable impact in this area";
- pursuing investment frauds that use municipal securities or other public finance instruments as vehicles for the schemes; and
- conducting enforcement sweeps, most prominently through the Municipalities Continuing Disclosure Cooperation ("MCDC") Initiative.

Mr. Ceresney stated that many recent SEC enforcement actions represent "first-of-their-kind" actions such as: (i) enjoining bond offerings; (ii) imposing penalties against municipal issuers; (iii) enforcing controlling person liability and conduct-based injunctions against public officials; and (iv) charging the SEC's newest class of registrants: municipal advisors. SEC Enforcement also has increased its focus on coordinating with criminal authorities, noted Mr. Ceresney.

In addition, Mr. Ceresney talked about the impact SEC "actions in the public finance space have had on the market." These include: (i) increased issuer compliance with continuing disclosure obligations; and (ii) improved general awareness among market participants about their obligations under securities laws. He concluded that "this change in the tone of enforcement is here to stay."

Commentary

There is inherent political tension when federal regulators seek to bring enforcement actions against local government officials, particularly if those actions may impair the local governments' ability to get to the capital markets. That tension raises a question: does the SEC have the ability to take action against local elected officials who make overly optimistic statements as to the financial condition of municipal entities?

Last Updated: October 24 2016

Article by Steven D. Lofchie

Cadwalader, Wickersham & Taft LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

SEC: Firm And Partner Charged With Issuing Fraudulent Audit Reports.

The Securities and Exchange Commission today announced that a New York-based audit firm and a senior partner agreed to settle charges that they issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, N.Y., and its local development corporation.

The SEC's order finds that PKF O'Connor Davies and Domenick F. Consolo allowed Ramapo to record a $3.08 million receivable in its general fund for a property sale that Consolo knew had not occurred. Consolo also ignored red flags and relied upon what turned out to be false representations by Ramapo officials about certain other receivables, interfund transfers, and liabilities. PKF O'Connor Davies failed to take appropriate steps to mitigate the risk of material misstatements even after senior management became aware that Ramapo’s financial statements were the subject of multiple law enforcement investigations and Consolo received complaints about possible fraud.

Ramapo, its local development corporation, and four town officials were charged with fraud earlier this year and accused of hiding a deteriorating financial situation from municipal bond investors.

“When audit reports are used to sell municipal bonds, investors expect those reports to be accurate,” said Andrew M. Calamari, Director of the SEC’s New York Regional Office. “Consolo failed to exercise professional skepticism and PKF O’Connor Davies issued false unmodified audit reports, and they left investors without an accurate picture of the town’s finances and its ability to repay bondholders.”

Consolo and PKF O’Connor Davies consented to the SEC’s order without admitting or denying the findings. The firm agreed to forfeit approximately $380,000 in audit fees and interest and pay a $100,000 penalty. O’Connor Davies also must engage an independent consultant. Consolo agreed to pay a $75,000 penalty and be suspended from practicing public company accounting. He’s also prohibited from acting as the engagement partner or engagement quality control reviewer on any municipal audit for five years.

The SEC’s order finds that Consolo violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 as well as Section 17(a) of the Securities Act of 1933, and PKF O’Connor Davies violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

The SEC’s continuing investigation is being conducted by Daniel M. Loss, Pamela Sawhney, and Celeste A. Chase of the New York office and Creighton L. Papier of the Public Finance Abuse Unit. Assisting the investigation are Alexander Vasilescu of the New York office and Jonathan Wilcox, Joseph Chimienti, Louis Randazzo and Mark R. Zehner from the Public Finance Abuse Unit. The case is being supervised by Sanjay Wadhwa of the New York office and LeeAnn Ghazil Gaunt of the Public Finance Abuse Unit. The SEC appreciates the assistance of the U.S. Attorney’s Office for the Southern District of New York and the Federal Bureau of Investigation.

Mondo Visione 2016

Date 31/10/2016

SEC Settles with Auditor in NYC Suburb's Bond Fraud Case.

A New York auditor on Monday settled U.S. Securities and Exchange Commission charges that it issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, New York, and its local development corporation, which were charged with fraud in April.

The SEC said PKF O’Connor Davies and senior partner Domenick Consolo let Ramapo record in 2009 a $3.08 million receivable in its general fund for the sale of a 13.7-acre property known as the “Hamlets” to the nonprofit Ramapo Local Development Corporation, despite knowing that the sale had not occurred.

It also said Consolo ignored red flags about the intention and ability of the RLDC to pay the $3.08 million, while PKF failed to mitigate the risk of material misstatements even after learning that federal authorities were investigating Ramapo’s financial statements.

Under the settlement, PKF, of Harrison, New York, agreed to pay a $100,000 fine, forfeit $379,865 of audit fees and interest, and hire an independent consultant.

Consolo, 61, of Yorktown Heights, New York, agreed to pay a $75,000 fine and accept a five-year ban from supervising municipal audits. Neither admitted wrongdoing.

"We stand by the integrity of our work with the Town of Ramapo," PKF said in a statement, responding to requests for comment to a lawyer for the firm and Consolo. "We're confident what we learned through this process will provide valuable insights that will benefit our municipal clients."

The civil settlement came after the SEC on April 14 sued Ramapo, the RLDC and four officials in a case stemming from the financing of a controversial $58 million minor league baseball stadium.

Two of the officials, Ramapo elected Supervisor Christopher St. Lawrence and former RLDC Executive Director N. Aaron Troodler, have pleaded not guilty to separate fraud and conspiracy charges, in what prosecutors called the first U.S. criminal securities fraud case over the sale of municipal bonds.

Authorities said bond investors lost millions of dollars because the defendants concealed Ramapo's weakening finances, caused in part by the cost to build Provident Bank Park.

PKF's and Consolo's conduct "left investors without an accurate picture of the town's finances and its ability to repay bondholders," Andrew Calamari, director of the SEC's regional office in New York, said in a statement.

Ramapo is located in Rockland County, about 28 miles (45 km) northwest of New York City.

Reuters

Mon Oct 31, 2016 | 2:46pm EDT

By Jonathan Stempel | NEW YORK

(Reporting by Jonathan Stempel in New York; Editing by Paul Simao and Dan Grebler)

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting October 26-27, 2016 where it discussed multiple initiatives aimed at protecting investors and promoting a fair and efficient municipal securities market, and held annual meetings with the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

The Board met with SEC Chair Mary Jo White and Office of Municipal Securities' Director Jessica Kane and Deputy Director Rebecca Olsen, and separately with FINRA's President and CEO Robert Cook and Director of Fixed Income Regulation Cynthia Friedlander to discuss oversight of the municipal securities market and coordination on cross-market initiatives.

One key such initiative is the MSRB's effort to require municipal securities dealers to provide retail investors information about dealer compensation, in the form of a mark-up or mark-down, for certain transactions. In September 2016, the MSRB filed a proposal with the SEC to require dealers to disclose their compensation to investors to help them better understand the cost of buying or selling a municipal bond. It also filed associated regulatory guidance with the SEC on how dealers determine the prevailing price of bonds from which their mark-ups and mark-downs are calculated.

At its meeting, the Board discussed public comments received by the SEC on the MSRB's proposal and in response, agreed to make several minor amendments. "This rule proposal is one of the most significant undertakings of the MSRB in many years," said MSRB Chair Colleen Woodell. "While we are eager to see this rule in place, it's important we address reasonable concerns while preserving the original investor protection and transparency goals," she said.

FINRA is pursuing a similar rule for the corporate bond market. The MSRB has been and will continue to coordinate with FINRA on this cross-market initiative. Additional information on the MSRB's planned amendments will be available in the coming weeks.

In another market transparency initiative, the Board discussed its consideration of improving so-called "pre-trade" price transparency for municipal securities investors. The MSRB makes trade price information about municipal securities transactions freely available to all investors on its Electronic Municipal Market Access (EMMA®) website after the trade occurs. However, retail investors have limited access to additional data that might help them make more informed investment decisions. The Board directed MSRB staff to conduct further research on the potential value of certain pre-trade data as it continues to assess how it might enhance pre-trade transparency for retail investors.

As part of the MSRB's mandate to protect investors and municipal entities, the Board also discussed market practices associated with municipal bond underwritings. It directed MSRB staff to conduct a holistic review of its rules regarding primary offering practices with a view to enhancing existing protections under MSRB rules. Included in that review will be further consideration of a previously announced plan to amend MSRB Rule G-34, on the assignment of CUSIP numbers in primary offerings.

As part of its ongoing review of the MSRB's uniform practice rules, the Board also agreed to publish a request for comment on proposed updates to MSRB Rule G-26, on customer account transfers. Its discussion of the rule focused on modernization of the rule and changes necessary to make it more consistent with similar rules of other regulators.

In response to questions from dealers on the application of MSRB rules to municipal bond transactions by investment advisers having full discretion to act for their clients' accounts, the Board agreed to publish interpretive guidance on the application of certain rules to these transactions.

The Board also held a preliminary discussion of comments received on the second request for comment on a proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination stated in the bond offering document. The Board will determine next steps at a later date.

Date: October 31, 2016

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FINRA Examiners Probing Firms' Involvement with Bank Loans.

NEW YORK – Financial Industry Regulatory Authority examiners are probing firms' involvement with bank loans and other alternative financings in the municipal market, a FINRA official said at an industry seminar here.

Bonnie Bowes, associate director for fixed income regulation with FINRA, made her comments at a seminar on bank loans and direct placements hosted by the Securities Industry and Financial Markets Association on Tuesday.

Bowes said that dealers should expect examiners to ask for things like lists of direct placement deals and the details of those transactions. Firms should also be able to show adherence to policies and procedures they've established to determine whether the transactions involve bank loans or securities as well as their analysis of how they made those determinations, she added.

Bowes also listed several examples of insufficient answers firms have provided in the past of why they classified a debt instrument as a loan instead of a security.

The examples included the firms saying: the bank or purchaser didn't want the instrument to be labeled a security; the issuer didn't want the expected additional costs if something were labeled a security; counsel would not give a legal opinion on the issue; and labeling the instrument as a loan is how the firm always conducts business with the bank.

Bowes and Robert Fippinger, chief legal counsel for the Municipal Securities Rulemaking Board, echoed an April notice from the two self-regulators that advised dealer and municipal advisor firms to look to the U.S. Supreme Court Case Reves v Ernst & Young, Inc. as the legal authority on determining whether a note is a security.

That case held that a note is presumed to be a security unless it is specifically identified otherwise. Examples of non-securities under the case are: notes secured by a mortgage on a home; short-term notes secured by a lien on a small business or its assets; short-term notes evidenced by accounts receivable; and notes evidencing loans from commercial banks for ordinary operations.

If a note is not explicitly deemed a non-security, it may qualify as a non-security if it bears a "strong family resemblance" to the non-security notes identified in the case.

The "family resemblance test" from the case has four factors to consider: the motivations of the buyer and seller; the plan of distribution; the reasonable expectations of the investing public; and the existence of an alternate regulatory regime.

One audience member at the seminar asked whether there were any instances so far where FINRA had reviewed a dealer's direct placement history and concluded that the firm had miscategorized an instrument as a bank loan or other alternative financing instead of a security.

In response, Bowes said FINRA has reviewed the Reves analyses given to examiners by firms and also reviewed transaction documents to study whether transactions are secured by a note as well as other characteristics, but have not concluded something was miscategorized in an enforcement matter.

She later noted, in response to a question about how much weight examiners give to policies and procedures, that during examinations FINRA staff takes into consideration the strength of a firm's policies and procedures that were created as well as the firm's adherence to them.

Fippinger also advocated for strong policies and procedures.

"If you have procedures in place to make a conclusion based upon factors, I think you're probably alright," Fippinger said, adding he was speaking for himself and not necessarily the MSRB. He added that a firm working with direct placements should be aware of the ways in which it can fall into either underwriter or municipal advisor activity. A firm should "try not to be both" as it would mean they could fall under MSRB provisions prohibiting a firm from acting as an underwriter and advisor on the same transaction, he added.

The jointly issued MSRB and FINRA notice from April that Bowes and Fippinger brought up during the panel told firms they need to conduct adequate due diligence on the bank loan and direct placement issue after regulators concluded some firms may not have fully considered the applicability of the securities laws and rules underlying bank loans. The notice also warned that municipal advisors may be engaging in direct placements without fully understanding whether they are acting as municipal advisors or broker-dealers.

The notice was similar to an MSRB notice released in September 2011 that warned market participants that some loans could actually be considered securities. Muni market groups and the MSRB have been seeking guidance from the Securities and Exchange Commission on when private placements and bank loans involve securities. So far, the SEC has refrained from providing such guidance, but Ed Fierro, senior counsel with the commission's Office of Municipal Securities, said during Tuesday's panel that staff is continuing to review the issue.

The Bond Buyer

By Jack Casey

October 25, 2016

Justice Probes Municipal-Bond Issuers Over Treasury Profits.

The U.S. Justice Department is investigating whether two local governments improperly made about $180 million by trading special Treasuries purchased with money raised in the municipal-debt market.

The agency that runs Louisville, Kentucky's sewer system disclosed in an August bond-offering document that officials may file a civil lawsuit against it for exploiting interest-rate moves to profit from Treasuries that are sold only to state and local governments. The securities were created to help governments comply with federal rules that limit how much they can earn by investing the proceeds of tax-exempt bond issues.

The government is also probing Gulf Breeze, Florida, a 6,000-resident city that frequently sells debt on behalf of non-profits and private corporations, city records show.

"We're just trying to figure out what they need," said Edwin Eddy, the city manager of Gulf Breeze, which hired the law firm Jenner & Block to respond to the inquiry.

Justice Department spokeswoman Nicole Navas and Treasury Department spokesman Rob Runyan declined to comment. Attorneys for Gulf Breeze and the Louisville and Jefferson County Metropolitan Sewer District — which have been barred from executing such trades since 2014 — dispute that they ran afoul of U.S. regulations. A lawyer for Enhanced Financial Solutions, the firm that managed the two borrowers' investments, said he expects that the Justice Department will determine that there was no wrongdoing.

Enforcement Target

The investigations are the latest in a decades-long effort to police the business of investing money raised in the $3.8 trillion municipal market, where governments can borrow cheaply for schools, roads and other public works because the interest payments bondholders receive aren't subject to federal income tax. State and local governments can't exploit that subsidy to profit by borrowing to speculate with stocks, corporate bonds or other higher-yielding securities.

Governments are allowed to purchase Treasuries and guaranteed investment contracts, or GICs, to pick up some income until bond proceeds are spent, though there are limits on how much they can earn. Municipalities also use Treasuries for so-called advanced refundings, in which they borrow money, buy U.S. bonds and use the income to pay off debt before it can be repurchased from investors.

Such products have been a frequent target of regulators. More than a decade ago, the Securities and Exchange Commission settled with banks that allegedly inflated the prices of Treasuries sold to local governments in the 1990s. More recently, 20 bankers and brokers pleaded guilty to or were convicted of rigging the bidding for GICs, resulting in fines of about $750 million against banks.

[For an in-depth look at the bid-rigging investigation, click here.]

The probes of Gulf Breeze and Louisville center on a $109 billion Treasury niche known as State and Local Government Series securities, or SLGS, that are tailor made for local governments. Treasury officials claim that Louisville and Gulf Breeze used quirks in how SLGS are issued to reap speculative gains, according to correspondence with regulators obtained by Bloomberg through public-records requests.

Federal officials say the local-governments put in orders for SLGS — whose prices are set just once a day — and then utilized the ability to change the requested amounts and maturities before they were issued if the broader bond market moved in their favor. As soon as the next day, they sold the securities back to the Treasury Department, profiting if interest rates declined, the department said in letters to Gulf Breeze and Louisville. The strategy resulted in earnings of about $64 million for Gulf Breeze between 2007 and 2012, while Louisville made $115 million from 2008 to 2011, according to the letters.

Gulf Breeze sought the Treasury Department's approval for the strategy. C. Willis Ritter, an attorney who advised the Treasury Department in the 1970s on the initial tax-exempt bond regulations, asked officials in March 2007 to confirm that the earnings were permitted under rules adopted in 2005. The department didn't provide a written response, according to its reply to a public records request submitted by Bloomberg.

Exoneration Seen

Enhanced Financial anticipates that the Justice Department will conclude that there was no wrongdoing, said Michael Schwartz, a lawyer who is representing the firm. The principals of Enhanced Financial, Christopher Monaghan and Michael Garner, currently work at another

Pennsylvania financial adviser, Echo Financial Products LLC.

“We are fully cooperating with the Department of Justice and expect when the Department of Justice thoroughly reviews all of the evidence they will determine there’s no basis to believe that Enhanced Financial Solutions did anything improper,” Schwartz said.

The Treasury Department ordered Enhanced Financial in late 2013 to stop its transactions in SLGS, according to SEC records. Louisville and Gulf Breeze in 2014 were also barred from buying them for five years, according to public records.

“They said don’t do that anymore and we said, OK, we won’t,” said Eddy, Gulf Breeze’s city manager.

The city started using SLGS in the mid-2000s to invest the reserves from a 1985 bond issue that funded local government loans because guaranteed investment contracts weren’t available at the time, Eddy said.

“We looked at the state and local government desk as an alternative based on advice from consultants and attorneys,” Eddy said. “It’s our job as administrators of the loan pool to earn as much money as we can.”

Bloomberg Business

by Martin Z Braun

October 27, 2016 — 2:00 AM PDT Updated on October 27, 2016 — 8:57 AM PDT

MSRB Responds to Issuer Complaints and Improves Bank Loan Disclosures On EMMA.

In late September, the Municipal Securities Rulemaking Board (“MSRB”) announced that it had taken steps to enhance the bank loan disclosure submission process and the display of these documents on MSRB’s Electronic Municipal Market Access (“EMMA”) system.

This latest announcement is in keeping with the MSRB’s previously released advisory notices, in which the self-regulator advocated for state, local and municipal bond issuers to voluntarily disclose bank loans and other alternative financings. Specifically, the MSRB has expressed concerns that these so called “bank loans” could, among other things, potentially impair the rights and seniority status of existing bondholders or adversely impact the liquidity or credit profile of an issuer.

Bank loan financings are entered into directly between an issuer and a bank without the involvement of an underwriter and are not subject to the continuing disclosure rules of Securities and Exchange Commission (“SEC”) Rule 15c2-12. As such, no offering disclosure documents are prepared and issuers are not required to provide information about bank loans via EMMA. Bank loans are seen, therefore, as a less expensive alternative to traditional publicly issued bond transactions.

However, due to the lack of explicit requirements for issuers to disclose bank loans, there is a concern that the investing public may not become aware of an issuer’s bank loan(s) until such issuer’s next public offering or the release of such issuer’s audited financial statements. In the eyes of the MSRB, this “delay” in the release of information related to an issuer’s bank loan(s) could adversely impact the holders of the issuer's outstanding bonds, as well as potential future investors. In January 2015, the MSRB released Notice 2015-03, Bank Loan Disclosure Market Advisory, in which it encouraged issuers to voluntarily post information about their bank loan(s) "to foster market transparency and to ensure a fair and efficient municipal market."

The new disclosure submission process is the result of several discussions between the MSRB and market participants which took place earlier this year. Many state, local and municipal officers complained that the submission process was confusing and actually seemed to lose some of the submitted documentation. The officers emphasized that the lack of disclosure of bank loans had less to do with the issuers' failing to disclose and more with the complexity of the submission process previously in place which made it difficult to correctly submit and find the disclosed materials.

In response to these concerns, the new process the MSRB announced last month provides step-b--step instructions for issuers to use when submitting information on bank loans and alternative financings to EMMA and contains advanced search functions that will allow EMMA users to search for securities associated with bank loan disclosures.

The general consensus among those in the public finance industry is that the issue of disclosing bank loans would be better addressed with a change to the SEC's Rule 15c2-12. However, the MSRB's facilitating the process of disclosing bank loans could be seen as indicative of where the federal regulatory authorities are heading.

Last Updated: October 19 2016

Article by Gordon Knox

Miles & Stockbridge

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

SEC Will Tell All MCDC Submitters If They Face Enforcement Action.

CHICAGO – While the Securities and Exchange Commission remains silent on whether there will be more settlements under its continuing disclosure enforcement initiative, an SEC official said any party that voluntarily submitted potential violations will be told whether the commission plans to take action against them.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, made the remark on Thursday during a panel discussion of hot topics in securities law at the National Association of Bond Lawyers' Bond Attorneys' Workshop here.

Gaunt acknowledged that the questions about the future of the commission's Municipalities Continuing Disclosure Cooperation initiative have been popular and "are very understandable," but said she is not in a position to comment.

However, she explained that while there may not be a statement from the commission on MCDC's future, the enforcement division's standard practice is to notify parties "at the earliest opportunity that [it] can do so" if it decides not to recommend an enforcement action.

“I can assure you that anyone who has made a submission will hear from us one way or another,” Gaunt said.

Ken Artin, a shareholder with Bryan Miller Olive and past-president of NABL, argued during a similar hot topics panel earlier in the day that the SEC should refrain from pursuing any more settlements.

“The fact is everybody is very much aware of continuing disclosure undertakings” after MCDC, Artin said, adding that “further enforcement actions probably aren’t going to drive that point home anymore.”

Joseph “Jodie” Smith, a shareholder with Maynard, Cooper & Gale who moderated the two panels, noted that many market participants said the SEC achieved its goal of boosting the market’s focus on disclosure as soon as it announced MCDC.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The most recent SEC action related to the initiative came on Aug. 25 when the SEC publicized 71 settlements with issuers from 45 states.

The settlements included disclosure failures that occurred between 2011 and 2014 and marked the first group of issuers who settled under the initiative. The SEC took action under MCDC against a single issuer, California’s Kings Canyon Joint Unified School District, in July 2014.

The issuers that settled included: two states; seven state authorities; 29 localities; seven local authorities; nine school districts or charter schools; six colleges or universities; five health care providers; five utilities; and one retirement community.

Those issuers joined 72 underwriters that represented 96% of the underwriting market by volume and paid a combined $18 million under MCDC settlements. The underwriter settlements were released in three batches, adding to speculation among market participants that there may be more issuer settlements in the future.

During the panel discussion, the audience members, who were primarily bond lawyers, were asked to raise their hands if they had an issuer or conduit borrower client that made an MCDC filing before the initiative’s deadline. A large percentage of those in the audience raised their hands in response.

However, when they were asked to do the same if they had a client that was included in the list of 71 issuer settlements, a far smaller number responded affirmatively, showing there are still a large number of issuers that will be waiting for the responses the SEC has promised.

Bond lawyers and others have raised questions about the SEC’s prior statement that it intended to pursue actions against non-reporting entities after it finishes settling with those who reported. Gaunt noted she could not comment about the possibility of ongoing enforcement activity but said non-reporters make up an area “in which we are certainly interested.”

She also said that while individuals were explicitly not a part of the MCDC initiative, pursuing individuals outside of the initiative “continues to be open to us.”

The Bond Buyer

By Jack Casey

October 21, 2016

[SIFMA Submits Comments to the MSRB on Clarifying Exceptions to Minimum Denomination Rule.]

On October 18, SIFMA filed a comment letter with the MSRB regarding its draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. These revised provisions would form a new stand-alone rule. SIFMA is pleased with some of the proposed changes, such as the elimination of the reference to increments and the elimination of the liquidation statement in the case of securities purchased from other dealers. However, some of the proposed changes result in less liquidity for customers and create additional and unnecessary challenges for dealers.

[SIFMA Comment Letter on Clarifying Exceptions to Minimum Denomination Rule (Oct 2016)]

[SIFMA Comment Letter regarding draft amendments to MSRB Rule G-15(f) on minimum denominations (May 2016)]

[MSRB Announces Regulatory Topics to be Discussed at October Board Meeting.]

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet October 26-27, 2016 in Washington, DC, where it will discuss mark-up disclosure, pre-trade price transparency and syndicate practices, among other rulemaking and policy topics.

[View the MSRB Board of Directors' meeting discussion items.]

[SEC's Ceresney Tells Muni Market Enforcement Focus is 'Here to Stay']

WASHINGTON – The Securities and Exchange Commission enforcement division's heightened attention on the municipal market and application of new legal techniques to that enforcement are "here to stay," according to the commission's top cop, Andrew Ceresney.

Municipal market participants also shouldn't be surprised if they continue to see the SEC use new-to-the-market techniques like civil penalties for issuers, individual accountability under control person liability, and increased coordination with agencies investigating criminal conduct, he said.

Ceresney made his comments during a keynote speech at this year's Securities Enforcement Forum held here on Thursday.

While the SEC had pursued several larger actions related to munis and public pensions before 2010, Ceresney said, the creation of a specialized unit in that year to address misconduct related to the municipal market and public pensions "by every measure … has paid off in a big way."

Since 2013, the SEC has brought enforcement actions against: 76 state or local government entities, including four states; 13 obligated persons; and 16 public officials. That compares to enforcement actions against 6 government entities, 6 obligated persons, and 12 public officials in the 10 years between 2002 and 2012.

The rise in enforcement actions has been coupled with “important” behavioral changes in market participants, Ceresney said.

For example, in an August 2015 case against Edward Jones, the firm, which was part of a syndicate, settled with the SEC over charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began, according to the SEC.

Ceresney said the case prompted conversations about whether such activity was endemic to the market.

He also pointed to comments by market participants that the SEC’s Municipalities Continuing Disclosure Cooperation initiative has made disclosure a top priority. The initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years in which issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The SEC’s specialized Public Finance Abuse Unit plans to continue such work and may, over time, normalize some of the first-of-their-kind actions the market has seen.

Issuers, for example, “should not expect a pass on civil penalties,” which are a recent development in muni enforcement, Ceresney said.

The SEC first hit an issuer with a civil penalty in a November 2013 action against a public facilities district in the state of Washington. The commission has since reached a settlement with California’s largest agricultural water district that included a $125,000 fine and will have to act on a proposed $1 million settlement with the city of Miami after a federal jury found the city guilty of securities fraud last month.

“Enforcement will scrutinize the nature of the issuer and the sources of funds available to pay a penalty and, with commission approval, seek penalties where appropriate,” Ceresney said. “And in particularly egregious cases, we will pursue penalties even when the source of those funds is the taxpayer base.”

The commission also intends to continue pursuing individuals under a section of the Securities and Exchange Act that allows the SEC to hold public officials responsible for violations based on their control of the municipal entity that engaged in the fraud, Ceresney said. It has pursued charges under the section’s control person liability in two 2014 actions, one against the former mayor of Allen Park, Mich. and the other against the mayor of Harvey, Ill.

Ceresney also reiterated past indications that the SEC is coordinating more with criminal authorities on public finance matters, as it is doing in a pending case against Ramapo, N.Y., its local development corporation, and four town officials. The SEC is alleging the defendants covered up the town’s deteriorating finances while pursuing a number of financings.

The commission also intends to work with units within the U.S. Attorney’s Office and Federal Bureau of Investigation on public corruption matters.

"Our sense is that, where public officials are engaging in public corruption in other contexts … we may also find there is corruption in the awarding of underwriting business or investment advisory contracts for public pension funds," Ceresney said.

The Bond Buyer

By Jack Casey

October 14, 2016

MSRB Amends Its Quorum Requirements to Include Municipal Advisors.

WASHINGTON – The Municipal Securities Rulemaking Board must now have at least one municipal advisor representative board member present to constitute a quorum under a rule change it filed with the Securities and Exchange Commission on Friday.

The amendment is immediately effective and changes MSRB Rule A-4 on meetings of the board.

The new requirement "ensures representation of all categories of persons required to be members of the board in any quorum established under Rule A-4," according to the filing.

"The MSRB … believes the proposed rule change appropriately complements the board's governance procedures that are structured to obtain the diverse views of the public and various entities that are subject to the MSRB's regulation and oversight and to provide for their representation in the decision-making processes of the board," the self-regulator said in its filing.

Under the MSRB's previous quorum requirements, two-thirds of the board's members had to be present and of those members, there had to be at least one: public representative; broker-dealer representative; and bank representative. If those conditions were met, any action that was approved by a majority vote of the present members constituted official board action.

The new amendment does not change the rule's previous requirements aside from adding the MA representative portion and making several technical changes to clarify the rule.

The change relates to the Dodd-Frank Act's charge to the MSRB to create a regulatory regime for municipal advisors and municipal advisory services. As part of the new regulatory structure, the MSRB was required to ensure that at least one individual on its 21-member, majority public board was associated with an MA. Any MA board member is considered a regulated member.

The MSRB filed the amendment without asking for or receiving industry comment. However, any participants that would like to comment on the rule change can file a submission with the SEC.

The Bond Buyer

By Jack Casey

October 14, 2016

Dealers: Proposed MSRB Minimum Denomination Rule Would Hurt Liquidity.

WASHINGTON – Dealer groups are concerned that a proposed Municipal Securities Rulemaking Board standalone minimum denomination rule would hurt liquidity and adversely affect participants in the market.

The MSRB's proposed Rule G-49 would incorporate requirements in the board's existing Rule G-15 on confirmation, which was amended in 2002 to prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by the issuers. The proposed rule also would include four exceptions to the rule, two of which were included with the 2002 prohibition and two that were proposed in April of this year to help maintain liquidity for below-minimum positions.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in its official statement for the bonds. Issuers sometimes set higher minimum denominations on bonds that are risky to discourage retail investors from buying them. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Mike Nicholas, chief executive officer for Bond Dealers of America, said in a comment letter submitted to the MSRB that the proposed rule "is extraordinarily complex and dealers have serious concerns with confusion arising regarding different interpretations of what is a permissible transaction under the rule."

"From a practical standpoint, the result of this complexity is that customers will be left with positions in municipal securities that they will not be able to trade or will only be able to trade at inferior prices," Nicholas said.

He added that the rule should be more narrowly tailored to focus only on those minimum denominations that an issuer sets because of suitability concerns for investors that are not considered sophisticated.

"This change will allow bonds with minimum denominations set due to normal market convention to freely trade without a detrimental impact on liquidity, pricing, or investor protection," Nicholas wrote.

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said that while SIFMA thinks there are some improvements in the standalone rule, it is overly complex and contains several changes that would "result in less liquidity for customers and create additional and unnecessary challenges for dealers."

One change proposed by the MSRB would be the elimination of the current requirement that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't the dealer's customer and is the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and must confirm that the original selling customer has fully and completely liquidated its below-minimum position. Dealers had said in previous comment letters that the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum positions because of concerns about disciplinary actions, among other things.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its request for comment that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The liquidation statement is key to one of the existing exceptions the MSRB adopted as part of Rule G-15. Under that exception a dealer could sell a below- minimum denomination amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

The elimination of the liquidation statement requirement would also affect another exception that was proposed in April and would have required such a statement. That exception would allow a dealer that has bought a customer's liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

SIFMA said in its most recent comment letter that it supports the elimination of the liquidation statement, but noted that its reading of the new proposed rule finds the MSRB narrowed the exception that was proposed in April and would be affected by the liquidation statement change. The exception in the proposed rule says that a dealer can use the provision if the below-minimum position it is selling was acquired by the dealer in an interdealer transaction and the amount being sold is the same amount as the below-minimum denomination position that the dealer acquired in the interdealer transaction, according to SIFMA.

Norwood said that it "seems inappropriate" that the proposed rule allows a dealer to use the exception if the dealer acquires the position in an interdealer transaction but doesn't allow a sale under the exception if the dealer acquired the position from a customer.

"By limiting this exception to positions acquired from dealers, the MSRB is effectively limiting liquidity for customers that have below-minimum denomination positions," SIFMA said. "We believe [the exception] should … be available to dealers, regardless of whether the bonds were purchased from a customer or a dealer …. The source of the bonds should not matter in this instance, as that fact has no impact on whether additional below-minimum denomination pieces are being created."

Norwood added that if the proposed rule is amended as SIFMA is requesting, another exception that the MSRB had written into the rule would become redundant and should be eliminated. That exception would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds.

She also said SIFMA believes a section of the proposed rule that the MSRB called a "new safeguard" in light of its elimination of the need for a liquidation statement should be deleted. The safeguard would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum denomination position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB's goal by preventing the creation of additional below-minimum denomination positions, the board said.

Norwood, who emphasized the point of the rule is to prevent dealers from engaging in transactions with customers, not dealers, below the minimum, said the MSRB's idea is "unwarranted, harms liquidity and is inconsistent with the original purpose of the rule of customer protection."

Nicholas made a similar argument, saying that "the practical result of [the rule] denying dealers …

flexibility is that dealers will be left with positions that will not trade and, therefore, dealers will not provide liquidity in certain situations."

He cited an example where a dealer buys a customer's liquidated position and then sells only a portion of that position to another customer to bring the second customer above the minimum denomination. Under the proposed rule, Nicholas says, the dealer could only sell the remaining part of the original liquidated position to one or more customers with an existing position in the issue and could not sell the remaining position to another dealer.

"BDA members believe that, in this instance, interdealer sales should be given the same treatment as customer sales," Nicholas said.

SIFMA additionally raised concerns about compliance costs to market participants from the rule and asked that the MSRB more effectively leverage its EMMA system to increase transparency related to below minimum denomination transactions. Part of that effort should be amending MSRB Rule G-32 on disclosures in connection to primary offerings to require the filing of minimum denomination information on EMMA on all transactions, according to SIFMA.

In the proposed rule, the MSRB would eliminate a condition it had put into its two additional exceptions proposed in April that would have required a dealer's sale to a customer to be consistent with any restrictions in the issuer's official statements regarding increment amounts.

Commenters had said the increment condition would unnecessarily limit the transfer of positions held by customers instead of providing more flexibility.

The draft rule will also carry over provisions that applied to past exceptions and require a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

The Bond Buyer

By Jack Casey

October 20, 2016

Ceresney Warning: Expect Continued SEC Enforcement Activity Regarding Municipal Securities.

In the keynote address at the 2016 Securities Enforcement Forum last week, Andrew J. Ceresney, Director of the SEC's Division of Enforcement, made clear that the SEC will continue and even expand its focus on the public finance market, particularly in the municipal securities area.

Ceresney noted that enforcement activity in the municipal securities arena has increased substantially. In the 10 years from 2002 to 2012, the SEC filed enforcement action against 6 government entities, 6 obligated persons and 12 public officials. In contrast, the Commission has filed enforcement actions against 76 government entities, 13 obligated persons and 16 public officials in the last 3 1/2 years.

The SEC has been conducting well-publicized enforcement sweeps in the area. Perhaps the most well-known of those is the Municipal Continuing Disclosure Initiative (reported about here), which caught up 72 broker-dealers and 71 municipal underwriters. Also of note was the Puerto Rico Junk Bond sweep, which illustrates the increased use of surveillance in the area. The junk bond offering was considered appropriate for only institutional investors and therefore had a minimum denomination of $100,000. Recognizing that some dealers might nevertheless try to break up the bonds into smaller denominations for retail customers, the SEC staff surveilled the trading, identifying a number of sales below $100,000. Settled enforcement actions were brought against 13 firms as a result.

In addition to the sweeps, the Commission has been using remedies and theories that, up until recently, have been seen only in the non-municipal context. Among those are the following:

- **Temporary Restraining Orders.** In 2014, the first request for a temporary restraining order was filed to stop an offering of bonds by the City of Harvey, Illinois, until certain safeguards regarding the use of the proceeds could be put into place. The SEC alleged that in connection with prior offerings city officials had diverted $1.7 million in proceeds to pay the city's operational expenses, as opposed to the projects that were supposed to be funded by those earlier bonds.
- **Civil Penalties Against Municipal Issuers.** The first imposition of a civil penalty against a municipal issuer occurred in 2013. In that case, a public facilities district in the state of Washington, which had issued about $42 million in bond anticipation notes, was alleged to have misled investors by failing to disclose that an independent consultant had questioned the projections contained in the official statement for the notes. Ceresney cautioned that the Commission will continue to pursue penalties against municipal issuers when appropriate, "even when the source of those funds is the taxpayer base."
- **Controlling Person Liability for Government Officials.** In 2014, the SEC used section 20 of the 1934 Act for the first time against a former government official. That case concerned a bond offering by the City of Allen Park, Michigan, to finance a movie studio project. The SEC alleged that the offering documents contained misleading statements about both the viability of the project and the financial condition of the city, including its ability to service the bond debt. The SEC alleged the former mayor of Allen Park was liable as a controlling person because of his authority and control over the city.
- **Injunctions Against Participation in Future Offerings.** The SEC is also seeking to enjoin issuer officials from participating in future municipal bond offerings. Thus, for example in the City of Harvey case discussed above, the mayor agreed to an order enjoining him from participating in future offerings.
- **Coordination with Criminal Authorities.** In 2014, the SEC's increased coordination with criminal authorities in the municipal finance area resulted in what may be the first filing of municipal bond-related criminal securities fraud charges. On April 14, 2016, the SEC brought civil fraud charges against Ramapo, New York, its local development corporation and four town officials, alleging they hid deteriorating financial conditions from bond investors. That same day, the U.S. Attorney for the Southern District of New York unsealed an indictment against a former town supervisor and executive director of the development corporation, charging them with securities fraud, wire fraud and conspiracy. Ceresney promised that coordination between the SEC and the public corruption and public integrity units of the U.S. Attorneys' offices and the FBI will continue to increase, particularly in the investigation of whether there is corruption in the awarding of underwriting business.

Ceresney closed with a warning to the municipal securities industry: "[O]ne municipal securities industry commentator recently observed of the last 3½ years that '[t]here is a definite change in tone.' I am here to say that this change in the tone of Enforcement is here to stay. You can expect continued activity in this area to protect investors."

Barnes & Thornburg LLP

by Anna N. DePerez

Tuesday, October 18, 2016

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MSRB Requests Input From Market on Future Strategic Planning.

WASHINGTON – The Municipal Securities Rulemaking Board is seeking input from market participants on where to focus its long-term strategic plan and specifically how it can improve its EMMA system.

The MSRB is scheduled to begin its strategic planning cycle with a meeting in January and will focus on both its core activities as well as strategic goals designed to steer its long-term priorities, the board said in a regulatory notice Wednesday. The MSRB engages in a strategic planning process every two years. It is asking that market comments be filed by Nov. 11.

"The MSRB's long-term strategic planning process informs the board's discussion and prioritization of regulatory, educational, and transparency initiatives," said MSRB executive director Lynnette Kelly. "Receiving comment from a wide range of market participants helps ensure that the MSRB thoroughly considers relevant market topics when setting and reevaluating organizational priorities."

The strategic planning will fall to the MSRB's 21-member, majority-public board and will involve a "comprehensive strategy review" with consideration of: its statutory authority; activities of dealers and municipal advisors; information needs and concerns of issuers; and market research practices, according to the regulatory notice.

Commenters are being asked for their opinions both on potential strategic goals for the board as well as the way the MSRB should prioritize its core activities. Its core activities include: regulating muni dealers and MAs; operating market transparency systems; and providing education, outreach and market leadership.

The regulatory notice includes a list of six questions to help guide commenters. A main focus is on suggestions for steps the MSRB can take to maximize the benefits EMMA can provide the market.

EMMA is the official repository for information on almost all municipal bonds.

The board has said it is planning to organize focus groups of EMMA users, including investors and issuers, over the next year to help generate ideas for improving the system. It also announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

The MSRB's Wednesday request for comment also asks participants to weigh in on what they see as the most important risks or issues in the market as well as whether any part of the board's more recent regulation of MAs deserves additional consideration.

The Dodd-Frank Act of 2010 charged the MSRB with regulating municipal advisors and the board has since created new rules like its Rule G-42 on core duties of MAs while also expanding existing dealer rules on things like gifts and political contributions to include municipal advisors in response to the act.

The MSRB is also asking commenters to write in with ideas of specific topics that it should address in its overall education program. The board last month rolled out the first two of what it intends to be a number of courses as part of one aspect of its education activities, a new learning management system called MuniEdPro. The system is designed to keep participants up to date on the municipal market and in compliance with their continuing education requirements. The two classes address the roles and responsibilities of participants in fixed-rate, primary market offerings as well as understanding MSRB Rules as they relate to market risks.

The Bond Buyer

By Jack Casey

October 12, 2016

Woodell Hopes to Start New Initiatives During Tenure as MSRB Chair.

WASHINGTON – As the new chair of the Municipal Securities Rulemaking Board on Oct. 1, Colleen Woodell hopes the board will begin new initiatives on syndicate practices and pre-trade price transparency during her one-year term.

She plans to use the knowledge she has gained over her career to contribute to the market on a much broader basis.

"I really wanted to give back," Woodell said of the impetus for her decision to take the position leading the board, which will also continue work on major rulemakings like markup disclosure.

Woodell discussed the issues pending before the MSRB and her career during an interview with The Bond Buyer.

The former chief credit officer of global corporate and government ratings at S&P Global Ratings, she is in her fourth year on the board. Her tenure is longer than usual after colleagues voted to give her a one-year extension as part of the MSRB's plan to have members ultimately serve four-year terms.

She replaces Nat Singer, senior managing director at Swap Financial Group, as chair, whom she served under as vice chair this past year.

Woodell said she views her role leading the 21-member, majority public board as a facilitator "making sure that everybody is heard and that we get the knowledge in the room that we need."

She added that although she sees 21 members as being "a lot," she thinks "it is a good number because it gives enough of a broad scope that it gets [the MSRB] where [it needs] to be."

As the MSRB continues to explore new rulemakings and necessary steps over the next year, Woodell said she will be cognizant of market feedback about pressures its participants have faced from recent regulations. However, she noted that "if we know that there's a need to do something, as a regulator, we need to do it."

"We know there's been a lot to absorb over the last couple of years and we're sympathetic to that," she said. "The costs are significant, the people impact is significant, but we still need to make sure that we are meeting our mission."

It is also important to her to make sure that new board members, who sometimes come on thinking their time will be spent solely on rulemaking, are aware that there is much more the MSRB does apart from crafting regulations.

Given the larger rulemaking initiatives that have either been finalized or appear closer to being finalized, like municipal advisor rules and markup disclosure, she thinks the market will have had a chance to get adjusted "before the next big things come."

The MSRB's markup disclosure rule, which is accompanied by guidance on how dealers would use a "waterfall" of factors to determine prevailing market price, has already been filed with the Securities and Exchange Commission. It would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation it sends the customer.

Comments on the proposed rule are supposed to be sent to the SEC by Oct. 4. Although dealers have been concerned about how to demonstrate compliance with the rule, Woodell said the board thinks "that what it filed is getting the market where it needs to be."

"Hopefully it will be done during my term, but you never know," Woodell said about the proposal. MSRB Rule G-42 on core duties of MAs went through three rounds of comments from the SEC. "Hopefully this won't go that many, but it's always possible," she added. The next step for the MSRB will be to respond to the comments.

The MSRB will also continue with several other initiatives, like a newly proposed rule on certain exceptions that would allow dealers to trade in amounts below a security's minimum denomination.

New Initiatives

Woodell said she also intends to set in motion several multi-year initiatives related to past comments and data the MSRB has received.

"We put a request for comment out on the entire [MSRB] rulebook a couple years ago and that raised a few questions, along with enforcement cases about syndicate practices," Woodell said. "We need to start the conversation on those."

The focus on syndicate practices relates to an August 2015 SEC case against Edward Jones, where the firm, which was part of a syndicate, settled charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

Woodell said the board may consider some rule changes that take into account the enforcement actions, developments in Internal Revenue Service price determination requirements, and other feedback or information it gets from the market.

"The first thing we need to look at is whether it is a bona-fide order," Woodell said, referring to whether the orders that dealers submit are actual orders instead of a firm just saying it wants bonds to then either flip or do something else with them.

Woodell also intends to start the conversation on pre-trade price transparency this year, something that will be at least the same magnitude of an undertaking as markup disclosure or the initial municipal advisor rules from the board, she said.

The MSRB has already circulated a few concept releases on the topic and is currently analyzing the comments it received. Pre-trade is amorphous but refers to data that can help with pricing determinations before a muni is traded. It can include voluntarily submitted information from alternative trading systems and external yield curves.

According to Lynnette Kelly, the MSRB's executive director, the goal for the board will be to figure out what types of pre-trade information would be the most valuable.

The board also plans to work with the Financial Industry Regulatory Authority on steps involving pre-trade price transparency information, adding an extra level of necessary coordination to the process.

Woodell said the board will separately circulate a request for comment before it holds a formal strategic planning session to look at the longer-term goals for the board. The MSRB holds such a planning session every two years and incorporates the market comments along with input from the board.

Over the next five to ten years, Woodell said she would expect that the market would continue to absorb larger MSRB rulemaking like rules on syndicates, while also seeing a rise in electronic platforms.

Tangentially related to the MSRB, she said the muni market will be affected by the country's infrastructure needs and pension issues. Both presidential candidates have talked about the need for increased spending on infrastructure and the elections will also likely bring about larger changes to Congress and the SEC, she said.

"I think the infrastructure and … pensions are huge. They're not going away," Woodell said. "You're not going to wake up tomorrow and say 'that's gone.'"

EMMA

As is normal with the MSRB, the next year is also expected to bring several changes and improvements to the board's EMMA system, according to Woodell.

"EMMA is a big transparency platform," she said. "We'll continue to think about what needs to be done with it and take feedback from everybody to see what could be better."

To that end, the board will be facilitating focus groups with different types of EMMA users, including investors and issuers. It will also consider adding things like third-party yield curves and a new issue calendar to the platform.

Kelly, who described the focus groups as "a year-long initiative," said they will help to answer questions like whether the interface should look different depending on what type of user is accessing it and how the platform could best be leveraged to empower different users.

The board recently announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

"Every time we do anything, almost every day here, someone talks about market transparency and fair and efficient markets," Woodell said. "Transparency is obviously key to fair and efficient markets."

In addition to EMMA, the board will follow developments related to the first MA qualification exam, which was released on Sept. 12 for a year. MAs that didn't pass the pilot exam will have to take and pass the qualification exam. The board also will give a $5.5 million proportional rebate to dealers and will continue to monitor its finances to be "very sensitive" to the fiscal responsibility that it has to the muni business to not charge too much, Woodell said.

Some market participants question whether the MA qualification exam will cause advisors to retire early or otherwise leave "It would be disconcerting to me if it did because a basic qualification exam feels like something someone who is practicing as an MA should be able to pass," Woodell said.

"I'm sure some of the market participants feel some level of angst surrounding the idea of a test," she added. "But if you're going to be in the market and if you're going to be advising people, you have a fiduciary duty [and] you better know what you are doing."

Background

Woodell says that her career in munis started with "a lucky break" after she graduated from Wells College in Aurora, N.Y. as an economics major. She went to the yellow pages and sent out "a bunch of resumes to places I found," one of which was Moody's.

She started there in 1977 in what was then the department that handled the handbook of common stocks Moody's published. Then, in 1979, Moody's developed an internal program to promote from within and asked Woodell if she was interested in public finance.

"I said 'what's that,' and that's really what started it," Woodell said.

She stayed with Moody's until 1990, at which point she moved to Fitch until 1993. From there, she went to First Albany Capital Inc., a regional firm at that point, for five years. Ultimately, she moved to S&P and was there until 2004.Woodell retired in 2012.

Woodell said that she loves the industry because it is always changing, something she finds "fascinating."

She also enjoys what she and her friends refer to as "the curse of the muni analyst."

“I fly into National [Airport in D.C.] and I say ‘oh, there’s the sewer plants for Washington’ or I go on vacation and I say ‘oh, they have desalinization here,'” she said. “It’s with you all the time. I find it endlessly fascinating.”

The Bond Buyer

By Jack Casey

September 30, 2016

SEC Approves Fund Liquidity Rules, Sparking Concern for Munis.

WASHINGTON – The Securities and Exchange Commission voted unanimously on Thursday to finalize new open-end fund liquidity requirements that market participants said would hurt the industry by damaging the funds’ appetites for munis.

The rule requires funds to create liquidity risk management programs that are approved and monitored by their boards. It will apply to mutual funds and other open-end management investment companies, including exchange-traded funds, but will exclude money market funds. ETFs that honor redemptions using securities instead of cash are excluded from some of the new requirements.

The requirements respond to what the SEC sees as the recent growth of open-end funds investing in potentially less-liquid strategies and are meant to ensure that funds maintain enough liquidity that they are able to effectively deal with investor redemptions.

“It is imperative that open-end funds manage their liquidity carefully, both to ensure that redemptions can be fulfilled in a timely manner and to minimize the impact of redemptions on remaining investors and the broader marketplace,” said SEC chair Mary Jo White.

Most funds will be required to comply with the liquidity risk management program requirements by Dec. 1, 2018, though funds with less than $1 billion in net assets will have until June 1, 2019. The finalized rule and amendments require funds’ liquidity programs to be designed to assess liquidity based on the number of days in which the fund reasonably expects an investment could be converted to cash given current market conditions without significantly changing the market value of the investment, according to the rule.

The Government Finance Officers Association, which expressed concern about the SEC’s original proposal for new requirements released in September 2015, is still worried about the finalized rule’s requirement to categorize assets in a way that “overlooks some of the key features of muni securities,” according to Emily Brock, director of GFOA’s federal liaison center.

Munis made up about $688.9 billion of the assets mutual funds and ETFs held as of Sept. 30, according to Morningstar Inc. data.

“Trading volume is not in isolation a reliable indicator of future liquidity for municipal securities,” Brock said. “Because highly rated municipal securities are considered core holdings of large institutional investors, they experience lower trading volumes during more stable financial periods than they do during periods of fiscal stress.”

She also noted that during times of fiscal stress, munis are typically the first considered for sale because of their attractiveness to investors. Additionally, Brock said GFOA's concern is tied to the "critical" nature of infrastructure investment in the nation's economy.

"We expect as a result of this rule, funds will decrease their appetite for the securities of smaller, less frequent issuers," which constitute about three quarters of GFOA's membership, Brock said. "The potential loss of mutual funds as investors is alarming, given the level of investment from funds in short-and-long-term municipal bonds."

Matt Posner, a principal with the Court Street Group, said that mutual funds have played a key role in the current outperformance of munis compared with other fixed-income classes and that this rule, by making the funds' internal processes more expensive, will eventually make the cost of issuance more expensive and will hurt smaller issuers that are considered less liquid.

He added that the muni industry should have used the resources it dedicated to challenging a separate rule from banking regulators that did not classify munis as high quality liquid assets, to instead address this one, which has "a much more wide-ranging influence."

"There are lessons to be learned about how this rule got passed without much discussion," Posner said. He added that the lessons could be helpful as the Basel III fundamental review of the trading book requirements loom. The requirements are a part of revisions from bank supervisors that are designed to reform regulatory standards for banks in response to the financial crisis.

The SEC's finalized liquidity requirements build on its original proposal. Under the finalized rule, funds' programs would have to classify portfolio assets into four categories: highly liquid investments; moderately liquid investment; less liquid investments; and illiquid investments. It also generally allows funds to classify their investments by asset class instead of making them determine the time it would take to convert each investment into cash.

Funds covered under the rule also must determine a minimum percentage of their net assets that must be invested in highly liquid investments. Highly liquid investments, according to the SEC, are defined as those that are reasonably expected to be converted into cash within three business days without significantly changing their value. Funds also have to have policies and procedures for responding to a shortfall in their highly liquid holdings.

Another component of the new requirements would mandate that no more than 15% of a fund's investments are considered illiquid, defined as incapable of being sold within seven calendar days without significantly affecting the investment's market value. The rule lays out a series of steps and considerations if a fund exceeds the percentage.

The SEC additionally approved by a two-to-one vote a separate but related set of changes on Thursday that would allow open-end funds, excluding MMFs and ETFs, to use swing pricing. Swing pricing refers to a fund's adjusting of its net asset value per share to pass on to purchasing or redeeming shareholders certain costs associated with their activities.

The swing pricing amendments will become effective two years after they are published in the Federal Register.

The Securities Industry and Financial Markets Association's Asset Management Group said in a statement that it supports the SEC's "taking the initiative to enhance its ability to monitor and regulate asset management activities" with the new requirements.

"While we are still in the process of reviewing the final rules, it is clear that the commission maintained its commitment to the goals of the proposal, including strengthening the SEC's regulatory effectiveness and protecting investors, while showing thoughtful consideration of comments by SIFMA AMG and others," SIFMA AMG said.

Paul Schott Stevens, president and chief executive officer of Investment Company Institute, said ICI is still reviewing the final rules "will have a more comprehensive understanding of the rules' impact once we have completed that work."

"It is clear, however, that this is a tough set of new rules that will spur a number of operational changes across the registered fund industry," Stevens said. "While some of these new rules will likely add complexity and cost, ICI commends chair White and the SEC for advancing this work, as the commission is the appropriate body to address areas of potential risk in activities and products related to asset management."

The Bond Buyer

By Jack Casey

October 13, 2016

SEC Stepping Up Enforcement of Public Finance Market.

Over the last three years, the Securities and Exchange Commission's Enforcement Division has used sweeps to dramatically increase the number of enforcement measures brought against bad actors in the public finance market, Director Andrew Ceresney said.

Ceresney's division has brought enforcement actions against 76 state or local governments, 13 obligated individuals and 16 public officials since 2013. From 2002-2012, the division brought enforcement actions against six government entities, six obligated individuals and 12 public officials.

MCDC and other sweeps.

Enforcement sweeps have been critical to enhancing enforcement of the municipal securities market and the public pension market, which currently hold securities valued at $3.7 trillion and $3.8 trillion, respectively.

"A sweep is a group of enforcement actions brought simultaneously against different parties who have engaged in similar violations," Ceresney said in a speech at the Securities Enforcement Forum on Oct. 13.
The commission's most prominent sweep has been the Municipalities Continuing Disclosure Cooperation Initiative (MCDC) in 2014. The enforcement division implemented the self-reporting initiative to target municipal advisers failing to provide investors with important financial information.

After failing to disclose, bond issuers were falsely telling investors they were complying with disclosure obligations. Additionally, underwriters were suspected of selling bonds to customers using materials containing false statements, the director said.

"While not every self-report resulted in an enforcement action, the commission charged 72 broker-dealers, representing about 96 percent of the market for municipal underwriting," Ceresney said.

Beyond sweeps, the commission has implemented four other new measures in bringing enforcement actions in the public finance space — enjoining bond offerings, dispensing penalties against municipal issuers, issuing injunctions against public officials and raising standards for municipal advisers.

Restrain the bonds.

While the SEC has issued temporary restraining orders in other sectors, the commission never prohibited a municipal issuer from selling bonds until 2013. The SEC alleged the city of Harvey, Ill., had diverted bond proceeds for improper, undisclosed uses. Additionally, the commission alleged Harvey officials had been issuing bonds for the purported development of a hotel, but in reality had diverted $1.7 million of the proceeds toward the city's payroll and other operational costs.

Harvey was going to issue similarly structured bonds in the near future before the enforcement division stepped in to enjoin offerings until necessary safeguards were imposed.

Municipal issuers.

Historically, the commission hasn't brought penalties against municipal issuers, but that changed in recent years, Ceresney said.

The enforcement director presented three recent cases in which the commission charged issuers. In November 2013, the SEC charged a public facilities district in Washington with lying about the financial projections associated with an events center it was hoping to fund.

The SEC charged California's largest agricultural water district last March for lying to investors about its financial condition in connection with a 2012 bond offering worth $77 million. Currently, the commission is pursuing a civil penalty against the city of Miami for officials engaging in a "shell game" — using restricted funds to inflate its general fund.

"These cases demonstrate that municipal issuers should not expect a pass on civil penalties," Ceresney said.

Public official culpability.

The commission has started holding public officials responsible under Section 20(a) of the Exchange Act, "based on their control of the municipal entity that engaged in the fraud," Ceresney said.

Section 20(a) was used in the municipal securities context for the first time in a case against the former mayor and former administrator of Allen Park, Mich., in 2014. The commission alleged the administrator prepared and approved offering documents in association with the construction of a movie studio, despite knowing of negative, undisclosed information. The SEC alleged the mayor, based on his authority and control over the municipality, was also liable.

Municipal advisers.

This year, the commission brought enforcement actions against municipal advisers for the first time. The Dodd-Frank Act mandated municipal advisers register and comply with regulations issued by the Municipal Securities Rulemaking Board. The SEC charged Central States, LLC, and three of its employees, with violating their fiduciary duties and breaching MSRB rules.

"The new registration requirements and regulatory standards were intended to mitigate some of the problems observed with the conduct of some municipal advisers, including failure to place the duty of loyalty to their municipal entity client ahead of their own interest," Ceresney said.

By Timothy Weatherhead, The Hill Extra – 10/14/16 05:04 PM EDT

SIFMA Submits Comments to SEC on Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers.

SIFMA provides comments to the Securities and Exchange Commission (SEC) in response to Municipal Securities Rulemaking Board (MSRB) Filing with SEC on Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price.

Read the comment letter.

October 3, 2016

BDA Submits Comment Letter to the SEC: MSRB Retail Confirmation Disclosure Rule Proposal.

BDA has submitted a comment letter to the SEC in response to the MSRB's filing of its proposed retail confirmation disclosure rule along with proposed guidance amendments to MSRB Rule G-30 related to 'prevailing market price'.

On Friday, September 9th BDA submitted a comment letter to SEC in response to FINRA's filing of its proposed retail confirmation rule with the SEC. The letter and FINRA's rule filing can be viewed here.

The BDA's letter related to MSRB's proposal is focused on the following key issues:

- The urgent need for FINRA and MSRB to harmonize their rules from a policy, testing date, and effective date standpoint
- BDA urges regulators to appreciate the operational burdens associated with automating the process for making a 'prevailing market price' judgement especially related to the 'similar' security analysis that will frequently be required for municipal securities
- Due to the operational and technology burdens of the rule and the other major rules that will be effective in the next 24 months
- BDA urges the SEC to institute proceedings on both the FINRA and MSRB filings to extend the time period for assessing the rules prior to approval or disapproval

Proposal Overview

Scope of Transactions: The proposal will apply to retail trades when a dealer has entered into an offsetting principal trade in the same security in a total quantity greater than the retail trade during the same trading day

Timing of Trades: MSRB proposes to have the rule apply to offsetting principal and retail trades that are executed on the same trading day as opposed to over a certain amount of hours during a given trading day

Disclosure Computation: MSRB has proposed to base the confirmation disclosure computation on the difference between the prevailing market price that exists at the time of the retail trade and the retail trade price

- MSRB Rule G-30 Amendments: "Dealers must establish market value as accurately as possible using reasonable diligence under the facts and circumstances" based on the FINRA 2121 "waterfall" concept. MSRB notes that it has filed the G-30 amendments with only minor amendments in comparison to the proposed amendments BDA commented on in March 2016.

Time of Trade Disclosure and Link to EMMA on Confirms: Unlike FINRA, MSRB included a requirement to include a time of trade of disclosure on all retail and institutional customer confirmations in addition to a link to EMMA on retail confirms regardless of whether the mark-up disclosure is required on the transaction.

Proposed Effective Date: No later than 365 days after the SEC approves the rule

Additional Information:

A recap of BDA's April 2016 Member Fly-in Meeting with FINRA and MSRB can be viewed here.

BDA's December 2015 comment letters to FINRA and MSRB can be reviewed here.

10-04-2016

Dealers to SEC: Markup Proposal Overly Complex, Would Hurt Liquidity.

WASHINGTON – Dealer groups are warning that a Municipal Securities Rulemaking Board proposal to require dealers to disclose their markups and markdowns in certain transactions would be overly complex and hurt liquidity.

They urged revisions and new guidance allowing for compliance through dealers' automated systems.

The groups made their comments to the Securities and Exchange Commission regarding the MSRB's proposed changes to its Rules G15 on confirmation and G30 on prices.

The changes would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

The Financial Industry Regulatory Authority has proposed a similar requirement and has been coordinating its changes with the MSRB.

The MSRB proposal, filed with the SEC on Sept. 2, also establishes a waterfall of factors for determining prevailing market price (PMP), which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities.The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that could be used to show securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Both Bond Dealers of America and the Securities Industry and Financial Markets Association criticized the proposed waterfall of considerations given, among other things, the level of subjectivity many of the determinations would require.

BDA chief executive officer Mike Nicholas said the proposal "vastly underestimates the complexity of operationalizing the waterfall concept in an automated fashion."

"In light of the fact that there is currently no commercially available solution for automating the waterfall process … dealers will have to devote significant resources to finding a solution that works with their existing legacy systems and processes," he wrote.

Leslie Norwood, managing director and co-head of municipal securities for SIFMA, and Sean Davy, managing director for SIFMA's capital markets division, warned that under the proposal dealers that carry inventory would be required to "grapple with the cost and complexity" of such programming. They said that the burden could cause those firms to move to a riskless principal model "rather than assume the costs, complexities, and risks of implementing the proposal as currently formulated."

"Unfortunately, there is no suggestion that the MSRB has measured or fully considered the risk that its proposal will impair liquidity in the municipal market," SIFMA wrote. "A more thorough analysis of the proposal's effect on liquidity is entirely within the MSRB's capabilities."

SIFMA, which also made clear that working with the MSRB's EMMA system and FINRA's TRACE system would be a more effective way to ensure investors are informed, asked that the MSRB adopt explicit guidance recognizing that it is not technologically feasible to automate a strict waterfall analysis. The prevailing market price analysis should also only apply to the confirmation disclosure proposal instead of transactions in general, SIFMA said.

Quoting a section of the SEC's 2012 Report on the Municipal Securities Market that explained determining the prevailing market price for munis can be a complex task, Norwood and Davy said the complexity would be "further amplified in the context of the proposal."

"The MSRB should expressly recognize this operational reality and provide further guidance regarding what it views as 'reasonable policies and procedures' to calculate PMP on an automated basis," SIFMA said. The group suggested that the self-regulator allow firms to adopt an alternative to contemporaneous costs or proceeds, such as pulling prices from third-party pricing vendors.

Additionally, SIFMA is asking that the MSRB and FINRA acknowledge that firms would be acting reasonably and appropriately by labeling their markups and markdowns as an "estimate" or as "approximate" on the confirmations given the difficulty of being exact when using the waterfall. Nicholas also said that it would be appropriate to deem the disclosed markup or markdown as a dealer's estimated compensation.

Regulators should acknowledge that firms may diverge when determining what securities are "similar," given the likely subjectivity of the determination and its basis on facts and circumstances, SIFMA wrote. The group wants an assurance that regulators would not find that a dealer's calculation is incorrect as long as it is based on a reasonable and good faith automated measure of PMP based on the information available at the time of the transaction.

Both dealer groups asked for clarifications on certain aspects of the MSRB filing.

BDA expressed "serious concern" that the proposal says isolated transactions in munis "may" be given little or no weight in establishing prevailing market price. Nicholas notes that munis do not trade as frequently as corporates and that given the specificity of the required similar security analysis, isolated securities or those with a limited number of trades may be the only ones a dealer could deem similar.

He added that there is a discrepancy between the MSRB's filing and the actual rule text as to how much weight an isolated transaction can be given. He requested the board clarify the language as well as the intent of the section.

SIFMA asked that the MSRB revise its guidance to more accurately describe what it means by a spread, which is included in its non-exclusive list of relevant factors, to determine whether a security is similar. The example the board gives of a spread compares munis to Treasuries, but only taxable munis trade at a spread to Treasuries, SIFMA said.

Both BDA and SIFMA also emphasized the need for the MSRB to coordinate their rulemaking with FINRA as much as possible to limit the compliance burden. The MSRB has proposed dealers send customers security-specific hyperlinks along with confirmations. The groups said it would be better for the board to require dealers to include more general links on confirmations that would direct customers and investors to pages on which they can search for their specific securities. The two dealer groups also asked the MSRB and FINRA to set a more reasonable implementation period than the proposed one year after SEC approval. They cited the complexity of complying with the changes as well as the numerous other large regulatory developments that are expected soon, such as movement to a T+2 settlement cycle and implementation of the Department of Labor's fiduciary standard.

BDA asked the period be at least two years after SEC approval while SIFMA said that, if the MSRB and FINRA work to provide more clarity and guidance on the proposal, it could be implemented in no less than three years.

"Neither the MSRB nor FINRA have provided justification for such an aggressive timeframe," SIFMA said. "We urge [the regulators] to propose a reasonable implementation period consistent with the commission's expectations."

The Bond Buyer

By Jack Casey

October 5, 2016

Municipal Advisors Put Focus on Staying Clear of Dealer Activity.

NEW ORLEANS – Municipal advisors face growing concern that some activities they could pursue to help clients make private placements might land them in hot water with the Securities and Exchange Commission.

A panel discussion at National Association of Municipal Advisors' annual conference here focused on how MA firms' activities in private placements could lead the regulator so see them as unregistered broker-dealers, subject to a different set of regulations, and what they can do to avoid that trap.

The issue has received increased attention in past years as the popularity of bank loans and other private placements have increased in the municipal market, panelists and audience members said.

"We're all grappling with an approach we can go forward with to best serve our clients that still keeps us out of trouble with the SEC," said Alex Handlers, of Bartle Wells Associates, who moderated the panel. He said MA firms have changed their practices in recent years in various ways to address the concerns.

Private placements can be attractive for issuers because they are cheaper and less regulated than traditional issuances. They can also give issuers the ability to negotiate specific aspects of the deal like legal covenants.

MA involvement in such deals has raised legal issues over whether they are acting as unregistered brokerdealers. Advisors, who owe fiduciary duties to their clients, and broker-dealers, who act as intermediaries, operate in different regulatory regimes.

The legal question boils down into two areas of consideration: whether the private placement should be considered a security; and whether an advisor dealing with the private placement is acting only in the capacity of their advisory relationship with their client or whether the advisor is acting as a broker by entering into the business of effecting a transaction in the securities of others.

While SEC representatives have said in the past that there is no bright line test for determining whether something is a loan or a security, they point to the 1990 case *Reves v. Ernst & Young*, in which the Supreme Court found that notes were presumably securities, but allowed for that presumption to be overcome if the notes bore a strong resemblance to another note that is not a security.

If a private placement is not deemed a security, then the need to distinguish between MA and broker-dealer business is moot because the SEC and MSRB rules for broker-dealers only apply to municipal securities.

If a private placement is a security, though, MAs have to be more careful and can look to generally accepted key parts of a security transaction, including: solicitation; execution of the transaction, conversations about the size of the transaction; and whether the MA handles the securities of others in connection with the transaction, as factors in determining whether they are acting as unlicensed dealers.

Handlers added that MAs seem to have found that some of the activities that they historically had taken on could be included in the definition of broker-dealer activity, such as identifying potential investors and doing the solicitation for the deal.

Handlers advised that when MAs are evaluating their activities, they take into account "the whole totality of things" the SEC could look for related to dealer activity, like whether the duty of soliciting for the deal falls to the MA or, as it should, a dealer acting as a placement agent.

“[An MA] could go over to the dark side on one of these things, [which does] not necessarily mean [it] is going to be deemed guilty, but it doesn’t help” the MA’s case with the SEC, Handlers said.

“The more we can keep ourselves on the right side of the line, the less chance there will be of any violation from the SEC’s perspective,” he said. “If we haven’t changed our practices yet, it’s time to do it now.”

One MA in the audience who works for a larger firm shared with the panelists and attendees what steps his firm had taken to shield itself from possible violations. The main concern he addressed related to MAs having a list of possible lenders that they then reach out to asking about potential interest in a deal. The panelists and audience members agreed that such an action automatically limits the number of potential lenders and thus would move an MA into one part of the broker-dealer territory.

The MA’s firm tries to combat that problem by making sure that its client supplies the list of potential lenders instead of the MA itself. That way, it’s the issuer determining where the request for proposal (RFP) is going to go, the advisor said. The firm also sends out RFPs on the issuer’s stationary instead of its own and will rely on its issuer client to take the lead on negotiating the terms of the private placement.

“We’re trying to be pretty clear up front with everything we do because we don’t know where we’re going to … get trapped and be in the underwriter world,” the advisor said.

SEC representatives have said that they are looking at the issues MAs can face when navigating the difference between allowable conduct with private placements and actions that can lead to violations. One solution could be providing for certain exemptions from broker-dealer rules for MAs conducting business. The SEC already provides other regulated entities like investment advisors and broker-dealers exemptions from its MA rule, but there are no parallel exemptions for MAs from broker-dealer or investment advisor rules.

Jeff Sharp, senior vice president and director of business development for Capital One Public Funding, which has a portfolio of muni private placements, encouraged the municipal advisors in the room to not shy away from having their issuer clients pursue private placements despite the regulatory concerns.

“I want to make a bit of an impassioned plea that you not just throw the baby out with the bathwater,” he said. “These are a valuable tool for your clients at times. We really want to be an arrow in your quiver.”

Sharp said the potential risk for MAs can be removed through the use of dealer placement agents as intermediaries.

“Placement agents are there to help you,” Sharp said. “It will cost your clients some money, but that’s just part of our new regulatory environment. They can keep you out of trouble and get your clients a good deal.”

The Bond Buyer

By Jack Casey

October 11, 2016

SEC Examiners Find MA Violations, Expect More Reviews Next Year.

NEW ORLEANS – Securities and Exchange Commission examinations of municipal advisors over the past two years found fiduciary duty and fair dealing violations, said SEC officials who cautioned the number of MA exams will increase in 2017.

The officials from the SEC's Office of Compliance Inspections, and Examinations discussed the findings from the examination initiative during a panel at the National Association of Municipal Advisors annual conference here.

The initiative was announced in August 2014 and was designed to assess non-dealer MAs' compliance with registration, disclosure, fair dealing, supervision, books and records, as well as training and qualifications requirements. The SEC is responsible for examining all non-dealer MAs while the Financial Industry Regulatory Authority is responsible for dealer MAs.

After a firm examination is completed, OCIE sends either a deficiency letter spelling out the violations it found or a no further action letter. While the deficiency letter is not public and does not necessarily imply there will be enforcement, the representatives said they may pass certain findings on to their enforcement colleagues in the SEC.

Robert Miller, an OCIE supervisory attorney and examining manager, emphasized that when a firm receives a no further action letter, it should be aware that it is not the same thing as "a gold star."

Suzanne McGovern, an OCIE assistant director, said that as of Sept. 13, approximately 670 firms have registered with the SEC, 518 of which are non-dealer municipal advisors. Additionally, 4,900 individuals have each filed a Form MA-I to provide advisor information.

OCIE examined 50 non-dealer municipal advisors and two broker-dealers in 2015 and closed 67 examinations of non-dealer municipal advisors in 2016, according to McGovern.

She added that OCIE's focus on examinations will continue into next year as the office and the MA community both become adjusted to newly effective conduct rules for municipal advisors, such as the Municipal Securities Rulemaking Board's Rules G-20 on gifts and G-37 on political contributions. OCIE recently outlined its resource allocation for the next year and determined that one of the office's priorities for 2017 will be independent MAs, she said.

"That means probably the number of examinations this year will go up," she said. The office uses risk assessments it does of the firms to determine which ones to examine and when to begin the processes.

While examinations in 2015 mainly uncovered what Miller called "technical violations," such as those related to registration and books and records, examinations in 2016 found instances of fiduciary duty violations. The Dodd-Frank Act gave MAs a fiduciary duty to put their clients' interests first. The more recently enacted MSRB Rule G-42 detailed MA duties of care and loyalty.

As an example of the commission's fiduciary duty findings, Miller described a series of discoveries the office made about three individuals who were employed with an MA and were also working at a related broker-dealer. The individuals pursued several deals while working with a municipality in an advisory capacity and the OCIE examiners found that when it came time to choose an underwriter for the municipality's deals, they picked their own dealer without notifying the municipality of their ties.

“In that case, clearly there’s a conflict of interest,” Miller said about the concerns with the individual’s breach of their fiduciary duty. “If they’re double-dipping, what is the likelihood that they are going to look out for the best interest of the municipality as opposed to themselves?”

While Miller did not explicitly identify the parties in the case, the facts he described are very similar to an SEC enforcement action released in March where the commission settled with Kansas-based municipal advisor Central States Capital Markets, its chief executive officer John Stepp, former vice president Mark Detter, and current vice president David Malone. The firm and employees were financial advisor for an issuer in a muni transaction and then selected a broker-dealer where the three men also worked to underwrite the bonds, according to the SEC.

Miller said OCIE examiners have also uncovered examples of fair dealing violations related to excessive fees.

He gave an example of a deal involving a small community in the Southeast that needed to buy new equipment for its school district. The community reached out to a municipal advisor and the MA recommended it issue bonds. However, given the small nature of the deal, the MA initially had trouble finding other deal participants and decided it had to do more due diligence. It eventually found participants with which the firm had worked with before, but, when the bonds were issued and the deal was completed, OCIE found that the MA ended up getting a fee of 22% of the bond proceeds.

“I think that is the definition of excessive,” Miller said.

OCIE’s excessive fee determinations deal more with facts and circumstances he added, saying examiners will continue to look at things like the MA’s expertise, the time it has spent in the industry, the level of qualifications, and the complexity of the issuance when drawing such conclusions.

Miller and McGovern said OCIE also found registration as well as books and records violations during the two-year examination period.

Common violations included registering with the Municipal Securities Rulemaking Board as an MA but not the SEC, listing an incorrect name on the registration form, and not properly keeping a general ledger for the firm.

Miller recommended that firms trying to keep a good general ledger think about the practice from a “follow the money” standpoint. He said the idea is to allow examiners, when they visit, to see how money came in, who got paid, and what the money was getting paid to.

“The key thing for us … is more documentation is better,” he said. “It allows us to ask intelligent questions.”

Other violations related to documentation included failures to have written supervisory procedures (WSPs) or not having WSPs that were tailored to the firm’s operations. They gave an example of firms that, when asked about their WSPs, would provide copies of MSRB and SEC rules and simply say that they follow each of the rules’ components.

“Things like that will definitely get attention from the SEC,” Miller said.

He added that examiners also saw some firms that had comingled email addresses or credit cards for both individuals and the firms. They also found a number of individuals, each of which had a Form MA-I that had not been updated and thus had them registered with two different firms.

McGovern said that OCIE has found “probably about 50% of municipal advisors are not filing their amendments” to keep the regulators as well as their information updated.

OCIE is planning to put out a risk alert describing its findings as a “last piece” of the initiative, according to McGovern. She said the risk alert may take longer to be released because it has to get SEC approval, but that once it is made public it can help MAs strengthen their compliance programs.

The Bond Buyer

By Jack Casey

October 7, 2016

Municipal Advisor and Issuer Needs Post MCDC.

The SEC’s Municipalities Continuing Disclosure Cooperation initiative is causing many municipal issuers and underwriters to change the way they do things. Underwriters are scrutinizing issuer disclosures, and the representations made about those disclosures, for accuracy and clarity. To date 71 issuers have entered into cease and desist orders with the SEC and must update past delinquent disclosure filings and improve their processes to ensure timely and complete disclosure going forward. These realities, and the introduction of the Municipal Securities Rulemaking Board Rule G-42, provide municipal advisors with an opportunity to support their Issuer clients in meeting these requirements and the demands of the market.

Issuer Needs Post MCDC

The cease and desist orders issued by the SEC are likely to serve as a roadmap for all issuers. These orders require issuers to (amongst other things):

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days.
- Establish continuing disclosure obligation policies and procedures, and periodic training, within 180 days.
- Provide the SEC with a compliance certification.
- Disclose the terms of the settlement in any official statement for five years.

New Issues

Issuers coming to market need to ensure that their past filings conform to what they represented they would make publicly available and provide underwriters comfort that the issuer has a sound process in place to make timely and complete disclosure prospectively. It is best to begin this analysis when a deal is in its formative stages as underwriters will want to know:

- Are the issuer representations in the preliminary official statement and OS accurate?
- Does the underwriter have confidence the issuer will comply with their disclosure requirements going forward?

Check, Correct and Monitor

Outlined below is an approach that will help your Issuer clients address these obligations and support your G42 obligations:

- **Update Past Delinquent Filings:**
  – Conduct a 15c212 Five-Year Lookback Analysis.
  – Utilize data provided from the analysis to fix late and/or missed filings.
  – Once filed, re-run the analysis to demonstrate/confirm compliance at the Issue and CUSIP level.
- **Prospective Compliance — Notification/Monitoring and Periodic Lookback Analyses:**
  – Use a notification service to alert the Issuer and/or their Municipal Advisor in advance of ongoing filing obligations such as the Audit and Financial and Operating data. The notification service should clearly identify the timing and due date of the filing, operating and financial data tables required to be filed, and which issues and CUSIPs must be tagged to identify filings.
  – Use a monitoring and notification service to identify Rating Changes to support timely filing.
  – Once the filing date has passed, perform a 15c212 Lookback/Confirmation report to demonstrate/confirm proper filing.
- **Official Statement Notice:**
  – Include a statement regarding use of a notification/monitoring service for prospective filing obligations and post-filing reporting to support the issuer's timely filing prospectively.

The regulatory environment has placed new and different burdens on virtually all members of the municipal market. These changes require market participants to address this heightened regulatory and market scrutiny in an efficient and cost-effective manner. As a Municipal Advisor, there is an opportunity to support and serve Issuer clients as they grapple with these new demands. The simple approach outlined above is recommended for those needing to comply with a MCDC Order and for all issuers to ensure their filings are timely and representations on new issues are accurate.

The Bond Buyer

By Gregg Bienstock

October 12, 2016

Gregg Bienstock is chief executive officer and co-founder of Lumesis Inc.

MSRB Files Amendment to Rule A-4 on Meetings of the Board.

The Municipal Securities Rulemaking Board (MSRB) today filed, for immediate effectiveness, an amendment to MSRB Rule A-4, Meetings of the Board, to add that to constitute a quorum of the Board, at least one member of the Board who is a municipal advisor representative must be present. Under Rule A-4 as amended, a quorum of the Board consists of two-thirds of the whole Board, and at least one public representative, one broker-dealer representative, one bank representative and one municipal advisor representative must be present.

Read the rule filing.

Miami to Pay $1 Million to Settle SEC Municipal Bond Fraud Case.

The city of Miami agreed to pay $1 million to settle a Securities and Exchange Commission lawsuit in which a federal jury ruled that the municipality defrauded bond investors by hiding the deteriorating condition of its finances.

The city and the SEC notified the court that a tentative settlement had been reached last month, and city commissioners approved it this week, according to information posted on Miami's website. City officials have denied wrongdoing, blaming a prior administration.

Bloomberg Markets

by Susannah Nesmith

October 14, 2016 — 12:06 PM PDT

MSRB Seeks Input on Strategic Priorities.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB), which oversees the $3.8 trillion municipal securities market, is seeking public input on its core activities and strategic goals to help guide the organization's long-term priorities. Feedback from market stakeholders supports the MSRB's ability to fulfill its mission to protect investors, state and local government issuers, other municipal entities and the public interest by promoting a fair and efficient municipal market.

In an effort to promote market transparency, the MSRB is seeking specific input on future development of its Electronic Municipal Market Access (EMMA®) website, the official repository for information on virtually all municipal bonds. In addition, the MSRB is also seeking feedback from municipal market participants on prioritizing its ongoing efforts and what, if any, additional issues should be considered.

"The MSRB's long-term strategic planning process informs the Board's discussion and prioritization of regulatory, educational and transparency initiatives," said MSRB Executive Director Lynnette Kelly. "Receiving comment from a wide range of market participants helps ensure that the MSRB thoroughly considers relevant market topics when setting and reevaluating organizational priorities."

Date: October 12, 2016

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Woodell Hopes to Start New Initiatives During Tenure as MSRB Chair.

WASHINGTON – As the new chair of the Municipal Securities Rulemaking Board on Oct. 1, Colleen Woodell hopes the board will begin new initiatives on syndicate practices and pre-trade price transparency during her one-year term.

She plans to use the knowledge she has gained over her career to contribute to the market on a much broader basis.

“I really wanted to give back,” Woodell said of the impetus for her decision to take the position leading the board, which will also continue work on major rulemakings like markup disclosure.

Woodell discussed the issues pending before the MSRB and her career during an interview with The Bond Buyer.

The former chief credit officer of global corporate and government ratings at S&P Global Ratings, she is in her fourth year on the board. Her tenure is longer than usual after colleagues voted to give her a one-year extension as part of the MSRB’s plan to have members ultimately serve four-year terms.

She replaces Nat Singer, senior managing director at Swap Financial Group, as chair, whom she served under as vice chair this past year.

Woodell said she views her role leading the 21-member, majority public board as a facilitator “making sure that everybody is heard and that we get the knowledge in the room that we need.”

She added that although she sees 21 members as being “a lot,” she thinks “it is a good number because it gives enough of a broad scope that it gets [the MSRB] where [it needs] to be.”

As the MSRB continues to explore new rulemakings and necessary steps over the next year, Woodell said she will be cognizant of market feedback about pressures its participants have faced from recent regulations. However, she noted that “if we know that there’s a need to do something, as a regulator, we need to do it.”

“We know there’s been a lot to absorb over the last couple of years and we’re sympathetic to that,” she said. “The costs are significant, the people impact is significant, but we still need to make sure that we are meeting our mission.”

It is also important to her to make sure that new board members, who sometimes come on thinking their time will be spent solely on rulemaking, are aware that there is much more the MSRB does apart from crafting regulations.

Given the larger rulemaking initiatives that have either been finalized or appear closer to being finalized, like municipal advisor rules and markup disclosure, she thinks the market will have had a chance to get adjusted “before the next big things come.”

The MSRB’s markup disclosure rule, which is accompanied by guidance on how dealers would use a “waterfall” of factors to determine prevailing market price, has already been filed with the Securities and Exchange Commission. It would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation it sends the customer.

Comments on the proposed rule are supposed to be sent to the SEC by Oct. 4. Although dealers have been concerned about how to demonstrate compliance with the rule, Woodell said the board thinks “that what it filed is getting the market where it needs to be.”

“Hopefully it will be done during my term, but you never know,” Woodell said about the proposal. MSRB Rule G-42 on core duties of MAs went through three rounds of comments from the SEC. “Hopefully this won’t go that many, but it’s always possible,” she added. The next step for the MSRB will be to respond to the comments.

The MSRB will also continue with several other initiatives, like a newly proposed rule on certain exceptions that would allow dealers to trade in amounts below a security's minimum denomination.

New Initiatives

Woodell said she also intends to set in motion several multi-year initiatives related to past comments and data the MSRB has received.

"We put a request for comment out on the entire [MSRB] rulebook a couple years ago and that raised a few questions, along with enforcement cases about syndicate practices," Woodell said. "We need to start the conversation on those."

The focus on syndicate practices relates to an August 2015 SEC case against Edward Jones, where the firm, which was part of a syndicate, settled charges that, instead of selling new bonds to customers at the initial offering price as required, it took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

Woodell said the board may consider some rule changes that take into account the enforcement actions, developments in Internal Revenue Service price determination requirements, and other feedback or information it gets from the market.

"The first thing we need to look at is whether it is a bona-fide order," Woodell said, referring to whether the orders that dealers submit are actual orders instead of a firm just saying it wants bonds to then either flip or do something else with them.

Woodell also intends to start the conversation on pre-trade price transparency this year, something that will be at least the same magnitude of an undertaking as markup disclosure or the initial municipal advisor rules from the board, she said.

The MSRB has already circulated a few concept releases on the topic and is currently analyzing the comments it received. Pre-trade is amorphous but refers to data that can help with pricing determinations before a muni is traded. It can include voluntarily submitted information from alternative trading systems and external yield curves.

According to Lynnette Kelly, the MSRB's executive director, the goal for the board will be to figure out what types of pre-trade information would be the most valuable.

The board also plans to work with the Financial Industry Regulatory Authority on steps involving pre-trade price transparency information, adding an extra level of necessary coordination to the process.

Woodell said the board will separately circulate a request for comment before it holds a formal strategic planning session to look at the longer-term goals for the board. The MSRB holds such a planning session every two years and incorporates the market comments along with input from the board.

Over the next five to ten years, Woodell said she would expect that the market would continue to absorb larger MSRB rulemaking like rules on syndicates, while also seeing a rise in electronic platforms.

Tangentially related to the MSRB, she said the muni market will be affected by the country's infrastructure needs and pension issues. Both presidential candidates have talked about the need for increased spending on infrastructure and the elections will also likely bring about larger changes to Congress and the SEC, she said.

“I think the infrastructure and … pensions are huge. They’re not going away,” Woodell said. “You’re not going to wake up tomorrow and say ‘that’s gone.'”

EMMA

As is normal with the MSRB, the next year is also expected to bring several changes and improvements to the board’s EMMA system, according to Woodell.

“EMMA is a big transparency platform,” she said. “We’ll continue to think about what needs to be done with it and take feedback from everybody to see what could be better.”

To that end, the board will be facilitating focus groups with different types of EMMA users, including investors and issuers. It will also consider adding things like third-party yield curves and a new issue calendar to the platform.

Kelly, who described the focus groups as “a year-long initiative,” said they will help to answer questions like whether the interface should look different depending on what type of user is accessing it and how the platform could best be leveraged to empower different users.

The board recently announced improvements to EMMA to make it easier for issuers to disclose bank loans. The changes were spurred by issuer complaints that the system was confusing and misleading.

“Every time we do anything, almost every day here, someone talks about market transparency and fair and efficient markets,” Woodell said. “Transparency is obviously key to fair and efficient markets.”

In addition to EMMA, the board will follow developments related to the first MA qualification exam, which was released on Sept. 12 for a year. MAs that didn’t pass the pilot exam will have to take and pass the qualification exam. The board also will give a $5.5 million proportional rebate to dealers and will continue to monitor its finances to be “very sensitive” to the fiscal responsibility that it has to the muni business to not charge too much, Woodell said.

Some market participants question whether the MA qualification exam will cause advisors to retire early or otherwise leave “It would be disconcerting to me if it did because a basic qualification exam feels like something someone who is practicing as an MA should be able to pass,” Woodell said.

“I’m sure some of the market participants feel some level of angst surrounding the idea of a test,” she added. “But if you’re going to be in the market and if you’re going to be advising people, you have a fiduciary duty [and] you better know what you are doing.”

Background

Woodell says that her career in munis started with “a lucky break” after she graduated from Wells College in Aurora, N.Y. as an economics major. She went to the yellow pages and sent out “a bunch of resumes to places I found,” one of which was Moody’s.

She started there in 1977 in what was then the department that handled the handbook of common stocks Moody’s published. Then, in 1979, Moody’s developed an internal program to promote from within and asked Woodell if she was interested in public finance.

"I said 'what's that,' and that's really what started it," Woodell said.

She stayed with Moody's until 1990, at which point she moved to Fitch until 1993. From there, she went to First Albany Capital Inc., a regional firm at that point, for five years. Ultimately, she moved to S&P and was there until 2004. Woodell retired in 2012.

Woodell said that she loves the industry because it is always changing, something she finds "fascinating."

She also enjoys what she and her friends refer to as "the curse of the muni analyst."

"I fly into National [Airport in D.C.] and I say 'oh, there's the sewer plants for Washington' or I go on vacation and I say 'oh, they have desalinization here,'" she said. "It's with you all the time. I find it endlessly fascinating."

The Bond Buyer

By Jack Casey

September 30, 2016

SEC Votes to Propose Shortening Settlement Cycle Timeframe.

WASHINGTON – The Securities and Exchange Commission has voted to propose an amendment to one of its rules that would shorten the standard settlement cycle for most bond and other securities transactions to two instead of three days after the trade date.

The amendment is related to a previously SEC-approved proposal from the Municipal Securities Rulemaking Board that would similarly shorten the settlement cycle for muni transactions.

The SEC's proposal to amend Rule 15c6-1(a) of the Securities and Exchange Act of 1934 will be open for public comment for 60 days after publication in the Federal Register, the commission said in a release.

"Today's proposal to shorten the standard settlement cycle is an important step in the SEC's ongoing efforts to enhance the resilience and efficiency of the U.S. clearance and settlement system," SEC chair Mary Jo White said at a commission meeting on Wednesday. "The benefits of a shortened settlement cycle should extend to all investors, not just those directly involved in the trading, clearing, and settling of securities transactions."

The SEC amendment is designed to reduce the risks that arise from the value and number of unsettled securities transactions prior to their completion, including the credit, market, and liquidity risk that U.S. market participants face.

SEC commissioner Michael Piwowar has consistently supported the idea to shorten the settlement cycle.

"I have been quite vocal about the fact that I would have preferred for us to consider this rulemaking long ago," he said during the meeting. "Years from now, investors will be puzzled about how a T+3 settlement cycle existed for so long."

Piwowar also noted that the SEC is asking about the possibility of shortening the settlement cycle even further, to one day after the trade date.

"I preliminarily understand that a T+1 settlement cycle would produce distinct challenges and generate costs magnitudes above a T+2 settlement cycle, but I encourage commenters to tell us whether that is true and also identify the costs and benefits of each alternative relative to one another," Piwowar said.

The Investment Company Institute applauded the SEC's vote to propose the amendment, saying the change "will help make our markets more efficient and reduce risk to the benefit of all investors."

"The SEC's proposal sends a clear, important signal to industry stakeholders that regulators are committed partners in realizing this important change," said Marty Burns, chief industry operations officer at ICI. "Today's action represents a critical milestone that will keep the T+2 project moving along toward implementation next year."

The MSRB filed similar changes to its Rule G-12 on uniform practice, Rule G-15 on confirmation, as well as other requirements in November of last year.

The MSRB changes, approved by the SEC, are tied to the SEC shifting to a T+2 cycle and are part of an industry migration to the new cycle by the third quarter of 2017.

The self-regulator has not set a compliance date for its proposed rule changes but has said it will publish a notice on its website to align the compliance date to that of the rest of the markets.

John Vahey, director of federal policy for Bond Dealers of America, said BDA supports the shortening of the settlement cycle to trade date plus two and "believes it will provide meaningful benefits for the marketplace."

However, he said, the group continues "to be concerned with the potential for shortened time periods for other rules, such as confirmation delivery time requirements."

Kenneth Bentsen, president and chief executive officer for the Securities Industry and Financial Markets Association, said SIFMA commends the SEC for its leadership in establishing a regulatory framework that supports a shortened settlement cycle.

"The SEC's proactive efforts to update its rule will create the regulatory certainty the industry needs to move forward in its goal of achieving a T+2 settlement cycle by September 5, 2017," he said. "This is truly a win for investors, the industry and all market participants."

BDA, in a comment letter to the SEC, had expressed concern that the MSRB rule changes might impact retail investors who purchase securities using written checks. But the SEC said in its approval notice that the MSRB addressed the issue by arguing in its filing that the large majority of firms have access to technology that would allow their clients to deliver funds in a timely manner aligned with the T+2 timeline. The MSRB also suggested firms encourage their customers to use electronic funds payment to streamline processing.

Both BDA and SIFMA said the changes could affect MSRB Rule G-32 on disclosures in connection with primary offerings. BDA asked that the MSRB leave Rule G-32 unchanged while SIFMA said the changes for T+2 provided "an opportune time" to revise customer disclosure requirements under the rule. The MSRB, in its filing with the SEC, said it may consider suggested clarifications to the rule at a later date.

The Bond Buyer

By Jack Casey

September 28, 2016

MSRB Proposes Standalone Minimum Denomination Rule.

WASHINGTON – The Municipal Securities Rulemaking Board proposed on Tuesday to create a standalone minimum denomination rule that would revise current and proposed requirements because of dealer complaints.

The new standalone Rule G-49 would contain requirements added to Rule G-15 in 2002 to prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by the issuers. It would also include two exceptions to the prohibition added in 2002, as well as two more exceptions proposed in April of this year to help maintain liquidity for below-minimum positions.

Under the proposed Rule G-49, one of the existing exceptions and one of the exceptions proposed in April would be modified in response to market participants' comments.

The MSRB has asked for public comments to be submitted on proposed Rule G-49 by Oct. 18.

"As a result of input from industry and other commenters, the MSRB believes that creating a clearer, stand-alone rule on minimum denominations will facilitate understanding and compliance with these investor protections," said MSRB executive director Lynnette Kelly. "We want to support the practical application of the prohibition while emphasizing the overall importance of adhering to the minimum denomination for certain transactions."

The minimum denomination is the lowest amount of bonds that can be bought or sold, as determined by the issuer in its official statement for the bonds. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Rule G-49 would eliminate the current requirement that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't the dealer's customer and is the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

The liquidation statement is key to one of the existing exceptions that was adopted as part of Rule G-15. Under that exception a dealer could sell a below- minimum denomination amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

The elimination of the liquidation statement requirement would affect another exception that was proposed in April. That exception would allow a dealer that has bought a customer's liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds. There was also a liquidation statement required for that.

The MSRB is proposing to eliminate the liquidation statement requirement after dealers said in comments in April that the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum denomination positions.

Dealers were concerned that they could be subject to disciplinary action if they could not prove a liquidation had occurred. They would need to rely on another dealer, an ATS, or a broker's broker to obtain such a statement and were wary of such reliance. They were also concerned traders would be discouraged from bidding on below-minimum positions.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its request for comment that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The MSRB has proposed a "new safeguard" in light of its elimination of the need for a liquidation statement. The safeguard would prohibit a dealer engaged in an inter-dealer trade from selling less than all of a below-minimum denomination position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB's goal by preventing the creation of additional below-minimum denomination positions, the board said.

The MSRB is separately proposing to eliminate a condition it had put into its two additional exceptions proposed in April that would have required a dealer's sale to a customer to be consistent with any restrictions in the issuer's official statements regarding increment amounts.

Commenters had said the increment condition would unnecessarily limit the transfer of positions held by customers instead of providing more flexibility.

In addition to the two exceptions that would be affected by the liquidation statement's elimination, G-49 would incorporate two others, one that is already in existence and another that was proposed in April. The exception already in place allows dealers to buy from customers munis below the minimum denomination if the dealer determines, based on customer account information or a written statement from the customer, that the customer is selling its entire position in the bonds.

The second exception, proposed in April and added to G-49, would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds.

The draft rule will carry over provisions that applied to past exceptions and require a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

The rule would not, however, require such a written statement to be made to a customer who is brought up to or past the minimum denomination for the munis under the second proposed exception to the rule.

The Bond Buyer

By Jack Casey

September 27, 2016

[MSRB Improves Bank Loan Disclosure on EMMA After Issuer Complaints.]

WASHINGTON – The Municipal Securities Rulemaking Board has improved its EMMA system to make it easier for issuers to disclose bank loans and other alternative financings after state and local officials complained the process was too confusing and seemed to lose some of these disclosures.

The self-regulator, which has been a frequent advocate for voluntary disclosure of bank loans, introduced new, step-by-step instructions for issuers to use when submitting information on alternative financings to EMMA. The system now includes a bank loan disclosure tab on issuer homepages and contains an advanced search function that will allow users to search for securities associated with bank loan disclosures.

The MSRB will also hold an educational webinar on the new process geared toward issuers from 3:00 to 4:00 p.m. on Oct. 13.

"Feedback from issuer representatives suggested that a simplified method of submitting bank loan disclosures to EMMA would support making this important information available to investors and the public," said MSRB executive director Lynnette Kelly. "With the new and streamlined process, the MSRB hopes to see more issuers submitting bank loan disclosures for display on EMMA."

Bank loans and other financings have become popular for issuers because they can be used as a cheaper and less regulated alternative to municipal bonds. However, there is no requirement that issuers disclose such financings and any disclosure that does occur is done on a voluntary basis.

Under the new submission guidelines, issuers are instructed to begin by finding the area for creating a bank loan or alternative financing filing under the "continuing disclosure" tab on the EMMA Dataport Submission Portal. They will then be able to enter a description of the financing, disclose the date of the financing, and be given the choice of three options, depending on whether they know the CUSIP numbers that they want to associate with the loan. If they know the CUSIPs, they will be able to add them in an additional box. If they do not have CUSIP information, they can either search for the specific securities they want to associate by issuer name or state, or choose to only enter the issuer name and state without tying the financing to CUSIPs.

The new disclosure capabilities come after several discussions between the MSRB and market participants that took place earlier this year.

Issuers on the Government Finance Officers Association's debt committee vented their frustrations about the complexity of bank loan disclosure on EMMA to MSRB chair Nat Singer during a meeting the committee held as part of GFOA's annual conference in Toronto in late May. They emphasized that the problem has less to do with issuers not disclosing and more with the complexity of the system that was in place making it hard to correctly submit and find the disclosed information.

Ivan Samstein, chief financial officer for Cook County, Ill., and a committee member, told Singer that while there may be a problem with a lack of disclosure, it is overstated.

Jonas Biery, vice chair of the debt committee and senior business operations manager at the City of Portland, Ore.'s Bureau of Environmental Services, said that issuers didn't know where to post the information and investors didn't know how to find it, which led to the appearance of issuers largely under-disclosing.

"From our perspective, we have this potential momentum to create this structure that facilitates issuer posting, but the EMMA system just didn't quite seem to accommodate that," Biery said at the time.

The MSRB circulated a concept release in March that asked market participants to weigh in on whether it should pursue a rule to require municipal advisors to disclose information about the bank loans or privately placed munis of their issuer clients. The MSRB said it considered requiring the disclosures from MAs because issuers had not readily responded to prior requests for voluntary bank loan disclosures on EMMA.

Most commenters on the concept release applauded the MSRB's intent to increase disclosure but presented a host of reasons for why the concept of having MAs disclose bank loans is flawed. The main concerns centered on the likely threat to an MA's fiduciary duty to its issuer client if the issuer didn't want to disclose a bank loan but the MA was required to disclose it. Other commenters also questioned whether the MSRB had the statutory authority to require such disclosure.

The general consensus among commenters was that the issue would be better addressed with a change to the SEC's Rule 15c2-12 on disclosure. The idea to change 15c2-12 has proved popular in the market and lawyers in the Securities and Exchange Commission's Office of Municipal Securities have said they are exploring possible regulatory solutions that could address whether issuers should in some way be required to disclose information about their bank loans and privately placed securities.

The Bond Buyer

By Jack Casey

September 26, 2016

MSRB Seats New Board and Announces Priorities for New Fiscal Year.

Washington, DC – On October 1, 2016, the Municipal Securities Rulemaking Board (MSRB) began its new fiscal year and seated the 21-member Board of Directors that establishes regulatory policies and oversees operations.

Colleen Woodell, a Board member since 2013, takes over as Chair with a focus on advancing transparency initiatives, clarifying dealer syndicate rules and emphasizing the role of education in market regulation. "I look forward to guiding the continued evolution of the municipal market as it adopts necessary structural and transparency changes, and ensuring that all participants operate with integrity," Woodell said. Board member Arthur Miller, who joined in 2015, serves as Vice Chair for the upcoming year.

Among the MSRB's operating objectives for FY2017 are the expected implementation of a rule requiring dealers to disclose to retail investors information about dealer compensation when buying municipal bonds from, or selling them to, investors. "Our mark-up disclosure proposal will bring the municipal market in line with the equity market when it comes to investors' understanding of the cost of their transactions," Woodell said.

The MSRB also will continue to improve the usefulness and usability of the Electronic Municipal Market Access (EMMA®) website, with an evaluation of how it can best serve all stakeholders and the addition of features that support market transparency, including a new-issue calendar, third-party yield curves and, potentially, pre-trade price data.

In 2017, the MSRB also will expand its MuniEdPro course catalog to provide municipal market participants with high-quality, interactive educational content, and develop additional professional qualification standards for municipal advisors, including a principal exam and continuing education requirements. With respect to municipal advisor regulation, the MSRB will address advertising practices and activities of solicitor municipal advisors, and additional professional qualification requirements, including continuing education.

For the dealer community, the MSRB plans to update and clarify several uniform and fair practice rules, and scrutinize dealer syndicate practice rules for necessary changes.

The MSRB Board of Directors has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors. In March 2016, the Securities and Exchange Commission, which oversees the MSRB, approved lengthening the term of service for the MSRB Board members to four years from three. Under the new structure, four staggered classes—one class of six members and three classes of five members—will ensure consistent and manageable annual turnover.

Four standing committees—Steering, Audit, Finance, and Nominating and Governance—perform work at the direction of the Board, with responsibilities defined by their charters. See a list of MSRB Board members and their committee assignments below.

FY 2017 MSRB Board of Directors and Committee Assignments

Steve Apfelbacher – Finance (Chair) and Steering
J. Anthony Beard – Nominating and Governance
Renee Boicourt – Audit
Robert Clarke Brown – Finance, and Nominating and Governance
Julia H. Cooper – Audit
Ronald Dieckman – Nominating and Governance
Richard K. Ellis – Audit
Jerry W. Ford – Audit, and Nominating and Governance
Dall Forsythe –Finance
Richard Froehlich – Nominating and Governance
Gary Hall – Nominating and Governance, and Steering (non-voting member)
Lucy Hooper – Nominating and Governance
Mark Kim – Audit (Chair) and Steering
Kemp J. Lewis – Finance
Arthur Miller – Steering
Christopher M. Ryon – Steering and Nominating and Governance
Rita Sallis – Nominating and Governance (Chair), and Steering
Edward J. Sisk – Nominating and Governance
Patrick Sweeney – Finance
Dale Turnipseed – Nominating and Governance, and Steering
Colleen Woodell – Steering (Chair) and ex officio member of each committee

Date: October 3, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

MSRB Requests Comment on Establishing Continuing Education Requirements for Municipal Advisors.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft rule amendment to establish continuing education (CE) requirements for municipal advisors. The CE requirements would complement the MSRB's professional qualification program for municipal advisors, including an examination for municipal advisor representatives and a forthcoming examination for municipal advisor principals at municipal advisor firms.

The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that the MSRB develop professional qualification standards and CE requirements for municipal advisors. The draft amendments to MSRB Rule G-3, on professional qualification requirements, aim to establish robust CE requirements for municipal advisors while balancing the need to avoid unnecessary regulatory overlap with existing CE requirements for municipal securities dealers, who may also act as municipal advisors.

"Creating appropriate CE requirements for municipal advisors will ensure that firms provide minimum levels of training to individuals whose advice can have such a long-lasting impact on the financial health of states, cities and other municipalities across the country," said MSRB Executive Director Lynnette Kelly. "This is an important next step in the development of a comprehensive regulatory framework for municipal advisors."

The MSRB will host a free educational webinar on Thursday, October 20, 2016 at 3:00 p.m. to 4:00 p.m. Eastern Time to review the draft requirements and assist stakeholders in providing input on the proposal. Register for the webinar.

Read the request for comment.

Comments should be submitted no later than November 14, 2016.

Date: September 30, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

MSRB Seeks Comment on Creating New Rule to Clarify Minimum Denomination Provisions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft proposal to clarify regulatory provisions that generally prohibit dealers from buying or selling bonds below the minimum denomination allowed in a bond offering document. The revised provisions would form a new stand-alone rule.

The MSRB's minimum denomination regulations, currently provisions of MSRB Rule G-15 on customer transactions, are designed to protect investors in cases where municipal securities issuers determine that the complexity, risks, lack of disclosure or other factors make the securities inappropriate for a retail customer. The MSRB first sought comment in April 2016 on clarifying its minimum denomination provisions and adding exceptions that would be consistent with this investor protection intent and would also enhance liquidity for investors that hold positions below the minimum denomination. The MSRB has decided to gather additional public input before considering proposing any changes to the Securities and Exchange Commission.

"As a result of input from industry and other commenters, the MSRB believes that creating a clearer, stand-alone rule on minimum denominations will facilitate understanding and compliance with these investor protections," said MSRB Executive Director Lynnette Kelly. "We want to support the practical application of the prohibition while emphasizing the overall importance of adhering to the minimum denomination for certain transactions."

Draft MSRB Rule G-49 provides for several exceptions to the minimum denomination prohibition to facilitate liquidity for investors that for various reasons may own bonds in lots below the minimum denomination. The MSRB believes the proposed exceptions provide benefits to these investors while at the same time avoiding the creation of additional below-minimum denomination positions. The draft rule also aims to reduce administrative burdens when transacting in positions that resulted from customers totally liquidating their entire below-minimum position. Read the request for comment.

Comments should be submitted no later than October 18, 2016.

Date: September 27, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

NABL: MSRB Updates Congress on Implementation of Dodd-Frank Act.

On September 19, the Municipal Securities Rulemaking Board (MSRB) sent to the leadership of the Senate Banking, Housing and Urban Affairs and House Financial Services Committees a letter concerning the MSRB's creation of the core regulatory framework for municipal advisors (MAs). In the letter, MSRB Chair Nathaniel Singer detailed the MSRB's completion of a core regulatory framework for MAs through the implementation of MSRB rules, including MSRB Rule G-42 (establishing core standards for non-solicitor MAs) and MSRB Rule G-44 (creating supervision and compliance obligations for MA firms). In addition, the MSRB has created education and outreach initiatives for MAs. Singer also included in the letter that the MSRB's Electric Municipal Market Access (EMMA) system has been enhanced to include credit ratings from all major rating agencies, an economic calendar and an email reminder tool to alert municipal entities of approaching annual disclosure deadlines.

The MSRB's letter to Congress is available here.

MSRB Updates Congress on Completion of Core Regulatory Framework for Municipal Advisors.

In a letter to Congress on the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Municipal Securities Rulemaking Board (MSRB) describes the completion of its core regulatory framework for municipal advisors and the complementary education and transparency initiatives aimed at protecting municipal entities.

Read the full press release.

Read the MSRB's letter to Congress.

Issuers: Verify the Professional Qualifications of Your Municipal Advisor.

Working with a municipal advisor? Be sure to check their registration status and professional qualifications.

All municipal advisor firms must be registered with the Municipal Securities Rulemaking Board (MSRB) and the Securities and Exchange Commission (SEC).

View a list of all registered municipal advisor firms here or on the MSRB's website by clicking the Check Out Your Municipal Finance Professional button on the homepage, at msrb.org.

Municipal advisor professionals are also now required to take a professional qualifying examination developed by the MSRB. By September 12, 2017, every municipal advisory professional is expected to have taken and passed the MSRB's qualifying exam (Series 50) in order to continue providing municipal advisory services.

A list of associated persons at registered municipal advisor firms who have passed the Series 50 exam is available on the MSRB's website.

NABL: House Financial Services Subcommittee Holds Hearing on Municipal Securities.

On September 22, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled "Examining the Agenda of Regulators, SROs, and Standards-Setters for Accounting, Auditing, and Municipal Securities". Members of the panel included Securities and Exchange Commission (SEC) Office of Municipal Securities (OMS) Director Jessica Kane and Municipal Securities Rulemaking Board (MSRB) Executive Director Lynnette Kelly. Members of the committee were primarily concerned with protecting issuers and the public from high costs and providing investors with transparency in the muni market. During the hearing, a number of representatives raised specific concerns, including Rep. David Sweikert (R-AZ), who raised concerns regarding "extraordinary legal fees" for state and local governments when refinancing bonds, and Rep. Bruce Poliquin (R-ME), who raised concerns with "hidden costs" in negotiated sales as compared to competitive sales. Kane and Kelly continued to emphasize the progress made by their respective agencies in transparency and disclosure. They specifically mentioned the SEC's MCDC Initiative and the MSRB's proposed markup of disclosure rules.

The witnesses' written testimonies and a recording of the hearing are available here.

MSRB to Lawmakers: 680 Firms, 4,500 Professionals Registered as MAs.

WASHINGTON – About 680 firms, with 4,500 associated professionals, were registered as municipal advisors as of September, the Municipal Securities Rulemaking Board's chairman told House and Senate committee leaders in a letter detailing the board's compliance with the Dodd-Frank Act.

"I am writing to update you regarding a major milestone for the MSRB," Nat Singer, the board's chairman told the leaders of House Financial Services and Senate Banking committees. "We have just concluded development of a core regulatory framework for municipal advisors, implementing a regime mandated by Congress under the [Dodd-Frank Act]."

The letter describes the new MSRB rules that make up that framework as well as the initiatives the board has implemented to protect municipal issuers and other entities and to enhance its EMMA system as well as its educational and outreach efforts.

The MSRB also created a majority-public member board, as mandated by the Dodd-Frank Act, which was signed into law by the president on July 21, 2010.

Dodd-Frank required non-dealer MAs for the first time ever to become subject to federal regulation and gave the MSRB regulatory jurisdiction over them.

On Sept. 30, 2013, the Securities and Exchange Commission adopted final registration rules for MAs, which defined the term "municipal advisor" and set forth exemptions from that definition. MAs must register with both the SEC and the MSRB.

The MSRB amended its Rule A-12 on registration to require new MA registrants to pay a $300 annual fee per professional in addition to a MA firm's payment of a $1,000 initial and a $1,000 annual fee. Singer told the committee leaders that the MSRB projects for its fiscal 2017, which begins on Oct. 1, that 3.2% of its revenues will be funded by MA fees.

Dodd-Frank also required MAs to become subject to a federal fiduciary duty to put their issuer and other clients' interests first before their own. MSRB Rule G-42, which took effect on June 23 of this year, establishes core standards of conduct for MAs under which they owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" to their clients requiring MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The rule requires written documentation of the advisory relationship between an MA and its client, including: the scope of services to be performed and the disclosure of any conflicts of interest or legal and disciplinary events; the specific fee structure associated with the engagement, and a prohibition against the MA acting as a principal in muni transactions.

New Rule G-44 establishes supervisory and compliance requirements for MAs under which they must develop, implement and maintain supervisory procedures reasonably designed to ensure their MA activities comply with all regulatory requirements.

The MSRB has extended a number of its rules to MAs, including G-17 on fair dealing, G-20 on gifts and gratuities, and G-37 on political contributions. Rule G-37, which took effect on Aug. 17, is designed to prevent pay-to-play practices of giving contributions to state or local officials who can award MA business.

The MSRB also amended its Rule G-3 on professional qualifications requirements to define two classifications for MA professionals: representatives and principals. Both classifications of MAs are required to take and pass the Series 50 Municipal Advisor Representative Examination. The MSRB is developing a separate qualification exam for principals. The board also amended its Rules G-8 on books and records and G-9 on preserving records to require MAs to retain records on general business proceedings, gifts, gratuities, and written supervisory procedures, among other things.

Singer said MSRB protects municipal issuers and other entities through three mission-driven objectives: rules for broker-dealers and MAs that promote fair, and prevent fraudulent and manipulative, market practices; the collection and dissemination of underwriting and trade data; and education and outreach activities. The letter details those activities as well as improvements that have been made to EMMA.

The Bond Buyer

By Lynn Hume

September 20, 2016

House Financial Services Committee Holds Hearing on Municipal Securities Regulators.

On September 22, the House Financial Services Committee hosted a hearing with witnesses from the SEC, MSRB, FINRA, PCAOB and FASB to discuss their agenda in regulating accounting, auditing and municipal securities. Ranking Member Carolyn Maloney (D-N.Y.) asked about enforcement actions taken in the municipal market. The SEC's Jessica Kane replied that the MCDC initiative was introduced to address the lack of compliance with continuing disclosure initiatives, and called the program "incredibly successful." MSRB Executive Director Lynette Kelly's testimony focused on the "significant strides" made by the Board to promote and foster increased transparency in the municipal securities market.

- Hearing Summary
- Written testimony submitted by the MSRB
- Additional information about the hearing

How MCDC Has Changed Continuing Disclosure Practices.

LOS ANGELES – Municipal market participants here shared concrete examples of how disclosure is improving in the wake of the Securities and Exchange Commission's continuing disclosure voluntary enforcement initiative.

They pointed to the increased use of third party consultants and better written policies and procedures during a Tuesday panel focused on the effects on disclosure of the SEC's Municipalities Continuing Disclosure Cooperation initiative at The Bond Buyer's California Public Finance Conference.

They gave their examples during a Tuesday panel focused on the effects on disclosure of the SEC's Municipalities Continuing Disclosure Cooperation initiative at The Bond Buyer's California Public Finance Conference.

The MCDC initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The commission most recently announced 71 settlements with issuers from 45 states on Aug. 25. Those issuers joined 72 underwriters that represented 96% of the underwriting market by volume and paid a combined $18 million as part of their MCDC settlements. It is unclear if the SEC plans to pursue additional issuer settlements.

Cyrus Torabi, a shareholder with the law firm Stradling Yocca Carlson & Rauth and moderator for the MCDC panel, said along with other panelists that the initiative has succeeded by focusing the muni industry's attention on disclosure in a way it had not been focused before.

"One thing that I have certainly noticed is that on almost every deal, there is a third-party consultant," he said. "Most underwriters require that. It's basically a market practice."

Torabi compared that general standard with one he remembers when he first started in munis. He said there would be a brief question on a phone call about whether the issuer had been in compliance with prior disclosure requirements. If the issuer said yes, that was enough to put it in the official statement.

Torabi and Eric Goldstein, principal administrative analyst with the Metropolitan Water District of Southern California, also said that underwriters as well as disclosure and underwriter's counsel have generally heightened their scrutiny of official statements.

Goldstein cited as an example a recent due diligence call he was on where close to half of the 38 written questions focused on disclosure. He added that the metropolitan water district did not file under MCDC.

Stephen Heaney, director of public finance for Stifel, said his firm, which paid $500,000 in a settlement under MCDC, has a new focus on due diligence in the aftermath of the voluntary enforcement program "in order for the SEC not to come back and get us again."

Torabi said one idea for firms and issuers to consider when thinking about strengthening future disclosure is to be clearer about when the information will be filed. Many times, an issuer's disclosure undertakings say that it will file its continuing disclosure information something like six months or 180 days after its fiscal year ends, he said.

"Those types of deadlines create ambiguity," he said. Instead, firms should set an "actual, hard date" and stick to it, Torabi added. Several market groups, including the National Federation of Municipal Analysts, have suggested that in the past.

Torabi also noted that the SEC's Rule 15c2-12 on disclosure requires the filing of audited financial statements, but not necessarily the full audited annual financial report. He recommended that one way for issuers to minimize liability would be to only file updated financial information instead of its entire comprehensive audited financial report as part of their continuing disclosure.

Heaney said that there should be discussions about what to include in disclosures from a financial perspective leading up to the filing of the primary offering document.

"If something was important enough to be put in the initial offering [documents] and it's financial, then it really ought to be available to those in the secondary market," Heaney said.

Bill Oliver, NFMA's industry and media liaison who was in the audience during the panel, said he agrees with Heaney about information that is material for primary market investors being material for secondary market disclosure.

"This is essential for maintaining bond market liquidity," he said.

Oliver added that the main lesson from MCDC is that compliance with secondary market disclosure needs to be taken seriously by issuers and that the idea of providing less about financial information and other relevant areas is flawed.

"Any suggestions that issuers provide less information to the market fails to understand the message that the SEC is sending in its MCDC program," Oliver said. "The market needs more complete and timely financial information for the secondary market to function properly. The emphasis should be on providing more relevant information as quickly as soon as possible to the market, not in reducing issuer disclosure to diminish future liability."

Heaney also addressed the idea of participants trying to determine what the SEC considers material under its Rule 15c2-12 requirements, saying the idea "seems to be continuing to be nebulous." He urged underwriters and issuers to take an attitude of "if you've got mistakes, lay them out."

During a separate panel later in the day, Mary Simpkins, senior special counsel with the SEC's Office of Municipal Securities, briefly addressed the question of materiality by pointing out the examples of actionable conduct listed in the commission's 143 MCDC settlements.

"With respect to MCDC, I think we have already given you 143 examples of situations which we have found to be material," she said. "No matter how much guidance we put out, it's never going to cover everything. If you're not sure, just disclose it. You don't have to figure out exactly where the line is." In the first panel, speakers also touched on good guidelines issuers can have in place regarding disclosure.

Goldstein and other panel members highlighted the importance of written policies and procedures for issuers, something he said the metropolitan water authority has had formally since 2013. Its procedures outline the information that will be in annual filings, what triggers the need for a material event notice, as well as the duties of staff in preparing and filing disclosure information. He added the authority's board approves primary disclosure documents twice a year and that with every approval, the staff reminds board members of their responsibility to review the information.

Kathleen Marcus, also a shareholder with Stradling, noted the importance of written policies and procedures in connection with possible SEC enforcement actions, especially when an entity is seeking leniency.

"If you have policies in place, if you have designated people, you are going to be in a much better place if you get in the crosshairs of the SEC," she said.

Issuers also need to stay on top of material events, the panelists said. Torabi used one of his clients as an example of an effective way to do that, saying that it has designated a staff person to check every one of the ratings associated with their deals every other Monday to see if they have changed. He and other panelists highlighted the need for such a point person who can focus on material events disclosure.

Goldstein recommended that issuers also make use of outside compliance firms like Lumesis as a "second set of eyes."

The Bond Buyer

By Jack Casey

September 21, 2016

Why Dealers Are Struggling with Proposed Markup Disclosure.

LOS ANGELES – Dealers are struggling with how to comply with the Municipal Securities Rulemaking Board's proposed markup disclosure requirements and whether they can create computer programs or rely on pricing services for compliance.

Their struggle was evident from panel discussions at The Bond Buyer's California Public Finance Conference here.

Peg Henry, deputy general counsel for Stifel and former general counsel at the MSRB who moderated a panel on regulation, said the MSRB's proposed prevailing market price guidance will prove problematic for dealers trying to create a computer program to comply with the requirements.

The MSRB filed rule changes with the Securities and Exchange Commission earlier this month that would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup or markdown in the confirmation they send the customer.

The rule filing contains guidance for dealers on how to establish the prevailing market price of a municipal security in order to calculate their compensation – the markup or markdown.

The guidance establishes a waterfall of factors for dealers to consider when determining the prevailing market price. They would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price.

They would then make a series of successive other considerations if that data is not available.

They can look at contemporaneous trades of the muni in inter-dealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

But dealers have told the MSRB that it would be difficult or impossible to establish computer models to go through the waterfall of factors.

During the session, Henry asked Robert Fippinger, the MSRB's chief legal counsel, if third party pricing services could qualify under the rule as economic models.

Fippinger said, "In the description of the economic model, I think the words … at least suggest without saying that the economic model could be developed by somebody outside the firm."

But he added that if a dealer chooses to use an outside pricing service, it would be in effect endorsing that service's analysis as comparable to the economic model envisioned by the guidance. He said he is not sure if pricing services would be able to rise to the level of economic models.

Meanwhile, Mary Simpkins, senior special counsel with the SEC's Office of Municipal Securities who was on that same panel, said OMS is exploring possible regulatory solutions that could address whether issuers should in some way be required to disclose information about their bank loans and privately placed securities. Issuers so far have only been encouraged to voluntarily disclose these financings.

The MSRB circulated a concept release earlier this year that asked whether it should require municipal advisors to disclose information about their issuer client's bank loans or privately placed municipal securities.

While the idea gained some traction, the majority of those who responded said they thought it would be a better idea to have the SEC address such a requirement in amendments to 15c212.

Participants on a panel on direct purchases on Thursday agreed that 15c212 would be an effective way to address bank loan disclosure.

Scott Nagelson, managing director and head of US Bank's Government Infrastructure Group, said he thinks an amendment to the rule "would be healthy."

"Standardizing [disclosure] would be a positive for all parties," he said. "I think we need to go ahead and do that and stop talking about it."

Rudy Salo, a partner with Nixon Peabody, also said that such a change "probably is the best fix" as it would keep small issuers who may only have one private placement in recent years from having to take on an unnecessarily large disclosure burden and keeping all issuers focused on the importance of ongoing disclosure.

Lawyers, regulators, and market participants on other panels also talked about how regulators could best address compliance questions and concerns from the market on disclosure and other issues.

Dave Sanchez, senior counsel with Norton Rose Fulbright and a former lawyer with the SEC's OMS who was on a second panel on regulation, said it was clear from the first panel that regulators' focus moving forward is "much more granular" and centered on issues included in the SEC's 2012 report on the municipal market.

"The 2012 SEC report laid out in broad categories what the SEC wanted to work on and I think a lot of what has happened since then and a lot of what is on the horizon is merely execution of that," Sanchez said.

He also said “the real big trick” moving forward for regulators within the SEC, MSRB, and Financial Industry Regulatory Authority is making sure there is consistency in the examination of dealers and municipal advisors and the enforcement of existing regulations.

“The coordination needs to increase five to tenfold,” he said. “I think folks that have experienced examinations … see a disconnect in what they hear from policymakers and what they experience on the ground.”

Additionally, he said, market participants need to realize that when responding to the SEC with comments and suggestions, their tendency to always put “their thumb on the scale” in insisting on their view can paralyze the commission from getting anything done and that a more effective approach would be to go for “80% of what they want instead of 110%.”

On the other side, he noted that regulators have a tendency to pursue “easy rules for them to hit someone with a violation” and that there needs to be “a little bit of relaxing on that point.”

One main issue for the market discussed during both panels was possible improvements to disclosure, including potential changes to the SEC’s Rule 15c212. Several market groups have recently asked the SEC to explore such changes or additional guidance. The rule was adopted for primary market disclosure in 1989 and then amended in 1994 to cover secondary market disclosure. It was amended again in May 2010, mostly adding and clarifying existing material event notices.

The Securities Industry and Financial Markets Association shared a white paper with the SEC in April that listed a number of proposed changes, including giving municipal advisors some continuing disclosure responsibilities. The National Federation of Municipal Analysts sent a letter in August asking the commission to review 15c212 with an eye toward establishing more standardization in terms of the form, content, and timing of the information the rule requires to be disclosed.

Panelists briefly discussed SIFMA’s idea for giving MAs some continuing disclosure responsibilities.

Leslie Norwood, managing director and co-head of municipal securities for SIFMA, explained that the white paper suggested that the SEC create an amendment to the rule or issue guidance that would raise the duty of municipal advisors and make them responsible for checking statements and offering documents on competitive transactions when an MA is engaged by an issuer in preparing an official statement.

MSRB Rule G42 on core duties of municipal advisors states that MAs have a duty of care with respect to the information they provide in preparation of an official statement and Norwood said that could be the basis for the change.

Sanchez, who was joined on his later panel by PFM’s chief compliance officer Leo Karwejna, emphasized the importance of interpretive guidance both on disclosure questions and others facing the market instead of new rules or undertakings that some view as giving more certainty.

“People always want certainty in the market,” he said. “It’s not going to happen. Across the board, you’re not going to have that level of certainty you want [and] honestly, that’s okay.”

He added that “the great thing about interpretive guidance … is [it is] actually not binding.”

“If you don’t agree … you have the ability to act differently,” he said. “At the same time, they give you more detail and more comfort on how you act on a day-to-day basis, which is what the market wants.”

Karwejna said he considers guidance “to be the most important thing [regulators] could do.”

“Interpretive guidance [and] staff guidance within the SEC is still a lift,” Sanchez said. “But it is much less of a lift than a full-blown rule.”

Both he and Karwejna suggested the SEC address disclosure through such updated guidance.

“I think they should focus on the practical elements of clearly delineating who is responsible for what,” Karwejna said, referring to the issuers, MAs, underwriters, and others who participate in disclosure.

Sanchez added that the SEC should work to “really push through interpretive guidance that addresses all of these questions from [the standpoint of] each participant” rather than “continue to jury-rig rules through 15c212 or put Rule G42 to partially apply to antifraud, which just really confuses the market and doesn’t solve [the] main issue which is to have better disclosure.”

Underwriters have “very legitimate questions” about their roles and the differences that arise between competitive and negotiated sales, he said. It would also be helpful to have written guidance from the commission that confirms that MAs’ responsibilities depend on their scope of services, Sanchez added.

Karwejna said he sees the real challenge for the SEC on 15c212 as considering what interests are really being protected and how it wants to make sure the rule is doing that.

“That to me doesn’t mean changing so that issuers have … to be directly regulated,” he said.

Sanchez responded by saying direct regulation “could be extremely simple” like the commission saying “issuers, you are required to do a contract that has these 15 things.”

“You [would] actually still preserve your gatekeeper role for broker-dealers because broker-dealers have the due diligence obligation anyway,” Sanchez said. “I think by letting underwriters affirmatively off the hook but putting a soft, not complicated, not paper-heavy requirement on issuers would get you where you need to go because in order to accomplish the transaction, you still have all these gatekeepers that are required to look at [the] documents.”

The Bond Buyer

By Jack Casey

September 22, 2016

NASACT Signs Letter Asking Senators to Support Classifying Municipal Securities as HQLA.

Read the letter.

BDA Submits Comment Letter on FINRA Gifts, Gratuities and Non-Cash

Compensation Rules.

Bond Dealers of America submitted its comment letter to FINRA in response to its request for comment on proposed amendments to its gifts, gratuities, and non-cash compensation rules.

BDA submitted its comment letter to FINRA in response to its request for comment on proposed amendments to its gifts, gratuities, and non-cash compensation rules. You can view FINRA's regulatory notice here.

FINRA has proposed to consolidate various interpretative guidance documents related to gifts and non-cash compensation into the FINRA rulebook. Additionally, FINRA is proposing to increase its gifts limit from $100 to $175 to account for the rate of inflation since the adoption of the $100 limit. BDA's letter recommends that FINRA:

- Should not raise its gifts limit, from $100 to $175, in order to remain harmonized with the MSRB to reduce any unnecessary compliance complexity for dealers
- Increase its gift limit to $200, if FINRA deems an increase necessary, to make record keeping easier to track for dealer firms

Other Notable Proposed Amendments

Expanding Non-Cash Compensation Rules:

FINRA has proposed to amend the non-cash compensation rules to cover all securities products

Internal Sales Contests:

FINRA has proposed a revised approach to internal sales contests to be based on total production of all securities

A New Requirement for WSPs:

FINRA proposes a requirement for firms to incorporate business entertainment into their written policies and supervisory procedures

Additional Information

BDA's December 2014 comment letter to the MSRB can be reviewed here.

09-23-2016

Watch Live: MSRB's Lynnette Kelly Testifies Before Congress on Market Transparency Priorities.

Watch the testimony.

MSRB Chair Nat Singer Submits Letter to Congress on Implementation of the

Dodd Frank Act.

Read the letter.

Bank Loan Disclosure Enhancements Coming to EMMA.

In order to facilitate the filing of bank loan disclosures on its Electronic Municipal Market Access (EMMA®) website, the Municipal Securities Rulemaking Board (MSRB) has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process for issuers and also enhance the ability of investors to locate available bank loan disclosures on EMMA.

The MSRB strongly encourages state and local governments to voluntarily disclose information about bank loans and other alternative financings to the EMMA website. The MSRB believes that disclosure of alternative financings is important to enable current bondholders and prospective investors to assess a municipal entity's creditworthiness and evaluate the potential impact of these financings.

Read more about the MSRB's market leadership in the area of bank loan disclosure and access additional resources and information.

NABL: House Financial Services Committee Approves Financial CHOICE Act.

On September 13, the House Financial Services Committee approved H.R. 5983, the Financial CHOICE Act, by a vote of 30 to 26. Under H.R. 5983, any funding the Municipal Securities Rulemaking Board gets from enforcement actions would go to the Treasury Department for deficit reduction. The bill would also move the Securities and Exchange Commission's (SEC) Office of Municipal Securities back to the SEC Trading and Markets Division, eliminating its direct reporting to the SEC Chair. The bill also incorporates legislation from Rep. Randy Hultgren (R-IL), which would clarify that the SEC's municipal advisor (MA) rule doesn't require issuers to hire MAs. The Financial CHOICE Act will now go to the full House of Representatives for consideration, although timing is uncertain. Given the few remaining days in the legislative session, it is quite possible that H.R. 5983 will not be acted on by the full House. There is no companion Senate bill.

Click here for a video of the markup, the text of the original bill, the text of the amended bill, and the recorded vote.

SEC Commissioner: Examine Regulating Corporate Conduit Borrowers.

In a speech at the Financial Industry Regulatory Authority's (FINRA) 2016 Fixed Income Conference, Securities and Exchange (SEC) Commissioner Michael Piwowar raised the possibility of renewed discussions about the regulatory framework for municipal bonds. He said that although in the past calls to repeal the Tower amendment have been rejected, "[r]ecent conversations, however, have led me to consider whether it is time to revisit the reach of the Tower Amendment." Noting the diversity of municipal borrowers, from large state governments to local school districts to conduit borrowers, Commissioner Piwowar said, "it is worth considering whether each of these entities should be treated the same." He specifically raised the possibility of regulating "certain conduit borrowers" while continuing to exempt "traditional municipal issuers." Regulation of conduit borrowers was a recommendation of the 2012 SEC Report on the Municipal Securities Market.

Click here to read Commissioner Piwowar's speech. The 2012 Report on the Municipal Securities Market is available here.

In a First Federal Jury Trial, Miami, Boudreaux Found Guilty.

WASHINGTON – In a first-of-a-kind verdict, a Miami jury found on Wednesday that Miami and its former budget director, Michael Boudreaux, were guilty of securities fraud for faulty disclosures in connection with three 2009 municipal bond offerings.

The jury decision in the case that was pending in the U.S. District Court for the Southern District of Florida in Miami comes after a trial of just over two weeks where the Securities and Exchange Commission faced off with lawyers for Miami and Boudreaux over the fraud charges.

Andrew Ceresney, the SEC's enforcement director, said the commission is very pleased by the ruling.

"This was the first federal jury trial by the SEC against a municipality or one of its officers for violations of the federal securities laws," Ceresney said. "We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws."

Benedict Kuehne, Boudreaux's lawyer, said he expects to appeal the jury decision, according to the Miami Herald. Kuehne and the lawyers representing Miami could not be reached for comment at the time of publication.

The SEC will now have to file a motion seeking remedies from the case, including an injunction barring Miami and Boudreaux from future securities law violations and financial penalties. The SEC has also asked the judge for an order that would command Miami to comply with a prior cease-an--desist order from 2003 that resulted from an earlier securities fraud case.

"Based on the jury's findings, the SEC anticipates that the federal district court judge will also enter a finding that the city of Miami violated [the] prior SEC order, imposed after a fully litigated administrative trial, prohibiting it from engaging in fraudulent conduct," Ceresney said.

The jury began deliberating Wednesday morning and returned with a verdict only a few hours later. It found that Miami was guilty on all four counts that the SEC sought, which were based in fraud provisions contained in Section 17(a) of the Securities Exchange Act of 1933 and Section 10b-5 of the Securities and Exchange Act of 1934. Boudreaux was found guilty on all counts except for the first, which was based in Section 17(a)(1) and would have required the jury to find that Boudreaux "used a device, scheme, or artifice to defraud in connection with the offer to sell or sale of any securities."

Both Miami and Boudreaux had argued that they relied on auditors in connection with the alleged fraud and misrepresentations. The jury threw out that defense, finding that neither defendant completely disclosed the facts about the conduct at issue to the auditors, sought advice from the auditors about their specific course of action, received advice from the auditors about that course of action, or relied on and followed the advice in good faith.

The SEC first filed its complaint 2013 alleging that starting in 2008, Miami and Boudreaux misled investors about inter-fund transfers that were designed to cover up a growing general fund deficit in its fiscal years 2007 and 2008. The SEC said the misleading transfers were also meant to get more favorable bond ratings for offerings that occurred in May, July, and December 2009.

The alleged omissions and misrepresentations were made in: bond offering documents for the three offerings in 2009 that totaled $153.5 million; presentations to bond rating agencies; and the city's comprehensive annual financial reports (CAFRs) for fiscal years 2007 and 2008, according to the SEC.

The city disclosed the inter-fund transfers in each of their CAFRs and official statements, but, according to the SEC, the defendants said the transfers contained money that was not expended and was being returned to the general fund. In reality, that money had already been pledged to several ongoing capital projects and some of it was restricted by city law for designated purposes and not the general fund, the SEC said. Thus, the funds that were transferred should not have been considered unallocated, the commission said.

Lawyers for Miami and Boudreaux had argued that the commission could not base its claims on the city's 2007 CAFR, which identified a $13.1 million transfer from the capital projects fund, because it was not incorporated into any of the three 2009 bond offerings cited in the complaint. They also argued that the 2008 CAFR did not have any misrepresentations because it provided information about the purpose of each of the three inter-fund transfers that took place in 2008. Those three transfers amounted to roughly $34 million and were made from the city's capital projects fund and a special revenue fund to bolster the general fund.

Additionally, the lawyers argued that the SEC was trying to hold their clients, who they say followed Governmental Accounting Standards Board and other recognized requirements, to a higher standard that does not exist. They also argued the rating agencies that eventually made determinations based on the information the city provided took a deeper look at Miami's finances than just looking at the fund transfers.

The Bond Buyer

By Jack Casey

September 14, 2016

SEC Allows MSRB to Provide Three-Year Old Trade Data to Academics.

WASHINGTON – The Securities and Exchange Commission has approved proposed rule changes from the Municipal Securities Rulemaking Board that would authorize the board to provide three-year old trade data for academic studies that would identify dealers in some way without naming them.

The SEC is still soliciting comments on an amendment filed by the MSRB that would make clear that the new data product would not include information about list offering prices and takedown transactions. However, the commission said in its approval order that it found the amendment to be consistent with the purpose of the proposed rule change and that there is good cause for approving the proposed rule change with the amendment on an accelerated basis.

“By enhancing transparency in the municipal securities market, the proposed rule change is reasonably designed to protect investors, municipal entities, obligated persons, and the public interest,” the SEC said in its order.

Lynnette Kelly, the MSRB’s executive director, said the MSRB has taken measures to make the data “as rich as possible for researchers while guarding against the potential for reverse engineering to identify the dealers in a particular transaction.”

“By continuing to increase the availability and usefulness of data for academics, the MSRB hopes to encourage researchers to consider more sophisticated questions and conduct further studies of market behavior,” Kelly said.

The MSRB said in its filing with the SEC that it would publish the effective date for the rule change within 90 days of the date of the SEC order and that the effective date will be no later than 270 days after the commission’s approval.

The approved changes to create the product will be made to MSRB Rule G-14 on reports of sales and purchases, which requires dealers to report municipal security trade information to the MSRB’s Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB already makes much of that reported data publicly available through its EMMA system as well as through subscription services or historical data sets.

However, none of the data currently available includes information about the identity of the dealers, something that limits a researcher’s ability to fully understand secondary market trading practices, according to the MSRB. The self-regulator said the new data is the result of requests from certain academics for an enhanced version of RTRS trade data that includes dealer identifiers.

Academics showed their support for the new product in comment letters sent to the MSRB after the self-regulator first announced the idea in July 2015. However, Bond Dealers of America and the Securities Industry and Financial Markets Association said they were concerned that the identifiers would open their members up to harmful reverse engineering.

The MSRB responded to those concerns by strengthening the conditions that would apply to academics who use the product. Any academic institution that wants to access to the data product will have to agree: not to attempt to reverse engineer the identity of any dealer; not to redistribute the data in the product; to disclose each intended use of the data; to ensure that any data presented in work product be sufficiently aggregated to prevent reverse engineering of any dealer or transaction; and to return or destroy the data if the agreement is terminated.

The data will also only be available to academics associated with institutions of higher education and will have to be at least three years old. The MSRB originally planned to require the data be at least two years old.

SIFMA, in its comment letter to the SEC on the proposed product, generally approved of the MSRB’s changes to further protect against reverse engineering but had recommended the MSRB require the data to be at least four years old.

Leslie Norwood, SIFMA managing director and co-head of municipal securities, said SIFMA generally supports the changes and is pleased with the MSRB’s amendment but is disappointed that many of the group's concerns "were largely dismissed in the adoption of the rule changes."

"We also do not believe that the suggested limitations in the user agreement are sufficient to prevent potential misuse of the data," Norwood said.

BDA said in its comment letter to the commission that "it is still very likely that, as a consequence of this proposal, private and non-educational entities will end up possessing full trade history including dealer names for every trade released."

John Vahey, director of federal policy for BDA, said BDA appreciates the MSRB's efforts to amend the rule to reflect BDA's concerns and urges regulators to be vigilant in protecting the integrity of the marketplace in the future.

The Bond Buyer

By Jack Casey

September 14, 2016

MSRB to Facilitate Municipal Market Research with New Academic Data Product.

Washington, DC – As part of an ongoing commitment to fostering greater understanding of trading practices in the municipal securities market, the Municipal Securities Rulemaking Board (MSRB) will develop an enhanced historical data product to provide institutions of higher education with post-trade municipal securities transaction data.

"The MSRB has long supported municipal market research that helps inform our regulatory and market transparency initiatives," said MSRB Executive Director Lynnette Kelly. "By continuing to increase the availability and usefulness of data for academics, the MSRB hopes to encourage researchers to consider more sophisticated questions and conduct further studies of market behavior."

The MSRB currently makes municipal securities trade data available to academics through a partnership with Wharton Research Data Services (WRDS) and through its own historical data product. The new academic data product will allow researchers to draw additional conclusions about patterns of trading in the market by including anonymous dealer identifiers. These identifiers will assist researchers in distinguishing transactions executed by specific parties, while still protecting the dealers' actual identities.

"The MSRB has taken several measures to make the data as rich as possible for researchers while guarding against the potential for 'reverse engineering' to identify the dealers in particular transaction," Kelly said. Read the regulatory notice for more details on the parameters of the academic product.

The MSRB collects secondary market trade data through the Real-Time Transaction Reporting System (RTRS), which is made available to the public at no charge on the Electronic Municipal Market Access (EMMA®) website and on a subscription basis for a fee. When fully developed in 2017, the new historical trade data product will be made available only to academic institutions.

Date: September 14, 2016

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Jury Finds Miami Defrauded Bond Investors.

A federal jury found Wednesday that the city of Miami and its former budget director had defrauded bond investors by failing to truthfully disclose the city's deteriorating financial condition.

The verdict came in the first federal jury trial by the U.S. Securities and Exchange Commission against a municipality. The SEC last month settled other civil cases with 71 municipal issuers as part of an agency initiative to improve disclosure.

"We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws," Andrew Ceresney, director of the agency's enforcement division, said Wednesday.

Miami City Manager Daniel J. Alfonso said the city "has put into place procedures, policies and practices to improve transparency and accountability."

City Attorney Victoria Mendez said the city is reviewing its legal options. "While we respect the jury and the judicial process, we are disappointed in the jury's verdict," she said.

The jury found that Miami had committed securities fraud while reporting on the city's finances in 2007, 2008 and 2009. According to the SEC's complaint, Miami transferred dollars earmarked for specific capital projects between funds, enabling the city to meet its own reserve-fund requirements.

Miami bond offerings were subsequently rated favorably by rating firms, which later downgraded Miami after an auditor's report forced the city to reverse most of the transfers, the SEC complaint said.

Former City Budget Director Michael Boudreaux was found not liable on one count—using a fraudulent scheme—but was found liable for negligence and misrepresentations during his time as budget director, his lawyer said. The lawyer, Benedict Kuehne, said his client plans to challenge those portions of the verdict.

Mr. Kuehne described his client as a "responsible government officer who tried to do the right thing at all times."

Mr. Boudreaux said in an interview with The Wall Street Journal in 2011 that "there was no deception on my part." He said that others implemented the ideas to transfer funds and that he was fired in 2010 after speaking to federal investigators.

This is the second time Miami has run into trouble over disclosure issues. The SEC said Wednesday that it now expects the court to find Miami violated a 2003 SEC order prohibiting the city from engaging in fraud, which followed an administrative trial.

The verdict could be costly for Miami. An SEC attorney said in court the agency would make a request for injunctive relief and monetary penalties the next two weeks.

THE WALL STREET JOURNAL

By HEATHER GILLERS

Updated Sept. 14, 2016 11:40 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

SEC, City of Miami Lay Out Final Arguments in Bond Case.

MIAMI — The U.S. Securities and Exchange Commission and the city of Miami squared off in Florida federal court on Tuesday, with the regulator accusing city officials of playing a financial shell game to cut costs on a $150 million municipal bond sale in 2009.

In a 2013 complaint, the SEC alleged that the city and Miami's former budget director, Michael Boudreaux, violated the anti-fraud provisions of federal securities law.

Both the city and Boudreaux denied any wrongdoing in their closing arguments. The SEC is seeking an injunction against both parties as well as unspecified financial penalties.

The lawsuit alleges both the city and Boudreaux failed to tell credit rating agencies and investors they had churned money through various city accounts in an attempt to keep its general fund above a minimum, city-mandated, $100 million mark.

"They were playing a shell game of such epic proportions that years later, to unwind this, the city had to take money from people who serve, firemen, policemen, in order to replenish those capital projects," Amie Riggle Berlin, senior trial counsel for the SEC said in her closing argument.

"They failed to disclose anywhere in their financial statements that the projects from which they had taken money were operating at a deficit," Berlin said.

According to the SEC's complaint, in 2007 Boudreaux wrongly told city officials that certain money he planned to transfer into the city's general fund were unused.

"The city was told the transfer was from unused funds that could be transferred back to the general fund," said Scott Cole, a lawyer representing the city of Miami.

"The money was in plain sight not in some offshore bank account. He attached his work papers to his recommendation, that's not fraud," Cole told said.

Boudreax was fired in 2010.

His lawyer, Benedict Kuehne, said he was made a scapegoat.

"He's not a CPA. He relied on city personnel. He relied on CPAs. He used the information they had, that he obtained and did his level-headed analysis," Kuehne said, adding: "He put nothing in his pocket other than the city salary he earned."

Among the transfers redirected from capital projects into the city's general fund as its overall finances were deteriorating were $13.1 million in fiscal 2007 followed by a similar, $24.4 million-transfer the following fiscal year, according to court documents.

The SEC also implicated the city itself after elected leaders voted to approve Boudreaux's transfers and administrators signed off on audited financial reports that were later presented to ratings agencies.

This is not the first time the SEC has sought legal recourse against Miami. The city is still under a 2003 cease-and-desist order tied to a series of 1995 bond issues that also violated anti-fraud provisions of the federal securities laws.

Municipalities across the nation are watching closely as this trial is among the first where a public employee is being personally charged for actions taken in their professional positions.

By REUTERS

SEPT. 13, 2016, 5:57 P.M. E.D.T.

(Reporting By Zachary Fagenson in Miami; Editing by Daniel Bases, Bernard Orr)

SEC's Miami Win Likely to Embolden Muni Crackdown: Lawyers

NEW YORK — The U.S. Securities and Exchange Commission's courtroom victory in a fraud case against the City of Miami will likely further embolden the agency in its years-long effort to more tightly regulate the $3.7 trillion municipal bond market, securities lawyers said.

A jury took only a few hours on Wednesday to find Miami and its former budget director Michael Boudreaux liable for securities fraud in the sale of over $150 million in municipal debt in 2009. The SEC had accused the city of "playing a shell game" by shuffling money among accounts to conceal its deteriorating financial condition from investors.

The SEC told the court on Wednesday it would present a request for injunctive relief and monetary penalties within two weeks. The city and Boudreaux, who argued the fund transfers had been approved by auditors and publicly disclosed, said they planned to appeal.

The verdict is a "big boost" for the SEC, making the agency likely to sue more municipalities, Bradley Bondi, a former SEC lawyer now with Cahill Gordon & Reindel, said in an interview. The SEC has been criticized for favoring administrative proceedings over trials to resolve cases, he noted.

The SEC had subjected the municipal bond market to light enforcement, for reasons that include a reluctance to impose penalties that might be passed on to taxpayers. But its stance changed following a wave of defaults during the financial crisis.

In 2010, the agency set up a special enforcement unit for municipal securities and public pensions. Since 2012, it has brought cases against 19 municipal issuers over faulty disclosures, most of which have settled or ended in default judgments. An additional 71 issuers settled charges last month through a special self-reporting program.

Other cases have targeted municipal officials with fines. Since the start of 2013, eight officials have been hit with SEC civil penalties, compared to just five in the 15 preceding years, Robert Doty, a litigation consultant who tracks securities cases, said.

"It is truly a sea change and we have seen the SEC ramp up its municipal enforcement very aggressively," Stephen Crimmins, a lawyer with Murphy & McGonigle who had previously led the SEC's trial unit, said in an interview.

The Miami case also shows the SEC is losing some of its aversion to seeking financial penalties, said Kit Addleman, a former SEC lawyer now with Haynes and Boone in Dallas.

Now the SEC feels very strongly that "in some cases conduct is egregious enough that a penalty is the only way to drive the message home that the entity needs to clean up its act," she said in an interview on Tuesday.

The SEC had won a 2003 cease-and-desist order against the city in a previous case over similar conduct. Miami's repeat offense was a "rare situation" among muni cases, Bondi said.

In April, the SEC, which is only empowered to bring civil charges, announced a cooperative case with the U.S. Justice Department involving the criminal indictment of a town supervisor of Ramapo, New York, and one other individual over fraudulent disclosures in the sale of $150 million municipal bonds.

The SEC also has civil lawsuits pending against Rhode Island's economic development agency and the municipality of Victorville, California.

"We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws," Andrew Ceresney, director of the SEC's division of enforcement, said in a statement following the Miami verdict.

Crimmins said municipal issuers would be challenged by the SEC's more aggressive stance. Despite raising large sums of money, they largely fall short compared to corporations in terms of gathering financial data and evaluating and reporting it.

"Obviously this is a wake up call for people in the municipal securities area," he said.

By REUTERS

SEPT. 15, 2016, 3:57 P.M. E.D.T.

(Reporting by Dena Aubin and Sarah N. Lynch; Editing by Anthony Lin and Richard Chang)

First Municipal Advisor Political Contribution Disclosures Due in October.

Effective August 17, 2016, new provisions of MSRB Rule G-37 address municipal advisors' political contributions and municipal advisory business. Municipal advisors are now required to disclose to the MSRB, on a quarterly basis, information about their political contributions to municipal entity officials, state or local political parties, and bond ballot campaigns, as well as information about municipal entities with which they have engaged in municipal advisory business.

This information is submitted through electronic Form G-37 by the last day of the month following the end of each calendar quarter. The first submission period for municipal advisors opens October 1, 2016 and ends October 31, 2016.

Refer to the MSRB Rule G-37 Submission Handbook for assistance submitting political contribution disclosures. The MSRB makes these disclosures available to the public on its Electronic Municipal Market Access (EMMA®) website to facilitate public scrutiny of the potential linkages between the giving of political contributions and the awarding of municipal advisory business.

SEC Approves FINRA & MSRB (Almost) Pay-to-Play Rules.

The SEC announced August 25 that it approved FINRA's pay-to-play rules governing placement-agent or solicitor broker-dealers and was "prepared" to approve the extension of MSRB Rule G-37 to municipal advisors as well.

The two rule proposals would complete the pay-to-play suite of rules across municipal securities dealers, investment advisors, broker-dealers, and municipal advisors. The bedrock Rule – MSRB's Rule G-37 governing municipal finance professionals and dealers – has been in place since 1994. After Dodd-Frank's expansion of municipal-advisory regulation, the SEC adopted a similar rule governing registered investment advisers, Rule 206(4)-5.

The latest proposals by the MSRB and FINRA complete the picture by extending Rule G-37 to municipal advisors and adopting a similar rule governing broker-dealers working with IAs and MAs.

The SEC's Order says it's ready to approve the MSRB rule proposals, but gives interested parties until September 19th to request a hearing. That might be a gambit to get past October 1st and into the next federal budget cycle: The SEC recently argued in pending litigation challenging the MSRB Rule that a Congressional budget rider prevents the agency from spending money on any effort to approve rules requiring political contribution disclosures. I discussed that here.

The SEC's order on the MSRB proposal, Rel. No. IA-4512, File No. S7-17-16, is here.

And on the FINRA proposal, Rel. No. 34-78683, File No. SR-FINRA-2015-056, is here.

Burr & Forman LLP

by Thomas K. Potter, III

September 6, 2016

SEC Announces Enforcement Actions Under Its Muni Bond Disclosure Initiative: Akin Gump

Last week, the Securities and Exchange Commission (SEC) announced that it brought enforcement actions against 71 municipal issuers and other obligated persons as part of the SEC's Municipalities Continuing Disclosure Cooperating (MCDC) Initiative. Specifically, the SEC claims that, from 2011 to 2014, the 71 municipal issuers and obligated persons sold municipal bonds using offering documents containing materially false statements or omissions about their compliance with continuing disclosure obligations. As it previously announced, the SEC has also brought actions against underwriters for similar violations as part of the MCDC Initiative. The MCDC Initiative is designed to encourage issuers, underwriters and obligated persons to self-report certain violations of the federal securities laws in exchange for more favorable settlement terms. In the latest round of enforcement actions, the parties settled without admitting or denying the findings, agreed to cease and desist from future violations, and agreed to certain undertakings.

Continuing Disclosure Obligations

Rule 15c2-12 under the Exchange Act requires dealers, when underwriting certain types of municipal securities, to ensure that issuers enter into an agreement to provide information to the Municipal Securities Rulemaking Board (MSRB) on an ongoing basis. Such information includes annual financial information and operating data. Event notices are also required, which are triggered by, among other things, principal and interest payment delinquencies, nonpayment related defaults, changes in applicable bond ratings, bankruptcy and other significant events. In most cases, issuers or obligated persons must submit the required disclosure on or before the date specified in the continuing disclosure agreement or provide notice of failure to do so to the MSRB through the Electronic Municipal Market Access (EMMA) website. For bonds issued after December 2010, disclosure must be submitted to EMMA within 10 business days of the event.

In addition to preventing underwriters from purchasing and selling securities in the absence of a continuing disclosure agreement, Rule 15c2-12 generally requires the offering documents to contain a description of any material failure by the issuer to comply with its continuing disclosure commitments during the previous five years. The SEC may bring an enforcement action against the issuer under Section 17(a) of the Securities Act and/or Section 10(b) of the Exchange Act for any failure to provide such required disclosure. Because, according to the SEC, it is doubtful that an underwriter could form a reasonable basis for relying on the accuracy or completeness of an issuer's ongoing disclosure representations without affirmatively inquiring as to the issuer's filing history, the SEC may also bring an enforcement action against any underwriter of such securities. To defend against these actions, underwriters must demonstrate that they have exercised adequate due diligence in determining whether issuers have, in fact, complied with such continuing disclosure obligations during prior years. To this end, the SEC has stated that an underwriter may not rely solely on a written certification from an issuer regarding the fulfillment of past filing obligations.

Municipal Market Report and the MCDC Initiative

In 2012, the SEC released its Municipal Market Report, which listed the failure of issuers to comply with their continuing disclosure obligations as a significant problem. On March 10, 2014, the SEC launched the MCDC Initiative to encourage self-reporting by issuers, underwriters and other obligated persons of continuing disclosure violations. For eligible issuers and underwriters that report such violations, the Division of Enforcement recommends that the SEC accept a settlement pursuant to which the issuer or underwriter consents to the institution of a cease-and-desist proceeding under Section 8A of the Securities Act for violations of Section 17(a)(2) of the Securities Act. Additionally, the Division of Enforcement recommends a settlement in which the issuer or underwriter neither admits nor denies the findings of the SEC. The settlement includes certain undertakings by the issuers and underwriters, including establishing policies and procedures to prevent future violations, updating past delinquent filings, cooperating with subsequent SEC investigations and disclosing the settlement in future offering documents. For eligible issuers, the Division of Enforcement will recommend to the SEC a settlement with no civil penalty. For eligible underwriters, recommended civil penalties range from $20,000 to $60,000 for each offering containing a materially false statement, depending on whether or not the offering exceeds $30 million. Caps on the aggregate amount an underwriter is required to pay range from $100,000 to

$500,000 and depend on the size of the underwriter's revenue.

Considerations for Municipal Issuers and Underwriters

Given the SEC's increased focus on this area, issuers and underwriters should continue to review their policies and procedures relating to continuing disclosure. As part of this review, it is important to review an issuer's prior disclosure for any material violations of reporting obligations. Material violations, according to the SEC, include an issuer's failure to file or timely file annual audited financial information, annual operating information and quarterly reports. Material violations also include an issuer's failure to file notices of late filings as required under the continuing disclosure agreements. It is also important for issuers to develop processes to ensure compliance with disclosure obligations going forward.

Furthermore, the SEC has stated that for issuers and underwriters that would otherwise be eligible for the terms of the MCDC Initiative but do not self-report, there is no assurance that the Division of Enforcement will recommend terms as favorable in any subsequent enforcement recommendation. Additionally, the SEC has cautioned that enforcement actions outside of the MCDC Initiative could result in the SEC seeking remedies beyond those described in the MCDC Initiative, including increased financial penalties of both issuers and underwriters. Therefore, issuers and underwriters that discover material violations of disclosure obligations will likely need to consider whether such violations should be self-reported on the SEC's MCDC Initiative Questionnaire.

Last Updated: September 2 2016

Article by Alice Hsu, Lucas F. Torres and John Patrick Clayton

Akin Gump Strauss Hauer & Feld LLP

SEC Charges 71 Municipal Issuers and Obligated Persons Pursuant to Municipalities Continuing Disclosure Cooperation Initiative: Andrews Kurth

On March 10, 2014, the Securities and Exchange Commission's ("SEC") Enforcement Division (the "Enforcement Division") introduced the Municipalities Continuing Disclosure Cooperation Initiative ("MCDC Initiative"). The SEC's stated intent in introducing the MCDC Initiative was to address potentially widespread violations of federal securities laws by municipal issuers and obligated persons (each, an "issuer" and collectively, "issuers") and underwriters of municipal securities in connection with representations in bond offering documents related to prior compliance with continuing disclosure undertakings. To that end, the MCDC Initiative sought to incentivize issuers and underwriters of municipal securities to self-report possible violations by offering what the SEC described as favorable, standardized settlement terms to participants.

The MCDC Initiative accepted self-reported submissions from underwriters through September 10, 2014, and from issuers through December 1, 2014. The Enforcement Division began the MCDC Initiative on July 8, 2014, by charging one California school district and then shifted its focus to municipal underwriting firms. In three separate waves (occurring on June 18, 2015, September 30, 2015, and February 2, 2016, respectively), the SEC announced enforcement actions against a total of 72 municipal underwriting firms. In its third announcement of charges against underwriters under the MCDC Initiative, the SEC affirmatively stated that the actions would "conclude charges against underwriters." According to the SEC, the municipal underwriting firms charged comprised approximately 96% of the market share for municipal underwriting services.

On August 24, 2016, the SEC announced that it had entered into settlement agreements with 71 issuers in connection with the MCDC Initiative. The SEC found that the issuers had sold municipal bonds using offering documents that contained materially false statements or omissions about their prior compliance with continuing disclosure obligations.

A review of the cease and desist orders relative to the settlements with these issuers provides the following insights:

- The bulk of the orders related to issuers that, despite either stating within official statements that the issuers had materially complied with prior undertakings or omitting to state whether they had so complied, failed to file annual financial information, audited financial statements, or both on more than one occasion during the prior five year period. This indicates that such failures are considered material failures to comply with a continuing disclosure undertaking. For example, one issuer "filed its audited financial reports for fiscal years 2006, 2007, 2009, and 2010 late by two months, two months, a month, and nine months, respectively, and failed to file timely certain operating data for fiscal years 2008 through 2010. [The issuer] also failed to file timely notices of late filings for each of those."
- Depending on the facts and circumstances, a single failure to file audited financial statements and/or annual financial information could be considered a material failure to comply with a continuing disclosure undertaking. For example, one issuer stated that it had not failed to comply with its prior continuing disclosure undertakings in any material respect, but it had actually filed one set of audited financial statements 1,014 days late. The orders did not contain any allegations of an issuer with a single failure to file within a short timeframe (i.e. less than one month after being due).
- Depending on the facts and circumstances, even an issuer's failure to file notices of defeasances could be considered a material failure to comply with a continuing disclosure undertaking. For example, in one order, the issuer "failed to file certain notices of defeasances prior to the offering, though due before, resulting in bonds in the outstanding principal amount of over $24.5 million trading with significantly different credit structures for up to two years." No other failures by that issuer were noted within the order. However, it is implicit in the order that the failure to file potentially caused a large number of bonds to be traded without material information regarding the security for the bonds.
- As evidenced by the repeated references in the orders to issuers failing to file notices of late and delinquent filings, the filing of such notices could potentially mitigate the consequences of the issuer's original failure to file. Similarly, many of the orders emphasized the fact that filings should have been made before the offering document at issue was circulated, indicating that an issuer could potentially lessen the severity of an enforcement action if it corrects any failures prior to subsequent bond offerings.

The summaries above are provided for illustrative purposes only. Notwithstanding the general insights from the cease and desist orders summarized above, if an issuer is concerned about either ongoing compliance with its continuing disclosure undertakings or potential exposure to an SEC enforcement action, it should discuss the matter directly with its bond counsel, disclosure counsel or both. In such an event, the issuer and legal counsel should assess the unique facts and circumstances of the issuer, its continuing disclosure compliance history and the potential legal consequences, if any, in light of the guidance afforded by the MCDC Initiative enforcement actions.

The issuers included within the August 24th actions were diverse, including two states, seven state authorities, eight special districts and local authorities, six institutions of higher education (including a non-profit education foundation), 31 localities, eight school districts, five hospitals, one retirement community, one charter school, and two private service providers. All issuers received what the SEC has characterized as "favorable settlement terms." Such terms included compliance with a cease and desist order, but did not contain an admission or denial by the issuer with respect to the SEC's findings or a requirement that the issuer pay fines to the SEC. In addition, the orders required the issuers to:

- establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the proceedings;
- comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings;
- cooperate with any subsequent investigation by the Enforcement Division regarding the false statement(s), including the roles of individuals and/or other parties involved;
- disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- provide the SEC staff with a compliance certification regarding the applicable undertakings by the issuer on the one year anniversary of the date of institution of the proceedings.

It is unclear whether the August 24th charges represent the only round of enforcement actions that will be brought by the SEC against issuers. Unlike the SEC's third round of actions against municipal underwriting firms, the SEC did not indicate that this would "conclude" their actions against issuers. Rather, the SEC stated that the actions were "**the first** against municipal issuers since the first action under the initiative was announced in July 2014." But some observers have speculated that this will be the only round of enforcement actions against issuers, noting that the SEC has already shown that continuing disclosure failures are not an isolated or infrequent issue. Other observers have speculated that the SEC will now pursue enforcement actions against issuers and underwriters that did not voluntarily self report pursuant to the MCDC Initiative. Since the MCDC Initiative did not apply to individuals, the SEC could also potentially pursue individuals involved in municipal offerings containing material misstatements and omissions related to compliance with prior continuing disclosure undertakings.

While it is not clear whether more charges against issuers will follow in connection with the MCDC Initiative, it is clear that the SEC is focused on material misstatements regarding prior compliance with continuing disclosure undertakings. According to the SEC, the "diversity among the 71 entities in these actions demonstrates that continuing disclosure failures were a widespread and pervasive problem in the municipal bond market." The cease and desist orders should send a strong message that representations within bond offering documents related to prior compliance with continuing disclosure undertakings should be diligently vetted by both issuers and underwriters.

Last Updated: September 1 2016

Article by James Hernandez, Thomas A. Sage, Rick Witte and Edward B. Morse

Andrews Kurth LLP

MSRB Proposes Historic Dealer Markup Disclosure for Retail Investors.

WASHINGTON – In an historic action, the Municipal Securities Rulemaking Board has filed a markup disclosure proposal with the Securities and Exchange Commission that MSRB said will likely lower transaction costs for retail investors, enable them to better understand dealers' pricing practices, and improve investor confidence in the municipal market.

The proposal to amend rules G-15 on confirmation and G-30 on prices is similar to one that the board released in September, but includes a few changes as well as the MSRB's robust defense of why muni markup disclosure is needed.

The proposed rule changes would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markup and markdown in the confirmation they send the customer.

The rule filing with the SEC also includes guidance for dealers on how to establish the prevailing market price of a municipal security in order to calculate their compensation.

If approved by the SEC, the proposed rule changes would take effect no later than one year afterwards, the MSRB said.

The board told the SEC in the filing that the proposal "would provide retail customers with information similar to that currently received by retail customers in equity trades and muni trades in which the dealer acts in an agent capacity (on behalf of the customer).

The proposal also would "enable customers to evaluate the costs and quality of the execution service that dealers provide … improve communication between dealers and their customers, and make the enforcement of Rule G-30 more efficient," the MSRB said.

"The concept of providing this type of transparency of transaction costs for municipal securities was first floated 40 years ago," MSRB executive director Lynnette Kelly said in a release. "Charges in technology and in the municipal market have made it possible for investors to receive similar transaction information as investors in the equity market. This is a meaningful and historical shift for the municipal market."

"Our proposal will provide dealer compensation information on an estimated 8,000 retail investor municipal securities transactions each day," Kelly said. "That's a significant number of people who will have additional information about the cost of their transactions."

Dealer groups, firms and some issuers had complained the proposed rule changes would add complexity to the market and be burdensome and costly.

But the MSRB told the SEC that it believes the benefits of markup disclosure far outweigh any burdens to issuers.

The board said it "recognizes that some dealers may exit the market or consolidate with other dealers as a result of the costs associated with the proposed rule change relative to the baseline."

But it added that it, "does not believe — and is not aware of any data that suggest — that the number of dealers exiting the market or consolidating would materially impact competition."

The MSRB provided evidence from a survey of pricing data on its EMMA system that it said buttresses its contention that this kind of muni market disclosure is needed.

It analyzed various data reported to EMMA by dealers from July 1, 2015 through September 30, 2015 and found the average daily number of retail-size customer transactions in the secondary market for munis in which dealers acted as principals was 15,538.

About 700 firms reported trades during the period but the top 20 with the highest volumes accounted for about 73% of the muni trades.

The MSRB found that of the retail-size customer trades in which dealers acted as principals, about 55% would have likely received markup and markdown disclosures had the rule had been in place. Of those trades, 83% of the offsetting trades occurred within 30 minutes.

For those trades where they would have been markup and markdown disclosure, the estimated median markup value was 1.2% and the median markdown value was 0.5%. The MSRB found that “many customers paid considerably more than the median value,” with at least 5% of them paying markups higher than 2.25%. At least 5% of customer sales had markdowns higher than 1.51%.

The board also said that joint investor testing by the Financial Industry Regulatory Authority and the board revealed that investors do not understand how dealers are compensated when they act in a principal capacity and that investors want more information on this topic.

The biggest change from the proposal released in September to the one filed with the SEC is that the MSRB decided the markup disclosure requirement would be triggered if the offsetting transaction occurred on the same trading day rather than over a two-hour period.

The MSRB kept the same three exceptions. Markup disclosure would not be required: if the offsetting trade is done by a functionally separate trading desk; for primary market trades at the list offering price; and for municipal fund securities.

For a muni trade subject to markup disclosure, a dealer would have to calculate the markup under Rule G-30 and related guidance and express the markup as both a percentage of the prevailing market price and a total dollar amount. The dealer would also have to provide a reference or hyperlink to the “security details” for the muni on EMMA, along with a brief description of the type of information available on that page. The dealer would also have to provide the time of execution.

The proposed changes to Rule G-30 and related guidance state that a dealer ‘must exercise “reasonable” diligence in establishing the market value of a security and the reasonableness of the compensation received.” Also, the markup or markdown “must be a fair and reasonable amount, taking into account all relevant factors.”

Rule G-30 already prohibits dealers from engaging in principal transactions with customers except at aggregate prices (including any markup or markdown) that is fair and reasonable, the MSRB noted.

The changes to Rule G-30 show how to establish the prevailing market price, upon which a dealer’s costs and markup or markdown is determined. The dealer’s compensation would be the amount it charges over the prevailing market price when selling bonds and the difference between what it pays and the prevailing market price when buying bonds.

The MSRB proposes a “waterfall” or hierarchy of factors that dealers should look at in establishing the prevailing market price of a muni.

First, dealers should look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. The prevailing market price should not differ if the dealer trade is with another dealer or a customer.

If the dealer believes contemporaneous trades are not representative of market value, they can rebut the presumption that they determine the prevailing market price by showing changes in interest rates, changes in the credit quality of the debt, or news that has changed the market's perception of the market value of the security.

If the dealer does not have any contemporaneous trades of the muni security, it can look at contemporaneous trades of the muni security among other dealers. If it fines none, it can look at trades of that muni security between other dealers and institutional investors with which the dealers regularly trade that same security. If there are none, the dealer can look at alternative trading systems, or other electronic platforms, where trades occur at displayed quotations.

If there are no contemporaneous trades in the muni security or quotes for it, the dealer can look at contemporaneous trades of similar securities. A muni security would be similar if it had a comparable yield. Other "non-exclusive factors" that can be used to determine similarity include: credit quality; the extent to which there are comparable spreads; general structural characteristics and provisions of issue; the size of the issue, the float or recent turnover of the issue and legal restrictions on transferability; and comparable federal and/or state tax treatment.

If these factors cannot be used to find similar securities, dealers can consider prices or yields derived from economic models, the MSRB said.

The board cautions dealers against relying on isolated transactions or quotations, saying they should be given little or no weight in establishing the prevailing market value or price.

Dealer groups are still concerned about the proposal's complexity.

John Vahey, director of federal policy of the Bond Dealers Association said that while "BDA accepts the premise that retail investors may benefit from greater information on transaction costs, we urge regulators to more fully appreciate the operational complexity of the proposed rule and the significant difference between establishing prevailing market price in the context of fair pricing and creating an automated operational process that computes prevailing market price for inclusion on a customer confirmation."

"Dealers, especially smaller dealers, will need at least 18 months to develop and test new systems designed to comply with the rule, especially with other significant effective dates, including the Department of Labor's fiduciary duty rule, fast approaching," he said.

Leslie Norwood, a managing director and co-head of the muni division at the Securities Industry and Financial Markets Association said, "We are reviewing the proposal and will send a comment letter to the SEC. At first glance, it appears to be substantially similar to the FINRA filing. We believe there are significant implementation and operational issues that will likely require additional guidance."

The Bond Buyer

By Lynn Hume

September 2, 2016

BDA Submits Comment Letter to the SEC on FINRA's Retail Confirmation Rule.

Today, Bond Dealers of America submitted a comment letter to the SEC in response to FINRA's proposed retail confirmation disclosure rule.

BDA's letter focuses on:

- The urgent need for FINRA and MSRB to harmonize their rules from a policy, testing date, and effective date standpoint
- BDA urges regulators to appreciate the operational burdens associates with automating the process for making a 'prevailing market price' judgement
- Due to the operational and technology burdens of the rule and the other major rules that will be effective in the next 18 months, BDA urges regulators to adopt an effective date no earlier than June 2018
- BDA urges the SEC to institute proceedings on both the FINRA and MSRB filings to extend the time period for assessing the rules prior to approval or disapproval

Proposal Overview

Scope of Securities: Corporate and agency debt securities

Scope of Transactions: The proposal will apply to retail trades when a dealer has entered into an offsetting principal trade in the same security in a total quantity greater than the retail trade during the same trading day

Timing of Trades: FINRA proposes to have the rule apply to offsetting principal and retail trades that are executed on the same trading day as opposed to over a certain amount of hours during a given trading day

Disclosure Computation: FINRA has proposed to base the confirmation disclosure computation on the difference between the prevailing market price that exists at the time of the retail trade and the retail trade price

Proposed Exceptions: FINRA has proposed two exceptions to the rule for 'functionally separate trading desks' and for fixed-price offering transactions executed at the fixed offering price

Proposed Effective Date: No later than 365 days after the SEC approves the rule

A recap of BDA's April 2016 Member Fly-in Meeting with FINRA and MSRB can be viewed here.

BDA's December 2015 comment letters to FINRA and MSRB can be reviewed here.

Big Banks Don't Follow Goldman on Trump Donation Ban.

Firm aims to prevent breaches of rules on muni bonds and pensions; other banks weigh contributions case by case

Goldman Sachs Group Inc. has taken a hard line on contributions by its partners to Donald Trump's campaign for fear of running afoul of municipal bond and pension rules. Its Wall Street peers aren't following suit.

J.P. Morgan Chase & Co., Bank of America Corp., Citigroup Inc., Morgan Stanley and Wells Fargo & Co. all said they currently had no plans for a blanket contribution ban. Instead, those banks are looking at contributions on a case-by-case basis.

Donations to the campaign of Donald Trump became an issue for Goldman because of vice presidential candidate Mike Pence, who is governor of Indiana. Goldman's roughly 550 partners received an email from the compliance department in late August instructing them that as of Sept. 1 they were banned from making campaign contributions to sitting state and local elected officials or candidates running for state and local offices. The email noted that this includes the Trump campaign. Other Goldman employees wouldn't be affected by the blanket ban.

The new policy, though, doesn't affect donations by Goldman partners and other employees to groups such as the Republican National Committee, an option that remains open and that has been communicated informally within the bank, according to a person familiar with the matter.

Rather, Goldman said the focus on the Trump campaign and Gov. Pence was aimed at preventing breaches of the Securities and Exchange Commission's pay-to-play rules. Those rules seek to prevent investment advisers from using political contributions to influence government officials charged with selecting underwriters for municipal securities or advisers for government investment assets, including state pension funds.

Under a rule adopted by the SEC in 2010, political contributions to state and local officials with influence over hiring investment advisers above a few hundred dollars trigger a two-year "timeout" period, during which the investment adviser can't receive compensation from the relevant government entity. The rule applies to contributions from firms' top executives and managing partners, employees who solicit a government entity for advisory business and any political-action committees they control.

Similar rules have covered municipal-bond underwriting since the 1990s. After John McCain tapped then-Alaska Gov. Sarah Palin as his running mate in 2008, the Municipal Securities Rulemaking Board, which makes rules regulating dealers of municipal bonds, sent a notice to the broker-dealer industry informing them that contributions to the McCain-Palin campaign would trigger the ban under its rules.

The pay-to-play rules aren't an issue for Hillary Clinton's campaign because neither she nor her running mate, Tim Kaine, is a state or local government official. Mr. Kaine is a U.S. senator for Virginia and a former governor of that state, but the rules don't cover federal officeholders or former officeholders.

Goldman's blanket contribution ban is especially notable because the firm isn't among the bigger Wall Street players in the market for underwriting municipal bonds. It has, however, served as an investment adviser to the Indiana Public Retirement System.

The firm may be taking a harder line because it has previously run "afoul of the municipal-bond pay-to-play rules," said Stetson University College of Law associate professor Ciara Torres-Spellliscy.
In 2012, Goldman agreed to pay $12 million to settle charges that a former banker in its Boston office worked for the political campaign of a former Massachusetts treasurer while winning bond underwriting business in the state. The fine was the largest ever imposed by the SEC at the time for pay-to-play violations, said Ms. Torres-Spelliscy.

In addition, there has been concern within Goldman about "look-back" provisions in the rules. Even if an employee who isn't covered makes a donation, this could later become an issue if that staffer moves into an area that is covered by pay-to-play rules, such as within certain areas of the firm's municipal-bond or asset-management businesses. That has become more of a concern as employees move into the asset-management business, according to a person familiar with the matter.

Rivals aren't being as strict. Instead of applying a ban to all senior staff, other banks are following longstanding policies of evaluating whether a particular individual's role would make a proposed contribution a breach of pay-to-play rules.

At Bank of America, certain employees are supposed to get clearance from compliance officials before making any political contributions, a spokesman said. Citigroup employees, depending on their role and location, can be required to get clearance for political contributions, according to a spokesman. Policies at J.P. Morgan, Wells Fargo and Morgan Stanley are generally along the same lines.

Most big banks have their own political-action committees, but they usually don't contribute to presidential candidates.

It is unlikely that the different approaches among big banks will tilt campaign fundraising either way. Even though political contributions from Wall Street banks in this election cycle have tilted Republican, much of that has gone to defunct campaigns of former candidates for the Republican nomination and campaigns for House and Senate seats, rather than to the Trump campaign.

Mrs. Clinton is the top recipient of campaign cash from employees of many of the big banks, according to data from the Center for Responsive Politics.

THE WALL STREET JOURNAL

By JOHN CARNEY and LIZ HOFFMAN

Updated Sept. 8, 2016 3:09 p.m. ET

—Emily Glazer and Christina Rexrode contributed to this article.

SEC Fines BOK Financial Over Municipal Bond Scheme.

BOK Financial Corp. has agreed to pay $1.6 million to the Securities and Exchange Commission to settle charges it failed to exercise proper oversight over a series of fraudulent bond offerings by a Georgia businessman.

The SEC also filed a complaint against a former senior vice president at the bank, Marrien Neilson. The agency said Neilson failed to properly oversee bond offerings by an Atlanta-based businessman, Christopher F. Brogdon.

Brogdon has been charged separately with fraud and ordered to repay $85 million to investors in a scheme to buy and renovate senior-living centers.

The SEC said BOK failed in its gatekeeper role as indenture trustee and dissemination agent for Brogdon's bond offerings. Tulsa-based BOK Financial is parent to Bank of Oklahoma, the state's largest bank.

“BOKF was in a crucial gatekeeper position to stand up for bondholders and notify them about material problems with the bonds, but instead turned a blind eye and chose to protect Brogdon and the fees it collected from his deals,” said Lara Shalov Mehraban, associate regional director in the SEC’s New York office, in a news release Friday.

BOK did not admit or deny the SEC’s findings. The bank agreed to pay disgorgement of more than $984,000 in fees it collected on the bond deals. BOK also will pay a penalty of $600,000 and interest of more than $83,500. “With today’s settlement agreement, we can put this matter behind us and move forward,” Scott Grauer, BOK’s executive vice president, said in a statement. “Our company has built its solid reputation by being a good corporate citizen, serving the needs of clients and communities with integrity, and never sacrificing our values in the interest of short-term results.

“The actions of a former employee in this matter are completely contrary to our guiding principles. Our board of directors and audit committee have worked with the SEC to create policies and procedures to prevent this from happening again.”

BOK took a $1.6 million charge to its first-quarter earnings for legal contingencies related to the case.

The SEC said the bank and Neilson were aware that Brogdon was withdrawing money from reserve funds for the bond offerings and didn’t replenish the reserve accounts.

BOK and Neilson also were aware one of the nursing homes put up as collateral had been closed for years, the agency said.

The SEC said Brogdon, 67, amassed nearly $190 million from dozens of municipal bond and private placement offerings for nursing homes, assisted-living facilities and other retirement community projects. The agency said he commingled investor funds, diverting investor money to other business ventures and personal expenses.

According to its civil complaint against Neilson, the SEC said she brought Brogdon in as a client to BOK in 2000.

Neilson, 66, was a senior vice president in the bank’s corporate trust department from 2007 until she was fired in July 2015.

Some employees at the bank’s corporate trust department in Tulsa raised concerns with Neilson about the Brogdon bond offerings, the SEC said.

“They described the offerings to her as a ‘house of cards’ or that Brogdon was ‘robbing Peter to pay Paul,’ phrases they also heard used by brokers who called with questions about the status of the bonds,” the SEC said in the complaint.

“Neilson herself received at least one complaint in 2012 that Brogdon was running a Ponzi scheme. Nevertheless, Neilson never escalated these complaints internally at BOKF and did not express concerns to others in Tulsa Corporate Trust about the offerings.”

Neilson, a former Broken Arrow resident, has been living in Mexico since March, the SEC said in its complaint.

THE OKLAHOMAN

by Paul Monies

September 10, 2016 12:00 AM CDT

MSRB Leverages Learning Technology to Offer Municipal Market Education.

Washington, DC – Leveraging advances in online learning technology, the Municipal Securities Rulemaking Board (MSRB) today launched MuniEdPro, a suite of interactive, online courses about municipal market activities and regulations. Each MuniEdPro course provides real-world simulations that allow the learner to understand municipal securities transactions and the related market and regulatory considerations.

“We are excited to be able to combine our goal of providing relevant educational content with the latest digital learning methodologies,” said MSRB Executive Director Lynnette Kelly. “Courses that improve the understanding of the municipal securities market—which is so important to investors and state and local governments—will benefit many market participants.”

MuniEdPro courses are a resource for anyone looking to enhance their understanding of how municipal securities are issued, sold and traded. However, the courses are designed for financial professionals who want to reinforce their knowledge of the municipal securities market and its regulations.

The MSRB plans to regularly add courses to the MuniEdPro course catalog, which today features courses on:

- **The Decision to Borrow:** Roles and Responsibilities of Market Participants in Fixed-Rate, Primary Market Offerings; and
- **Rules and Risks:** Applying MSRB Rules in Relation to Municipal Market Risks.

“As we fully develop our new learning management system, we welcome feedback from market stakeholders to ensure that MuniEdPro meets the needs and expectations of its users,” Kelly said.

Each MuniEdPro course is available for purchase individually or by subscription for organizations that wish to make MuniEdPro courses available to employees on a bulk basis or through an internal learning management system. Read more about MuniEdPro. Click here to access MuniEdPro.

The MSRB has provided municipal market education resources for many years, including free regulatory webinars and digital content available through its Education Center.

Date: September 6, 2016

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Piper Jaffray Fined $12,500 Over Primary Market Disclosure Violations.

WASHINGTON – Piper Jaffray & Co. has agreed to pay a $12,500 fine after the Financial Industry

Regulatory Authority found it submitted 23 disclosure documents related to primary offerings late to the Municipal Securities Rulemaking Board's EMMA system.

Representatives from the Minneapolis-based firm could not be reached for comment. The firm accepted the settlement without admitting or denying FINRA's findings.

The self-regulator found that the late filings, which violated MSRB Rule G32 on disclosures in connection with primary offerings rules, took place from November 2014 through September 2015. Each of the late filings was related to primary offerings of municipal bonds that Piper Jaffray underwrote.

Of the 23 documents, 12 were official statements, one was an amendment to an official statement, eight were notices for offerings that were exempt under Securities and Exchange Act Rule 15c212 on disclosure, and two were advanced refunding documents. The submissions were filed from one to 27 business days late. The 23 documents represented 2.4% of Piper Jaffray's submissions to EMMA during FINRA's review period.

MSRB Rule G32(b) requires that the underwriter of a primary offering of municipal securities submit certain documents to EMMA by specified deadlines. Underwriters generally have to submit the official statement linked to the offering within one business day after receiving it and at the latest by the transaction closing date.

If Rule 15c212 exempts the offering and an official statement won't be created, the underwriter must submit a notice divulging that information along with the preliminary official statement by the closing date. If there is no preliminary official statement prepared, the underwriter must give notice of that fact.

Additionally, the rule states that if a primary offering advance refunds outstanding munis and an advanced refunding document is prepared, the underwriter must submit that document and certain other information within five business days after the transaction's closing date.

FINRA found that Piper Jaffray's late filings that violated those provisions were because of turnover in the staff of the department that was responsible for submitting documents to EMMA.

The firm did not have written policies and procedures that adequately addressed the possible effect of turnover on EMMA submissions and thus also violated MSRB Rule G27 on supervisions, FINRA said.

Piper Jaffray has since modified its written supervisory procedures and its supervisory system generally with regard to instructions about the process for submitting documents to EMMA, among other steps, according to FINRA.

The Bond Buyer

By Jack Casey

August 29, 2016

Treasury Department Releases 2016-17 Priority Guidance Plan for Tax-

Exempt Bonds - And It's Already About One-Third Complete!

On August 15, 2016, the Treasury Department released its 2016 – 2017 Priority Guidance Plan (the "Plan"). Tax-exempt bonds are the last category in the Plan, but the Plan lists the priority guidance categories in alphabetical order. Had these categories been listed in order of esteem, we know that tax-exempt bonds would have been [INSERT ESTEEM-BASED POSITION HERE].

Any respectable "to-do" list includes items that already have been, or soon will be, completed. This balances against the difficult items that have languished so that the person who created the list (or had it thrust upon him or her) has some sense of accomplishment. Otherwise, the creation or review of the to-do list would be the soul crushing experience that it's intended to be. By this standard, the Plan's priority guidance for tax-exempt bonds is an exceptionally well crafted to-do list. Sure, the seven items on the list include projects that have been there (and will very likely continue to be there) for years, but it also includes two items that are complete – one of which was completed before the Plan was released! So, what's the Plan for tax-exempt bonds? Read on.

Herewith are the Treasury Department's 2016 – 2017 priority guidance plan items for tax-exempt bonds:

1. Guidance on remedial actions for tax-advantaged bonds under §§54A, 54AA, and 141.
2. Regulations on the definition of political subdivision under §103 for purposes of the tax-exempt, tax credit, and direct pay bond provisions. Proposed regulations were published on February 23, 2016. As we have previously discussed (here, here, and here), these proposed regulations require nothing short of a page-one rewrite.
3. Revenue procedure that will update Revenue Procedure 97-13 relating to the conditions under which a management contract does not result in private business use under §141. This update was released in the form of Revenue Procedure 2016-44 on August 22, 2016.
4. Final regulations on public approval requirements for private activity bonds under §147(f). Proposed regulations were published on September 9, 2008. This is one of the languishing items that needed the ameliorative counterbalancing of a completed task.
5. Final regulations on arbitrage investment restrictions under §148. These final regulations were promulgated as Treasury Decision 9777 on July 18, 2016 (finalizing proposed regulations that were published on September 26, 2007 and September 16, 2013).
6. Final regulations on the definition of issue price for tax-exempt bonds under §148. Proposed regulations were published on June 24, 2015. As those that follow the tax-exempt bond industry and those that read our blog (there should be complete identity between these groups) know, these proposed regulations are quite controversial.
7. Regulations on bond reissuance under §150. This is another perennial task on the to-do list.

We have been summarizing and analyzing the tax-exempt bond guidance items in the Plan as they have been released (including in the iterative form of proposed regulations), so watch this space for more as the Treasury Department continues to release its tax-exempt bond guidance.

Squire Patton Boggs – Michael A. Cullers

USA August 31 2016

SEC Investor Advocate Worried About Narrowing of Muni Market.

WASHINGTON – Financial regulators and others should work to reverse the increased narrowing of the municipal market caused by fewer retail investors and more munis concentrated among wealthier bondholders, the Securities and Exchange Commission's Investor Advocate told regulators.

"Personally, I hope we can reverse this trend toward concentration of assets among fewer investors," Rick Fleming said in a speech at the Municipal Securities Rulemaking Board's Securities Regulator Summit on Aug. 25.

Fleming said that, as of December 2015, individuals owned approximately 70% of munis either directly or indirectly through mutual funds or other pooled investment vehicles with the average age of a muni investor at 62.

"However, if you drill beneath those statistics, some interesting – and some might say troubling – patterns emerge," he said.

Fleming noted that "a mere 2.4% of households hold any municipal debt," about half of what the percentage was in 1998.

Further, the wealthiest one-half percent of U.S. households now own 42% of all municipal bonds, compared to ownership of only 24% in 1989. Additionally, the bottom 90% of households, as measured by net wealth, hold less than 5% of munis, falling from 15% in 1989, Fleming said.

"How did muni bond ownership become a lifestyle of only the rich and famous, as opposed to an investment option for the middle and upper-middle classes?" Fleming asked.

The investor advocate traced the narrowing of holdings to munis' tax exemption. While the tax-exempt status is attractive when compared to other investments, the interest rate on munis is often lower than the interest rate on other taxable fixed-income securities like corporate bonds, he said.

Households in higher tax brackets have always had more incentive to invest in muni bonds, he said, adding "this is not news." In addition, the shift from defined benefit pension plans, where the plan sponsor promises payments based on a pre-defined formula rather than individual investment returns, to defined contribution pension plans, where the employer and employee both make regular contributions to an account, "seems to have significantly deteriorated the incentive for less wealthy persons to invest in munis," he said.

Fleming said that the lower-yield for lower-tax tradeoff that munis promise to investors tends to be less attractive to individuals that have tax-advantaged retirement accounts where all holdings are tax-deferred.

"It usually makes little sense to hold tax-exempt munis within an IRA, 401(k), or 403(b), and, as we might expect, research suggests that people who direct their savings into tax-advantaged retirement accounts are unlikely to hold munis," Fleming said. That means that muni investors are likely to be individuals who are wealthy enough to have fully funded their retirement accounts, he added.

While Fleming said more study is probably needed, he added it is "worth asking whether the tax benefits of municipal bonds, which were presumably intended … to incentivize investment in munis, are actually accomplishing that objective."

"Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields," Fleming said.

"Regardless of our views on income or wealth inequality, I think we can generally agree that the projects funded by municipal securities improve the quality of life for all Americans, so we all have an interest in making sure the marketplace is attractive to investors of all stripes," Fleming said.

He further warned that "if the current trends continue and we see fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-too-distant future."

The Bond Buyer

By Jack Casey

August 29, 2016

[SEC Aims to Exclude Municipal Advisors from its Pay-to-Play Rule.]

WASHINGTON – The Securities and Exchange Commission has announced it intends to issue an order that will allow municipal advisors that are also considered investment advisors to be excluded under its pay-to-play rule for investment advisers because they are now covered under a revised Municipal Securities Rulemaking Board rule.

The SEC's pay-to-play rule, which is found in Rule 206(4)-5 under the Investment Advisers Act of 1940, prohibits an investment advisor from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to elected officials or candidates who can influence the award of advisory business.

According to the SEC filing, the order will be issued unless the commission holds a hearing. Any interested individuals can request a hearing by writing to the commission's secretary by 5:30 p.m. on Sept. 19.

Municipal advisors, which are now included in the MSRB's pay-to-play rule, can only be excluded under the SEC's rule if the commission finds, by order, that the MSRB's revised Rule G-37 on political contributions imposes substantially equivalent or more stringent restrictions on municipal advisors as the SEC pay-to-play rule imposes on investment advisors. It also must find that the revised MSRB rule is consistent with the objectives of the SEC pay-to-play rule.

Under the MSRB's revised rule, municipal advisors, similarly to dealers, are now barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule for dealers. It allows a municipal finance professional or municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The SEC's filing lists six examples of how the rules are substantially similar, including the two-year ban on engaging in muni business after a contribution and the prohibition on MAs and their professionals from soliciting contributions, or coordinating contributions, to certain municipal officials with which the MA is engaging or is seeking to engage in muni business.

The SEC and MSRB are currently in a legal dispute with three Republican state groups after the groups claimed the revised MSRB rule violates securities professionals' constitutional rights to free speech by making them choose between contributing to candidates and doing their jobs. The SEC has filed a motion to have the case dismissed during the last two months but a judge has not issued an order on the commission's motion yet.

The SEC's pay-to-play rule was also subject to a legal challenge from two of the three groups but that lawsuit was thrown out after a three-judge panel ruled the Republican groups failed to follow proper appeals procedures.

The Bond Buyer

By Jack Casey

August 26, 2016

SEC: Investor Protection in the Municipal Securities Markets.

Rick A. Fleming, Investor Advocate

U.S. Securities and Exchange Commission [1]

MSRB Municipal Securities Regulator Summit
Washington, D.C.

Aug. 25, 2016

Thank you, Lynnette [Kelly], for that kind introduction and for inviting me to participate in your event today. It has been a pleasure to spend time with a variety of regulators who are on the front lines of investor protection, and I appreciate the opportunity to provide some closing remarks for your conference. Of course, I need to remind you that the views I express are my own and do not necessarily reflect those of the Commission, the Commissioners, or Commission staff.

I have been the Investor Advocate at the SEC since early 2014, and since day one, I have actively supported a variety of reforms in the municipal securities markets. My interest in these issues is explained, in large part, by the high concentration of individual investors within the muni market. As of December 2015, approximately 41 percent of municipal bonds are owned directly by individual investors, and another 29 percent are owned indirectly through mutual funds or other pooled investment vehicles.[2]

However, if you drill beneath those statistics, some interesting—some might say disturbing—patterns emerge. First, we've seen a narrowing of the market. A mere 2.4 percent of households hold any municipal debt (either direct or indirect), and that figure is about half of what it was in 1998.[3] Second, as we've seen in other areas of wealth concentration, the wealthiest households own an increasing share of total municipal debt. The wealthiest one-half percent of U.S. households now own 42 percent of all municipal bonds, as compared to ownership of 24 percent in 1989. The bottom 90 percent of U.S. households, as measured by net wealth, now hold less than 5 percent of muni bonds, falling from almost 15 percent in 1989.[4]

How did muni bond ownership become a lifestyle of only the rich and famous, as opposed to an investment option for the middle and upper-middle classes? Ironically, the answer appears to lie with the tax advantages of muni bonds. Given the favorable income tax treatment of muni bonds, households in higher tax brackets have always had more incentive to invest in muni bonds—this is not news to this audience. However, the shift from defined benefit pension plans to defined contribution retirement plans seems to have significantly deteriorated the incentive for less wealthy persons to invest in munis.

As you are no doubt aware, the interest on municipal bonds is exempt from federal income tax, and often from state and local taxes. However, given these tax benefits, which make muni bonds attractive as compared to other investments, the interest rate for muni bonds is usually lower than the interest rate on other taxable fixed-income securities such as corporate bonds.[5]

This lower-yield for lower-tax tradeoff may be attractive for certain investors, but it tends to lose its appeal within the context of a tax-advantaged retirement account, where all holdings are tax-deferred. It usually makes little sense to hold tax-exempt munis within an IRA, 401(k), or 403(b),[6] and, as we might expect, research suggests that people who direct their savings into tax-advantaged retirement accounts are unlikely to hold munis.[7]

As employers have shifted away from defined benefit pension plans, there has been a significant increase in tax-advantaged defined contribution plans such as 401(k)s.[8] One outgrowth of this trend, however, is that muni bonds may no longer be attractive for the average investor. Today's muni investors are likely to be those who are wealthy enough to have fully funded their retirement accounts and, unfortunately, recent data suggests this may be a relatively small proportion of the population.[9]

More study is probably needed, but I think it is worth asking whether the tax benefits of municipal bonds, which were presumably intended (at least in part) to incentivize investment in munis, are actually accomplishing that objective. Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields. But whatever the cause, if the current trends continue and we see fewer and fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-too-distant future.

Personally, I hope we can reverse this trend toward concentration of assets among fewer investors. Regardless of our views on income or wealth inequality, I think we can generally agree that the projects funded by municipal securities improve the quality of life for all Americans, so we all have an interest in making sure the marketplace is attractive to investors of all stripes.

Notwithstanding the current concentration of assets, we still have a big job to do. Even though only a small percentage of U.S. households hold municipal securities, that is still millions of people, and it represents a lot of hard-earned money—approximately $3.71 trillion, in fact.[10] And, because the average age of the muni investor is 62 years old,[11] it means that a lot of those investors are seniors, whose vulnerabilities may increase as they age.

This is why I, and many of you, have been fighting for reforms in the muni markets. Although there is still plenty of work to be done, the past few years are evidence that regulators can take strides toward an innovative, flexible market while continuing to protect investors. The MSRB and FINRA have continued to enhance Electronic Municipal Market Access (EMMA) and Trade Reporting and Compliance Engine (TRACE), respectively, so investors would have better access to pricing and other important market information. The MSRB finalized its best execution guidance for dealers and the best execution rule took effect on March 21, 2016. Additionally, FINRA and the MSRB continue to collaborate on a markup disclosure rule and the MSRB is considering interpretive guidance to assist bond dealer in establishing “prevailing market price.” These are important initiatives that will make the markets a better place for investors, which will in turn make it a better place for issuers to get the funds they need for important projects.

As I close, I would like to take advantage of the fact that I am speaking to a group of regulators, and just extend my thanks, on behalf of America’s investors, for the jobs you do. Many of you have been on examinations of dealers, making sure they abide by the rules of the road and treat customers appropriately. Others have been involved in rulemakings that will improve those rules of the road. Some of you have worked to inform consumers about investment products or warn them away from scams, or you have personally talked to them and tried to give them whatever help they need.

Most days, you probably are not thanked for the work you do, but this is not one of those days. Thank you for all you do, each and every day, with little recognition or reward, on behalf of the American public.

[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author’s colleagues upon the staff of the Commission.

[2] Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, Fourth Quarter 2015, Table L.212 (Mar. 10, 2016, 12:00 PM), http://www.federalreserve.gov/releases/z1/current/z1.pdf.

[3] See Bergstresser and Cohen, Changing Patterns in Household Ownership of Municipal Debt: Evidence from the 1989-2013, (Current draft June 2015), at Figure 1; https://www.brookings.edu/wp-content/uploads/2016/07/Bergstresser-Cohen-with-tables.pdf.

[4] Id., at Figure 2.

[5] See https://www.investor.gov/introduction-investing/basics/investment-products/municipal-bonds.

[6] See, e.g., https://www.alamocapital.com/investment-products/bonds-and-fixed-income/municipal-bonds/ (“The placement of tax-free municipal securities into a qualified account is deemed to be an anomaly because (1) historically the yield on tax-free municipal securities is less than the yield on taxable securities, (2) the normally lower yield on municipal securities is justified by comparing its yield to the after-tax yield on taxable securities, and (3) the tax-free benefit is lost when “tax-free” securities are placed into a qualified account. The interest received from a “tax-free” security is taxed at ordinary income tax rates at the time it is withdrawn from the qualified account. Therefore the normal rule is that, given a choice, tax-free securities should be placed in a non-qualified account to retain their tax-free treatment.”).

[7] Id., at 3.

[8] See Rick A. Fleming, Protecting Elderly Investors from Financial Exploitation, Feb. 5, 2015, https://www.sec.gov/news/speech/protecting-elderly-investors-from-financial-exploitation.html (“Up until 1985, the aggregate value of defined contribution plans was less than half the value of defined benefit plans. By 2012, however, defined contribution plans were more than 50 percent larger than the aggregate size of defined benefit plans.”).

[9] According to the Employee Benefit Research Institute, 74 percent of American workers have saved less than $100,000 for retirement. 2016 RCS Fact Sheet #3, Preparing for Retirement in America, at Figure 3, https://www.ebri.org/files/RCS_16.FS-3_Preps.pdf.

[10] Federal Reserve Board, supra note 2.

[11] Bergstresser and Cohen, supra note 3 at Table 10.

SEC's Investor Advocate Talks Municipal Bonds.

The U.S. Securities and Exchange Commission's Investor Advocate Rick Fleming recently gave a speech discussing the state of the the municipal securities market.

Fleming noted approximately 41 percent of municipal bonds are owned by individual investors, while another 29 percent are owned by investors indirectly through mutual funds or other pooled investments.

However, there are some "disturbing" patterns beginning to emerge. Specifically, Fleming noted a "mere" 2.4 percent of households hold any form of municipal debt, which is half of what it was in 1998. On the other hand, the "wealthiest households" own an "increasing share" of total municipal debt, as the top one-half percent of U.S. households own 42 percent of all municipal bonds.

"Given the favorable income tax treatment of muni bonds, households in higher tax brackets have always had more incentive to invest in muni bonds — this is not news to this audience," Fleming continued. "However, the shift from defined benefit pension plans to defined contribution retirement plans seems [sic.] to have significantly deteriorated the incentive for less wealthy persons to invest in munis."

Naturally, interest on municipal bonds is exempt from federal income tax, and in many cases, state and local taxes. However, the yield on municipal bonds is often less than other taxable fixed-income securities.

The lower yield could be attractive for certain investors but it does lose its appeal within the context of a tax-advantaged retirement account where all holdings are tax-deferred. As such, it makes "little sense" for investors to hold tax-exempt municipal bonds in an IRA, 401(k) or 403(b).

This leads Fleming to question if the tax benefits of municipal bonds designed to encourage investment dollars are actually accomplishing the objective.

"Competing tax policies that favor retirement savings may actually drive most investors away from muni bonds, given their traditionally lower yields," Fleming expanded. "But whatever the cause, if the current trends continue and we see fewer and fewer investors holding an ever-larger proportion of muni bonds, the traditional retail-oriented muni market will change dramatically in the not-to--distant future."

Jayson Derrick, Benzinga Staff Writer

September 01, 2016 11:12am

MSRB Seeks Mark-up Disclosure for Municipal Securities Transactions.

Washington, DC – In an effort to improve investors' ability to assess the cost of transacting in municipal bonds, the Municipal Securities Rulemaking Board (MSRB) today advanced a plan to require dealers to provide retail investors information about compensation dealers receive when buying municipal bonds from, or selling them to, investors.

Currently, retail investors in municipal securities receive less information about the cost of their transactions than investors in the equity market. The MSRB's plan, which was submitted to the Securities and Exchange Commission (SEC) for approval, seeks to provide municipal retail investors with meaningful and useful pricing information to help them better evaluate the overall cost of their transactions.

"The concept of providing this type of transparency of transaction costs for municipal securities was first floated 40 years ago," said MSRB Executive Director Lynnette Kelly. "Changes in technology and in the municipal market have made it possible for investors to receive similar transaction information as investors in the equity market. This is a meaningful and historic shift for the municipal market."

If approved, the MSRB's proposal will require a dealer to make the new disclosure when, for example, it sells a municipal bond in a principal capacity (for the dealer's own account) to a retail customer and on the same day buys the same security from a third party. In this case, the dealer would disclose on the customer's confirmation its compensation, or "mark-up," from the "prevailing market price" of the security. In addition to providing the dollar value and percentage of the dealer's compensation on a trade, the confirmation would include a reference to trade price data about the security on the MSRB's Electronic Municipal Market Access (EMMA®) website.

"Our proposal will provide dealer compensation information on an estimated 8,000 retail investor municipal securities transactions each day," Kelly said. "That's a significant number of people who will have additional information about the cost of their transactions."

The MSRB's rule filing includes guidance for dealers on establishing the prevailing market price of a security for the purpose of calculating their compensation. Because of the significance of the proposed rule, the MSRB wants dealers to understand its intent with respect to how the rule would apply to different trading situations and the practical realities of the unique municipal market, which has more than one million individual bonds, the majority of which do not trade frequently. The MSRB's guidance specifically addresses establishing the prevailing market price for contemporaneous customer transactions; the ability of dealers to calculate their compensation at the time of disclosure to a customer; the frequent absence of pricing information for sufficiently comparable municipal securities; and the implications of transactions with affiliated dealers.

If approved, the proposed mark-up disclosure rule will be effective no later than one year following SEC approval.

Date: September 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1300
jgalloway@msrb.org

SEC Approves MSRB's Shorter Period for Resolving Interdealer Failures.

WASHINGTON — Dealers will have 10 calendar days to close out failed inter-dealer transactions now that the Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's amendments to one of its rules.

The amendments to MSRB Rule G-12 on uniform practice require the 10-day closeout period and include an option for a one-time, 10-day extension if the buyer of the municipal security consents. The SEC approved the changes on Thursday and they will take effect on Nov. 16.

The MSRB's current rules for closeout procedures are included in a years-old portion of Rule G-12 and do not mandate a closeout time period. They instead recommend that a dealer who fails to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

The MSRB said when it first proposed the changes that they would help to lessen the effect of interdealer transaction failures on the market. The self-regulator's first proposal would have set the closeout timeframe at 30 days.

The Securities Industry and Financial Markets Association responded to that proposal by asking the MSRB to instead move forward with a 15-day time period with the possibility of a 15-day extension.

The MSRB, citing concerns about small dealers being overburdened by a shorter timeframe, then proposed having a 20-day closeout time period. SIFMA, with the support of the Bond Dealers of America, responded again, saying the MSRB's concerns were unwarranted and that the time frame should be further shortened to the ultimate 10-day period with the possibility of a 10-day extension.

"Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market," said MSRB executive director Lynnette Kelly after the SEC approved the amendments. "Dealers share the MSRB's desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers."

In addition to the changes to the timeline for resolving interdealer failures, the SEC also approved MSRB proposals to allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business-day window. The amendments will also change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after notice by telephone.

While the time period for close-outs will be significantly shortened, the three interdealer options for remedying a failed transaction will remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The Bond Buyer

By Jack Casey

August 19, 2016

SEC Announces MCDC Issuer Enforcement Actions.

The Securities and Exchange Commission (SEC) today announced enforcement actions against 71 issuers for violations in municipal bond offerings. The cases are the first brought against issuers under the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative since the deadline for issuers to self-report on December 1, 2014.

The SEC's press release announcing the enforcement actions is available here.

The orders are available here.

SEC: Issuer Settlements Show Widespread, Pervasive Disclosure Problems.

WASHINGTON – The Securities and Exchange Commission's settlements with 71 issuers announced on Wednesday under a voluntary continuing disclosure enforcement initiative showed "a widespread and pervasive problem" with continuing disclosure in the municipal bond market but have led to some improvements, the SEC's enforcement chief said Wednesday.

The settlements, which include large and small issuers as well as non-profit borrowers from 45 states, were part of the SEC's Municipalities Continuing Disclosure Cooperation initiative, which promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The settlements included disclosure failures that occurred between 2011 and 2014 and were the first ones with issuers under the initiative since the first MCDC action was announced against California's Kings Canyon Joint Unified School District in July 2014.

Andrew Ceresney, director of the SEC's enforcement division, said the commission has seen a dramatic uptick in the number of disclosure filings with the Municipal Securities Rulemaking Board since the MCDC initiative was announced in 2013.

"We think that … market participants are much more focused on [disclosure] issues and [there are many] more that are complying at a much greater rate than they were prior to the initiative," said Andrew Ceresney, director of the SEC enforcement division. "Having said that, we are obviously going to monitor the market closely to make sure that these types of violations are not continuing, but signs are that the market has gotten the message."

However, Ceresney made clear that the scope and diversity of the 71 issuers and borrowers that settled "demonstrate that continuing disclosure failures were a widespread and pervasive problem in the municipal bond market."

Ceresney refused to comment on whether the initiative's findings warrant SEC regulation of issuers' disclosures, saying this is a policy rather than an enforcement matter. He also declined to comment on whether the SEC is investigating any issuer officials in connection with the settled cases.

The enforcement chief said the SEC believes it is important to hold individuals accountable and that he can't rule out actions against individuals in the future.

Ceresney also refused to comment on whether there will be more rounds of issuer settlements under the initiative or how many reporting issuers the SEC reviewed under the program. The underwriter settlements came out in three rounds. The SEC fined 72 muni underwriting firms, comprising 96% of the market share for muni underwritings a total of $18 million.

One lawyer speculated that the SEC did not disclose whether there would be more settlements because of a disagreement within the commission about whether to proceed with the initiative.

The lawyer said it would not be surprising if this is the only round of issuer settlements because the SEC had decided to only go after the most egregious examples of issuers not meeting their disclosure obligations.

"The point is that they clearly were trying to get a representative [group], at least one from each state, and trying to show it was across-the-board," the lawyer said, adding there's "a good likelihood" the SEC "may just declare victory and go home."

Another lawyer said the wording of the SEC's announcement seems to indicate there may be more rounds. The SEC's release said, "Today's actions are the first against municipal issuers since …."

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said in the release that because the issuers voluntarily agreed to take steps to prevent future violations, both they and their investors have benefited from the initiative.

Each of the issuers settled without admitting or denying the SEC's findings and agreed to establish appropriate written policies and procedures as well as conduct periodic training regarding continuing disclosure obligations to ensure compliance with federal securities laws. They each also agreed to designate an individual or officer responsible for ensuring they are compliant with their policies and procedures, which must be adopted within 180 days of the settlement. The designated individual will also be responsible for implementing and maintaining a record of the issuer's disclosure training.

Additionally, the issuers agreed to bring themselves into compliance with all of their continuing disclosure undertakings, including past delinquent filings, within 180 days of the settlement if they are not currently in compliance. They will have to disclose their settlements in future offering documents and cooperate with any subsequent SEC investigations.

The issuer settlements bring the total number of settlements under the initiative to 142 actions against 143 respondents. Although there were 71 issuers named in the actions the SEC announced Wednesday, two Connecticut-based issuers, Lawrence & Memorial Hospital Inc. and its parent corporation Lawrence & Memorial Corp. were combined into one action. The 71 issuers include two states: Minnesota and Hawaii. Seven of the issuers were state authorities, including several focused on transportation, and 29 were localities, which ranged from small towns to larger counties. Additionally, there were seven local authorities, nine school districts or charter schools, and six colleges or universities. Also included were five healthcare providers, five utilities, and one retirement community.

The issuer settlements were somewhat similar to the ones for underwriters in that they included both negotiated and competitive bond deals, although negotiated transactions were more heavily represented.

The SEC also listed each issuer or obligated person's violations in bullet-point form as it did for underwriters. Numerous issuers only had one bullet point listing violations in their settlements and the majority had three or fewer. However, some, like the Andover, Kan. and the Township of East Brunswick, N.J., had five. Berrien County, Mich. had the most bullet points listed, with seven.

The conduct the SEC cited in the settlements ranged from instances where issuers failed to disclose that they had not made continuing disclosures at all to those where the disclosures were very late or incomplete. They also included situations where issuers made false statements that they were in compliance with their continuing disclosure agreements as well as those where issuers were silent about their continuing disclosure and misled investors by omission.

Failure to file a material event notice was also mentioned for example in the settlement with Missouri-based Ascension Health Alliance, which the SEC found failed to file certain notices of defeasances before a 2012 negotiated offering.

The settlements were unlike those with underwriters in that the issuers and borrowers were not fined.

Bond Dealers of America and the Securities Industry and Financial Markets Association each said in releases that MCDC has been a difficult process for the market and urged the SEC to revise and update its Rule 15c2-12 on disclosure.

Citing its recent study of disclosure in the 50 states, SIFMA added it believes "states are in a unique position to improve municipal disclosure" and it would like to see states "adopt policies to insure that local government issuers, at a minimum, meet all federal and contractual requirements."

The settlements may provide fuel for the National Federation of Municipal Analysts' recent disclosure recommendations, including one calling for the SEC to regulate issuers' disclosure practices.

The Bond Buyer

By Jack Casey

August 24, 2016

SEC Aims to Exclude Municipal Advisors from its Pay-to-Play Rule.

WASHINGTON – The Securities and Exchange Commission has announced it intends to issue an order that will allow municipal advisors to be excluded under its pay-to-play rule for investment advisers because they are now covered under a revised Municipal Securities Rulemaking Board rule.

The SEC's pay-to-play rule, which is found in Rule 206(4)-5 under the Investment Advisers Act of 1940, prohibits an investment advisor from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make a contribution to elected officials or candidates who can influence the award of advisory business.

According to the SEC filing, the order will be issued unless the commission holds a hearing. Any interested individuals can request a hearing by writing to the commission's secretary by 5:30 p.m. on Sept. 19.

Municipal advisors, which are now included in the MSRB's pay-to-play rule, can only be excluded under the SEC's rule if the commission finds, by order, that the MSRB's revised Rule G-37 on political contributions imposes substantially equivalent or more stringent restrictions on municipal advisors as the SEC pay-to-play rule imposes on investment advisors. It also must find that the revised MSRB rule is consistent with the objectives of the SEC pay-to-play rule.

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The SEC and MSRB are currently in a legal dispute with three Republican state groups after the groups claimed the revised MSRB rule violates securities professionals' constitutional rights to free speech by making them choose between contributing to candidates and doing their jobs. The SEC has filed a motion to have the case dismissed during the last two months but a judge has not issued an order on the commission's motion yet.

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The Bond Buyer

By Jack Casey

August 26, 2016

SEC Says 71 Muni Borrowers Lied About Disclosure Histories.

The U.S. Securities and Exchange Commission said it reached settlements with 71 state and local borrowers for lying to investors about their compliance with disclosure requirements when they sold bonds in the $3.7 trillion municipal market.

Issuers from New York's Syracuse University to Boulder County, Colorado, to Hawaii voluntary self reported "materially false statements or omissions about their compliance with continuing disclosure obligations" in bond offering documents from 2011 to 2014, the SEC said in a statement. Muni issuers are required to provide investors with annual financial reports and other material event information that could affect the value of their debt.

"Continuing disclosure failures were a widespread and pervasive problem in the municipal bond market," Andrew Ceresney, director of the SEC enforcement division, said in the statement. The actions will bring attention to disclosure problems in the market and lead to increased compliance, he said.

The actions came under an SEC initiative to crack down on disclosure failures by offering issuers favorable settlement terms in exchange for self-reporting material misstatements and omissions about their compliance with disclosure requirements. Under terms of the settlement the issuers will "cease and desist" from future violations and establish procedures to ensure compliance in the future. The SEC has brought 143 actions over disclosure in the market, according to the release.

Minnesota Example

In 2012, the SEC said in a report that failure to properly comply with disclosure requirements was "a major challenge" for investors trying to find information about their municipal-bond holdings. In February, 14 underwriters agreed to settle allegations by the SEC that they issued bonds for municipalities that failed to make adequate disclosures.

Minnesota, for example, told investors that it hadn't failed to comply with disclosure requirements in bond issues in 2011 and 2013, when in fact it had failed to file required audit reports in 2008 and 2010 for previous bond issues, according to the SEC's order.

The state's commissioner of management and budget failed to comply "in all material respects with its commitment to provide certain types of continuing disclosure," the order says.

S&P Expectations

The settlement has afforded Minnesota the opportunity to improve its disclosure, said Myron Frans, the commissioner, who joined the agency in January 2015, in a statement in response to the SEC order.
"Transparency is a critical function of government and I am glad to report that our agency published these required disclosures last August, almost one year in advance of the SEC's order," Frans said in the statement.

Meanwhile, when the state sold nearly $799 million of general-obligation bonds earlier this month for highways, economic development and higher education, it detailed its disclosure failures in 2012 and some prior years, according to the official statement.

S&P Global Ratings, in a report Aug. 15 in anticipation of the disclosure settlements, said it would consider the potential credit implications of each agreement on a case-by-case basis, but that it would expect limited impact on the credit quality of issuers.

Bloomberg Business

by Darrell Preston

August 24, 2016 — 9:52 AM PDT Updated on August 24, 2016 — 12:25 PM PDT

SEC Charges 71 Muni Issuers for Misleading Investors.

(Reuters) – (Story corrects paragraph 4 to show a Minnesota county municipal finance official did not immediately respond to a request for comment and a state municipal finance official could not immediately be located for comment, not that an official in Minnesota's finance department did not return a call for comment.)

The U.S. Securities and Exchange Commission has charged 71 municipal bond issuers, including the states of Hawaii and Minnesota, as well as related entities, for using offering documents that misled investors, the agency said on Wednesday.

The actions, brought under an SEC initiative that encouraged municipal bond issuers to self-report certain violations, involved conduct that occurred between 2011 and 2014, the SEC said. The initiative offered favorable settlement terms in exchange for self-reporting, the SEC said.

All of the entities involved settled with the SEC without admitting or denying the SEC's findings, the agency said.

A county municipal finance official in Minnesota did not immediately return a call requesting comment. A state municipal official could not immediately be located for comment. A Hawaii finance department spokesman could not be reached for comment.

The action covers a wide range of other issuers and entities, including the Ohio State University, the city of Memphis, the town of Hilton Head Island, South Carolina, and the Delaware Transportation Authority, according to the SEC.

The SEC said that issuers in the case sold municipal bonds using offering documents that contained materially false statements or omissions about their compliance with continuing disclosure obligations.

Continuing disclosure provides municipal bond investors with important information, such as annual financial reports, on an ongoing basis. Failure to comply with continuing disclosure mandates is a "major challenge for investors seeking information about their municipal bond holdings," the SEC said.

Settlements in the cases require the parties to reform their policies, procedures and staff training related to continuing disclosure obligations and to update past filings, among other things, the SEC said.

The cases raised hackles at the Securities Industry and Financial Markets Association (SIFMA), a trade group, which on Wednesday called for broad changes in regulation and practices, given the widespread nature of the enforcement actions by the SEC, first against dealers and now against issuers.

SIFMA supports a "robust disclosure regime" in the municipal market, but has "serious concerns" about how the SEC carried out the self-reporting initiative for municipal bond issuers, SIFMA said in a statement.

By REUTERS

AUG. 26, 2016, 11:51 A.M. E.D.T.

(Reporting by Suzanne Barlyn; Editing by Frances Kerry and Meredith Mazzilli)

[SIFMA Statement on SEC MCDC Enforcement Action.]

New York, NY, August 24, 2016 – SIFMA today released the following statement from Kenneth E. Bentsen, Jr., president and CEO of SIFMA, on the MCDC enforcement action announced today by the Securities and Exchange Commission:

"SIFMA supports a robust disclosure regime in the municipal market to ensure that investors have timely access to the information they need to evaluate their investments. We have serious concerns about how the SEC executed the MCDC Initiative. Given the widespread nature of the enforcement actions by the SEC, first against dealers and now against issuers, we believe that broad changes in regulation and practices are warranted.

"To that end, as outlined in our June 2016 letter to SEC Chair White and in our April 2016 white paper, we urge the SEC to revise and update Rule 15c2-12 to improve interpretive guidance with respect to compliance. We also encourage the MSRB to leverage its existing infrastructure and technology to improve investor access to disclosures. In addition, as found in our recent 50-state review of state policies governing local government bond issuance, information disclosure and financial audits, we believe the states are in a unique position to improve municipal disclosure and would like to see states adopt policies to insure that local government issuers, at a minimum, meet all federal and contractual requirements."

Release Date: August 24, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

[S&P: What Will A Continuing-Disclosure Settlement Mean For Muni Credit?]

The Securities and Exchange Commission (SEC) is expected to soon start releasing Municipal Continuing Disclosure Cooperation (MCDC) initiative settlements with governmental entities. The MCDC initiative was offered to issuers and underwriters of municipal debt during a defined period in 2014 as a voluntary way to notify the SEC of potential continuing disclosure violations, in exchange for pre-defined settlements. The violations are related to SEC rule 15c2-12. (More background on the MCDC initiative is available on the SEC's website, www.sec.gov.)

As settlements are announced we expect to consider the potential credit implications of each on a case-by-case basis. Disclosure practices are an important part of our assessment of management, but we do not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices. Our expectation is that there would be very limited credit impact as ratings determinations would still come down to the individual credit fundamentals.

The MCDC Initiative

The MCDC initiative encouraged issuers and underwriters to report in 2014 violations of 15c2-12 which had occurred over the prior five years. The SEC offered the MCDC initiative as it believed that there were "potentially widespread violations" and that the general attitude toward adherence to the disclosure rules needed to be heightened throughout the market. The SEC has not revealed who self-reported.

Types Of Settlements

Underwriters

The SEC's enforcement division was charged with reviewing each case reported in the MCDC initiative. It has so far made public settlements entered into with underwriters and is now expected to start releasing settlements with issuers. The underwriter settlements did not require the underwriters to admit or deny any findings, but along with other provisions the underwriters would need to hire an independent consultant (approved by the SEC) to review internal practices and then implement any recommendations to further enhance compliance with 15c2-12. The underwriter settlements to date have included civil penalties, referred to as fines by those who have paid. The MCDC initiative included a maximum fine of up to $500,000 for the largest underwriters, and there have been 72 firms paying various-sized civil penalty fines to date. The fines have ranged from $40,000 to the maximum, according to the SEC.

Issuers

As the SEC actions are shifting to the issuer, we expect settlements to address disclosure violations in a different way. The primary difference, per the MCDC guidelines, is that the issuer settlements will not come with civil penalty fines. According to the SEC's standardized settlement terms, the focus of the issuer settlements will be on establishing management practices within the municipal issuer to ensure remediation of past violations and to avoid future violations.

Increased 15c2-12 Compliance Expected

The increased focus by the underwriter on compliance requirements and improved issuer filings per the 15c2-12 rules is expected to improve overall disclosure practices and enhance the quality and quantity of information available to the marketplace. We believe increased transparency is important in order to track and analyze credits, particularly those that do not come to market frequently. Notwithstanding the credit impact of individual settlements, we view the MCDC initiative as positive for the muni market, but we do not believe the initiative, in and of itself, is likely to result in changes to any current credit ratings.

Materiality Or Malfeasance

Even though the settlements are related to SEC securities law (albeit without admitting any violations), they are unlikely in our view to trigger any immediate rating actions. In our analysis of credit, we assess disclosure issues relative to their materiality to credit. Thus, we anticipate looking at each case on its own, taking into consideration the materiality of the violation in relation to the rating, based on the applicable rating criteria. That said, should the violation be malfeasance, then there could be a more immediate impact on the rating.

Assessment Of Management

We anticipate that, in general, the major credit consideration relating to the MCDC initiative will be around the capabilities of the management team. Management is an important component of our rating criteria in each sector of U.S. public finance. However, we note that management is only one input to the total rating, which underscores why we don't expect significant rating volatility if there are disclosure deficiencies identified, all other factors being equal. Management's plan, however, to remediate any violations would be an important component of our analysis of the capabilities of the management team.

Only a rating committee may determine a rating action and this report does not constitute a rating action.

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15-Aug-2016

GFOA: Your Action Requested on Senate-Side High Quality Liquid Assets Legislation.

On February 1, 2016, the House of Representatives voted unanimously to approve HR 2209, bipartisan legislation that would require federal regulators to classify all investment-grade, liquid, and readily marketable municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, classifying foreign sovereign debt securities as HQLA while excluding investment grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Some members of the Senate Banking Committee are seriously considering the introduction of companion legislation to HR 2209, and GFOA urges our members to send letters to Senate members asking them to sign on as cosponsors of the bill, especially from the following jurisdictions. A draft letter is available here.

Richard Shelby, Chairman (R-AL)
Sherrod Brown, Ranking Member (D-OH)
Tom Cotton (R-AR)
Bob Corker (R-TN)
Mike Crapo (R-ID)
Joe Donnelly (D-IN)
Heidi Heitkamp (D-ND)
Dean Heller (R-NV)
Mark Kirk, (R-IL)
Robert Menendez, (D-NJ)
Jeff Merkley (D-OR)
Jerry Moran (R-KS)
Jack Reed (D-RI)
Mike Rounds, (R-SD)
Ben Sasse (R-NE)
Charles E. Schumer (D-NY)
Tim Scott (R-SC)
Jon Tester (D-MT)
Patrick J. Toomey (R-PA)
David Vitter (R-LA)
Mark R. Warner (D-VA)
Elizabeth Warren (D-MA)

Background
In September 2014, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (OCC) approved a

rule establishing minimum liquidity requirements for large banking organizations. The liquidity coverage ratio rule was designed to ensure that large banks maintain liquid assets that can easily be converted to cash during times of national economic crisis. The rule identifies HQLA to meet this requirement, but fails to include municipal securities in any of the acceptable investment categories—despite including foreign sovereign debt.

Following approval of the new rule, GFOA and our state and local association partners have urged the Federal Reserve, FDIC, and OCC to amend the rule to classify investment-grade, liquid, and readily marketable municipal securities as HQLA. On May 21, 2015, the Federal Reserve Board issued a [proposed rule] that would designate certain investment grade municipal securities as HQLA. While the GFOA is extremely grateful for the Federal Reserve's recognition of the liquidity features of municipal securities, we have some concerns with the proposal, which we raised in our [comment letter]. Such concerns include the proposal's failure to include revenue bonds as HQLA, and the limit on the total amount of general obligation securities that a financial institution can hold of no more than 5% of the institution's total amount of HQLA.

Meanwhile, the FDIC and OCC refuse to modify the rule for municipal securities. In the absence of cooperation from these agencies, GFOA is working with bipartisan champions in Congress to change the rule through legislation (HR 2209) and preserve low-cost infrastructure financing for state and local governments and public-sector entities.

Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

GFOA

Wednesday, August 17, 2016

Impact of Pay-to-Play Rules in the 2016 Election Cycle: K&L Gates

The federal Pay-to-Play Rules may impact campaign contributions in the 2016 election and, in particular, campaign contributions to a major party's presidential campaign. Financial institutions that do business with, or seek to do business with, state or local pension plans should be aware of the business consequences that a political contribution in the 2016 election cycle may trigger.

In particular, vice presidential candidate Mike Pence's authority over the Indiana Public Retirement System ("INPRS") and the Indiana Education Savings Authority ("IESA") as Governor of Indiana may limit political contributions from a wide spectrum of financial institutions and their associates to the Donald Trump presidential campaign. Investment advisers, brokers, dealers, municipal securities dealers, municipal advisors, swap dealers and security-based-swap ("SBS") dealers (collectively, the "Covered Institutions"), and their associates are all potentially impacted.

Governor Pence is an "official" of INPRS and IESA under the Pay-to-Play Rules because he appoints members of their boards of trustees. As a result, direct or indirect contributions to the Trump campaign could trigger a two-year "time-out" that would prevent Covered Institutions from collecting fees from, or engaging in certain activities with, INPRS and the Indiana CollegeChoice

529 Savings Plans or the Indiana CollegeChoice CD 529 Savings Plan, of which IESA serves as the governing board.

This article summarizes the four principal federal Pay-to-Play Rules currently in effect: Securities and Exchange Commission Rule 206(4)-5 (the “SEC Rule”); Municipal Securities Rule Making Board Rule G-37 (the “MSRB Rule”); Commodity Futures Trading Commission Regulation 23.451 (the “CFTC Rule”); and SEC Rule 15Fh-6 applicable to SBS dealers and major securities-based swap participants.

In addition, the Pay-to-Play Rules broadly prohibit a person from doing indirectly what the person would have been prohibited from doing directly. Accordingly, a payment to a political action committee (“PAC”) or political party that is soliciting funds for the purpose of supporting an official of an issuer could be treated as a contribution made directly to such official.

SEC Pay-to-Play Rule
The SEC Rule was adopted in 2010 and modeled on the MSRB Rule. [1] It prohibits “Covered Advisers” [2] from receiving compensation for providing advisory services to a government entity client (such as INPRS) for two years after the adviser or a Covered Associate (as defined below) has made a contribution to an “official” of the government entity, or has solicited from others or coordinated contributions to an “official” of the government entity. The SEC Rule defines “Covered Associate” as: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any PAC controlled by the investment adviser or by any person described in parts (i) or (ii).

In addition, a contribution to a political party, PAC, or other committee or organization may trigger the two-year “time-out” if the contribution is, for example, earmarked for or known to be provided for the benefit of a particular political “official.” [3] An “official” means any individual (including any election committee of the individual) who was, at the time of a contribution, a candidate (whether or not successful) for elective office or holds the office of a government entity, if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

Accordingly, a candidate for federal office may be an “official” as a result of holding a state or local office. For example, the SEC Rule covers contributions to Trump’s presidential campaign because his running mate, Governor Pence, is an “official” under the SEC Rule given his current office of Governor of Indiana.

Under the SEC Rule, Covered Associates (but not Covered Advisers) may make a contribution up to the de minimis amount per election without triggering the two-year “time-out” on advisory fees. This de minimis amount is $150 in an election where a Covered Associate may not vote for the candidate and $350 in an election where a Covered Associate may vote for the candidate.

MSRB Pay-to-Play Rule
The MSRB Rule prohibits brokers, dealers and municipal securities dealers (each, a “Covered Municipal Dealer”) from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with municipal entities if certain political contributions have been made to officials of such municipal entities.

Under the MSRB Rule, a Covered Municipal Dealer is prohibited from engaging in municipal securities business with a municipal entity for two years after the Covered Municipal Dealer, a municipal finance professional of the Covered Municipal Dealer or any of their controlled PACs makes a contribution to any official of the municipal entity who can influence the selection of the Covered Municipal Dealer.

In addition, effective August 17, 2016, municipal advisors are prohibited from engaging in municipal advisory business with a municipal entity for two years after the municipal advisor, a professional of the municipal advisor or any of their controlled PACs makes a contribution to an official of the municipal entity who can influence the selection of the municipal advisor.

The MSRB Rule also prohibits Covered Municipal Dealers and municipal advisors, and their professionals, from soliciting or coordinating contributions from any person (including an affiliated entity) or PAC to an official of a municipal entity with the ability to select a Covered Municipal Dealer or municipal advisor with whom the Covered Municipal Dealer or municipal advisor does or is seeking to do business.

The MSRB Rule permits a municipal finance professional or a municipal advisor professional (but not Covered Municipal Dealers or municipal advisors) to make a contribution up to $250 in an election where the individual may vote for the candidate without triggering the “time-out.” There is no de minimis exception if the municipal finance professional or municipal advisor professional is not eligible to vote for the candidate.

Other Pay-to-Play Rules
The CFTC Rule restricts swap dealers from offering to enter into or from entering into a swap or a trading strategy involving a swap with a governmental special entity, if the swap dealer (or a covered associate of the swap dealer) made or solicited contributions to an official of that governmental special entity during the preceding two years, with limited exceptions. When proposing the rule, the Commodity Futures Trading Commission stated an objective of harmonizing the CFTC Rule with the MSRB Rule and the SEC Rule that already covered many swap dealers. Accordingly, the application and terms of the CFTC Rule to swap dealers are very similar to the MSRB Rule and the SEC Rule described above.

SEC Rule 15Fh-6 restricts SBS dealers from engaging in certain activities with a municipal entity, if the SBS dealer (or a covered associate of the SBS dealer) made or solicited contributions to an official of that municipal entity during the preceding two years, with limited exceptions. [4] The SEC stated that Rule 15Fh-6 was designed to subject the SBS dealers to the same types of restrictions as the CFTC Rule.

FINRA has proposed a similar rule that would apply to executives of broker-dealers.

In addition, many states and localities have also adopted pay-to-play rules that are applicable to persons who contract with their governmental agencies.

Contributions to the Trump/Pence Campaign
The Governor of Indiana appoints members of the boards of INPRS and IESA. This power to appoint board members, who make the decisions whether to hire or terminate service providers, makes Governor Pence an “official” of INPRS and IESA for purposes of the Pay-to-Play Rules.

Because the presidential and vice presidential candidates of a political party run on a single ticket, a contribution to the Trump presidential campaign would be subject to the Pay-to-Play Rules. In addition, contributions to the Republican Party or to a PAC supporting the Trump presidential campaign may trigger a “time-out” as well because the Pay-to-Play Rules apply to contributions that the donor knows will benefit a particular official.

Other Campaigns
In addition to the Trump/Pence campaign, Covered Institutions should be mindful of the ramifications of the Pay-to-Play Rules with respect to other donations this election cycle. As both Hillary Clinton and Tim Kaine are not “officials” for purposes of the Pay-to-Play Rules, a contribution to the Clinton/Kaine campaign would not be subject to the Pay-to-Play Rules. There are, however, other candidates for whom a campaign contribution may trigger the Pay-to-Play Rules.

Financial institutions should assess whether the Pay-to-Play Rules present a business risk in the 2016 election campaign, not just with respect to firm contributions but also those of their associates and related PACs, given their current or potential investors or clients. If so, they should review their compliance policies and procedures accordingly.

Notes:
[1] “Political Contributions by Certain Investment Advisers,” SEC Release No. IA-3043, www.sec.gov/rules/final/2010/ia-3043.pdf.

[2] The SEC Rule applies to investment advisers registered or required to be registered with the SEC, “foreign private advisers” not registered in reliance on Section 203(b)(3) of the Investment Advisers Act, and “exempt reporting advisers.”

[3] “Staff Responses to Questions About the Pay to Play Rule,” www.sec.gov/divisions/investment/pay-to-play-faq.htm.

[4] SEC Rule 15Fh-6 was adopted in April 2016 and became effective on July 12, 2016.

K&L Gates

by Clifford J. Alexander, Ruth E. Delaney, Sonia R. Gioseffi

18 August 2016

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to shorten the time frame during which municipal securities dealers must resolve open inter-dealer failed transactions thereby reducing the cost and market risk associated with open transactions.

The SEC’s approval of changes to MSRB Rule G-12 mandates that beginning November 16, 2016, inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10 calendar day extension at the buyer’s discretion. Read details of the rule change in the regulatory notice.

“Market support for this rule change reflects the extent to which dealers are committed to improving efficiencies in the municipal market,” said MSRB Executive Director Lynnette Kelly. “Dealers share the MSRB’s desire for prompt resolution of open transactions. A shortened close-out period provides investors with additional certainty about their purchases and reduces risks for dealers.”

Acceleration of the MSRB’s close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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BDA Submits Comment Letter to the SEC on FINRA’s U.S. Treasury Transaction Reporting Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA’s proposed rule to require reporting of U.S. Treasury security transactions to TRACE.

BDA’s comment letter expresses general support for the proposal. However, BDA urges regulators to not implement fees or pursue public dissemination of Treasury transaction information in the future. In addition, BDA urges FINRA and federal banking regulators to work to adopt a rule that would require non-FINRA member financial institutions to also report Treasury transactions to a central repository.

Proposal Summary:

FINRA has filed proposed rule with the SEC to require the reporting of certain transactions in U.S. Treasury securities to TRACE. The proposal has been published in the Federal Register and it has a 21-day comment period. Comment letters are due by Monday, August

Scope of Transactions to be Reported: Bills, Notes, Bonds, STRIPS

Timing of Reporting: FINRA has proposed end-of-day reporting within current TRACE hours.

Modifiers: FINRA has proposed two different modifiers for reporting purposes.

> **Modifier S:** FINRA has proposed a modifier for reporting spread trades between on-the-run and off-the-run Treasuries where transaction prices entered into the reporting fields for the spread trade could be different from the current market price for the given Treasury.
>
> **Modifier B:** FINRA has proposed a second modifier for a Treasury trade executed in connection with a Treasury futures contract.

Fees: FINRA does not propose charging trade-reporting fees for Treasury trades to FINRA members.

Timing of the Rule's Effective Date: Once the rule is approved by the Commission, FINRA will issue an effective date notice within 90 days. The rule will go into effect no later than 365 days from Commission approval.

08-15-16

S&P Releases MCDC Settlement Commentary.

On August 15, 2016, S&P released commentary discussing the potential affects a continuing-disclosure settlement would have on muni credit from. The commentary explains that the credit rating agency does "not expect the settlements themselves to translate into rating downgrades if settling issuers respond with proactive approaches to addressing any identified deficiencies in their disclosure practices." The second-round issuer settlements will be focused on management practices and the capabilities of the management team, as opposed to the underwriter settlements issued in the first round which required external oversight and civil penalties. As management practices are a part of the broader rating criteria, S&P acknowledged that the issuer settlement will be taken as a part of the credit analysis and thus do not expect significant volatility if there are disclosure deficiencies identified. See the commentary below.

Download:

MCDC Settlement Commentary

Wednesday, August 17, 2016

MSRB to Shorten Time Frame for Resolving Open Inter-Dealer Transactions.

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Acceleration of the MSRB's close-out procedures stems from its effort to promote regulatory efficiency by revising, reorganizing or retiring certain outdated MSRB rules and interpretive guidance following an assessment of current market practices and input from market participants. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Date: August 19, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Why Dealers and Academics Are Clashing Over MSRB Trade Data Proposal.

WASHINGTON – While dealer groups are pushing the Municipal Securities Rulemaking Board to place more restrictions on its proposal to share trade data with academics, researchers say the ones the MSRB has already floated threaten to render the data hard to use or even useless.

"It's not going to get as much use as we would like it to because of all the legal rules that it looks like are going to be imposed," said Bart Hildreth, a professor in the Andrew Young School of Policy at Georgia State University and former MSRB board member.

The Securities and Exchange Commission and Financial Industry and Regulatory Authority already get the full scope of MSRB trade data, with the identities of dealers, for audit and enforcement purposes.

The academic trade data product, which the MSRB first proposed in July 2015 after academics periodically asked for data for studies, has drawn support from market participants for its potential to increase transparency, but dealer groups like Bond Dealers of America and the Securities Industry and Financial Markets Association are still concerned that the introduction of anonymous identifiers could open their members up to the detrimental effects of reverse engineering. An anonymous identifier would allow the MSRB to show all of the trades of a dealer without identifying the firm.

Under the proposal, the data would be made available only to researchers associated with a higher education institution who subscribe and pay a fee. The data would be that gathered from required reports dealers make to the Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB makes some of that post-trade information available now, but none of it currently contains dealer identifiers.

The dealer groups' concerns led the MSRB to make several changes to the proposed product before submitting it for approval with the SEC earlier this year, including lengthening the wait time before data can be released to three years from two and bolstering the steps the self-regulator said it would take to combat the threat of reverse engineering.

The MSRB also agreed with a dealer suggestion to exclude primary trades from the product's data sets by not including list offering price and takedown transactions. But BDA and SIFMA both asked for further changes in recent comment letters to the SEC.

Leslie Norwood, managing director and associate general counsel with SIFMA, and Sean Davy, SIFMA's capital markets division managing director, said the three-year timeframe before data would be released was still too short and asked for it to be released after four instead of three years.

Mattia Landoni, an assistant professor of finance at Southern Methodist University, said, in response to the proposed longer delay, that it is important that researchers are able to write about topics that people are interested in at the time that the researcher releases his or her findings.

"With a three-year delay, that means I would be able to write [a] paper in the best case, three years later and in the worst case [even] later because [I] will have moved onto something else," he said.

Mike Nicholas, chief executive officer of Bond Dealers of America, said BDA "remains extremely concerned" with the risks associated with the proposal and added it is "simply inappropriate" to give higher education institutions the dealer-specific transaction information that dealers are required to submit to the MSRB.

"Because of the interconnected nature of our markets, it would only take one large dealer working in collaboration with a researcher at an institution of higher education to completely identify the dealer names that match MSRB's 'dealer identifier' and then have full visibility and transparency into the business strategy and transactions of every dealer," Nicholas wrote.

He added that the dealer-specific transaction data that the product would provide could easily be exposed to hacking attempts or a freedom of information act request if the data is being held by an academic at a public university.

Landoni said academics would not be opposed to agreeing to the MSRB rules designed to prevent misuse of the product.

"None of us would have a problem with promising not to reverse engineer individual dealer strategies," he said. "That's just not what we do."

Hildreth said that many universities, especially state schools, are going to have "real difficulty" in agreeing to the liability restrictions the MSRB would tie to reverse engineering that would have to be agreed to if academics wanted to access the product. He also said it is unclear how confidentiality rules tied to the data would transfer if for example a PhD candidate started a dissertation at one school but then moved schools during the several years it took to get the dissertation published.

Both BDA and SIFMA urged the MSRB to group similar dealers together and use the groups instead of the anonymous identifiers. However, SIFMA added that it would like to see the MSRB widen the eventual product's availability to any not-for-profit organization that has a separately identifiable research department and regularly publishes research reports instead of just academics with higher education institutions.

Hildreth and other academics said the dealer identifiers are important.

"Without dealer identifiers [the research process] is going to be less rigorous," he said. "The delay in the data [release] just adds to that."

"It's not going to be as used as the research community would like it to be used out of the gate," Hildreth said. "But then again, I respect MSRB's concern about what the market is telling them."

The Bond Buyer

By Jack Casey

August 11, 2016

Why Market Groups Want SEC Disclosure Guidance.

WASHINGTON – Five municipal market groups are asking the Securities and Exchange Commission for guidance that would help create a streamlined process for issuers to amend their continuing disclosure agreements without running afoul of Rule 15c2-12 on disclosure.

The groups, which include the Government Finance Officers Association, Bond Dealers of America, and the Securities Industry and Financial Markets Association, made their request in a letter to Jessica Kane, director of the SEC's office of municipal securities. The National Association of Bond Lawyers and the National Association of State Auditors, Comptrollers and Treasurers also signed the letter.

An SEC spokesman declined to comment on the letter.

The groups said their request stems from discoveries that issuers and underwriters made while reviewing continuing disclosure agreements (CDAs) as part of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The issuers and underwriters found that many of the issuers' agreements had ambiguities and inconsistencies that often resulted in overlapping, varying, and outdated information in the required disclosures.

The groups attributed these problems to the SEC's allowing issuers, in its 1994 amendments to Rule 15c2-12, to be flexible in drafting CDAs. As a result of this flexibility, there has not been a uniform CDA that everyone has used over the last 20 years and disclosure obligations have differed depending on the specifics of the issuance, according to the groups.

"In some cases, a CDA may require information that may be no longer relevant, available or able to be produced without significant burden or cost," the groups wrote. "Under current guidance … there is no simple way to amend and fix such CDAs."

For example, an issuer that has been active in the market for a number of years may have one previous CDA for a water utility issuance that said it will continue to provide investors with specific tables from rate reports on the water utility. That issuer might then embark on a new bond issue for capital improvements to the water system ten years later and include internally prepared financial information and operating data for the water system that excludes rate tables because they are less applicable and harder to obtain. Unless the issuer can amend its ten-year-old CDA, it will be contractually obligated to bondholders to produce the old tables until the bonds are paid or redeemed while still providing the annual updates to the information promised in the most recent CDA.

"We think that if the amendments that an issuer wants to make to an outstanding [CDA] are in keeping with that issuer's current practice and are consistent with what an issuer would commit to if they were issuing the bonds today and they don't have any material adverse effect on outstanding bondholders, that should be a reasonable set of guidelines for making amendments to outstanding continuing disclosure agreements," said Michael Decker, managing director and co-head of munis with SIFMA.

Jessica Giroux, general counsel and managing director for Bond Dealers of America, said the organizations sent the letter with the hope of getting "some commonsense changes … based upon what the practitioners in the field see as something that might streamline the system and not burden any one individual player."

The SEC's current requirements for amending CDAs include that the amendments only be made in connection with a change in circumstances that arises from a modification in: legal requirements; law; or the identity, nature, or status of the obligated person, or type of business conducted. The amended disclosure undertaking also must have complied with the requirements of 15c2-12 at the time of the primary offering after taking into account any amendments or interpretations of the rule as well as any change in circumstances. Finally, the amended CDA must also not impair the interests of bondholders.

The groups are asking the SEC to provide interpretive language that classifies a change in issuer disclosure practices as fitting into the "change in circumstances that arises from a change in legal requirements" guidance. They also are asking the SEC to agree that it would fit with current guidance to have the information required in the amended CDA be consistent with the disclosure that would be included in a primary market offering document if the bonds were issued today.

Additionally, they want the commission to sign off on the idea that a CDA change is acceptable if both the amendment to the CDA does not materially impair the interests of the bondholder and the notice through the Municipal Securities Rulemaking Board's EMMA system is an appropriate way to notify bondholders of the changes.

The letter is the product a subset of the many municipal market organizations that began discussing ways to improve disclosure after the SEC began its MCDC initiative. MCDC was first announced in March 2014 and allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements. The initiative has already led to settlements totaling $18 million with 72 underwriters representing 96% of the market by underwriting volume. The SEC has been contacting issuers that self-disclosed violations, but it is unclear when issuer settlements will be released.

Some groups see the collaboration as a way to preempt any SEC action to further regulate disclosure in the market.

Several representatives of the organizations that signed the letter said the larger group of organizations will continue to share ideas on improving disclosure, but could not point to any specific initiatives or future letter they have planned.

The Bond Buyer

By Jack Casey

August 9, 2016

Behind California's Effort Targeting Bond Measure 'Pay-to-Play'.

LOS ANGELES — California Treasurer John Chiang's efforts to combat "pay-to-play" activities among local bond issuers received mixed reviews from municipal bond industry participants.

Chiang announced policies July 27 designed to limit what he called questionable municipal bond industry bankrolling of local bond election campaigns.

He has asked all finance firms that wish to participate in the sale of state issued bonds to sign certificates by the end of August pledging to not engage in what Chiang describes as pay-to-play practices related to bond measure campaign funding.

Chiang’s program asks that the 105 financial and law firms in the state’s pools, made up of 13 advisory firms, 26 law firms, and 66 underwriters, take the pledge. But he has gone a step further by extending it to any financial firms that do state business, Schaefer said.

“There are any number of state agencies that want to hire bond counsel for non-transactional work, who look to the state’s pool,” said Tim Schaefer, California’s deputy treasurer for public finance. “That is why we wanted to up the ante.”

The idea is that “if you want to do business in Sacramento, we want you to take the pledge that you will not engage in this activity, because we think this activity is corrosive for California issuers,” he said. “The idea is not to humiliate anyone, or put them in the penalty box, because we are not a regulator; it is to change this behavior that is bad for California taxpayers.”

Chiang’s efforts continue the work of former treasurer Bill Lockyer and former Los Angeles County Treasurer and Tax Collector Mark Saladino, who both criticized what they saw as a pay-to-play environment in the state’s municipal bond market.

Lockyer announced in 2012 that the state would no longer work with financial firms that engaged in pay-to-play or that had been involved in the sale of what he considered to be egregious capital appreciation bond deals.

“We certainly salute and applaud what Lockyer did, but if we thought it was sufficient, we would not be taking it to the next level,” Schaefer said. “We are not deeming Lockyer’s efforts a failure, but we will just have to wait and see if we get a better effect – and I think we will get a better effect.”

Municipal bond firms are already charging lower fees, said Adam Bauer, president and chief executive officer of Fieldman, Rolapp & Associates.

“We have already seen the costs come down when we negotiate the underwriters’ discount,” Bauer said. “That has come down from years’ past.”

Bauer said he did not know if previous efforts by Lockyer or enforcement efforts by the Municipal Securities Rulemaking Board and U.S. Securities & Exchange Commission are responsible for the decline; or what part increasing competition among municipal finance firms has played.

Issuers are free to set their own standards and requirements above and beyond those set by the MSRB and other regulators, said Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association. But SIFMA does advocate that such requirements are clear and effective to achieve their stated goals, she said.

Twelve of SIFMA’s biggest dealer firms signed a letter in July 2013 asking the MSRB to adopt further restrictions on bond ballot contributions by broker-dealers, and each of those firms pledged a two-year moratorium on making any such contributions related to bonds they sought to underwrite.

Chiang’s program is another step in the right direction, Bauer said, because firms that engage in such activities make it harder for ethical firms to compete.

“I think it is great they are doing something like this,” Bauer said. “But the firms in the pool are not the firms I understand to be doing this type of thing.”

The financial advisory firms engaged in “pay-to-play” bond measure activities do not have the resources to go after the state’s business, Bauer said.

He believes the activities the treasurer is targeting are more prevalent in smaller districts that don’t have the resources to pay for campaign services.

“The steps that Lockyer took set the tone and it is not now taking place in the areas in which I work, but I think it is good to formalize it so there is more pressure to conform by firms who operate outside of the norm,” he said.

A Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using “pay-to-play” tactics.

Some underwriting firms in the state pool that used to provide free bond campaign services to school districts have discontinued the practice, Bauer said. He knows of one firm where the person who had that role split off from the company to form her own firm to avoid the conflict.

Another area where Chiang has expanded Lockyer’s efforts is by including bond counsel in the mix.

Restrictions placed under Rule G-37 by the MSRB and the U.S. Securities & Exchange Commission do not apply to bond counsel, because those entities only regulate broker-dealers, said Lisa Greer Quateman, a partner with Polsinelli, one of the law firms in the state’s pool.

“We personally do little school bond work, so we have happily executed the certification and are unaffected by it,” Quateman said. “Polsinelli was very comfortable signing the certification.”

Though school district general obligation bond referendums have been the focus of previous efforts, Schaefer said Chiang’s efforts are aimed at all local bonds.

Quateman said some lawyers would actually like to have Rule G-37 apply to law firms. But she said there are others who are concerned about how such restrictions would impact their First Amendment rights to participate in the political process.

“I am very happy that I am able to participate in the political process and help worthy candidates get their messages out,” Quateman said. “I am glad I am free to do that. I think the MSRB was very careful in the way it shaped Rule G-37.”

Quateman also thinks the treasurer was careful in how he structured his certificate so that it only asks participants to certify that they will not make campaign contributions toward bond transactions on which they plan to bid.

But Benjamin Keane, a managing associate at law firm Dentons and a member of its ethics & disclosure team, thinks there may be reason for concern.

The treasurer’s certificate is more all-encompassing than MSRB and SEC restrictions, Keane said in an interview.

“While the addition of a few basic certifications statements may seem minor to the untrained eye, requiring affirmative statements such as these will also almost certainly heighten the compliance risk borne by the regulated community," Keane wrote in a blog post he co-authored with Dentons partner Stefan Passantino. "After all, the "inadvertent non-compliance" defense is dramatically more difficult to assert, and a "false statement" indictment is dramatically more easy to obtain, when affirmative certifications are a compliance obligation."

Firms that wish to be included in the state's bond pool have to make an affirmative statement that neither the firm, or any officer, director, partner, co-partner, shareholder, owner, or employee will make any cash or in-kind service contribution.

That differs from MSRB and SEC regulations where the restrictions are directed at the companies or directors of the company, Keane said.

He will be watching to see if some of the larger companies in the pool are removed if a shareholder or employee violates this rule, he said.

"It doesn't just include contributions to ballot measures, but to any campaign in the state," Keane said. "It is harder for an underwriter in the pool to tell its employees that they cannot donate to any ballot measures in the state than to restrict them from any activities that involve bond campaign services."

The treasurer's office not only wants to impact the way financial firms operate in California, but hopes to set an example for the entire $3.7 trillion municipal bond industry.

"We are hoping this will bend the discussion similarly to what Lockyer's efforts did," Schaefer said. "It has already attracted more attention than what Lockyer did, because this one has more teeth to it."

The treasurer's office did not act capriciously, Schaefer said, adding that it has been meeting for a year to line up support. Supporters include the California Association of County Treasurers and Tax Collectors.

"You would be startled by the number of people at financial firms who reached out and said 'Thank you for doing this,'" Schaefer said. "Now they feel like they won't get undo pressure to do what the fringe players are doing."

Schaefer said Lockyer laid the groundwork for Chiang's efforts.

"It increased awareness of the phenomenon, because this situation we are trying to address lives in the shadows," Schaefer said.

No contracts are signed outlining what occurs in pay-to-play arrangements.

"Pay-to-play cases even in white collar cases can be hard to prove, because they are often quid pro quo," Keane said.

School districts or municipalities that later hire financial firms who donated to a bond measure campaigns or provide free campaign services don't sign contracts agreeing to pay higher fees on the transaction.

California Attorney General Kamala Harris had an opinion earlier this year that school district officials could be subject to penalties if they hired someone who had contributed to a bond campaign, Keane said.

"But you run into a situation of how do you prove that quid pro quo is going on?" Keane said. "It is difficult to show unless there is smoking gun evidence."

The Bond Buyer

By Keeley Webster

August 11, 2016

Kyle Glazier contributed to this article.

Has The California State Treasurer's Office Gone Underground?

Late last month, the California State Treasurer's Office announced a "move to stop 'Pay-to-Play' school bond campaigns". According to the announcement:

> Municipal finance firms seeking state business will be required to certify that they make no contributions to bond election campaigns. Firms that fail to do so will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The Treasurer's office has sent a letter to prospective underwriters advising them of the imposition of this "new minimum qualification" and requesting that they return a certification form by August 31, 2016.

However well intended, I question whether this action is legal. California's Administrative Procedure Act provides:

> No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Cal. Gov't Code § 11340.5(a). A "regulation" is broadly defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Cal. Gov't Code § 11342.600. It cannot be gainsaid that the Treasurer's "new minimum qualification" is a "standard of general application" and hence a "regulation" within the meaning of the APA.

I contacted the Treasurer's office and received the following response:

> The Treasurer's Office has the sole authority to establish a pool of qualified underwriters for State bond work and enter into agreements in connection with State bond sales. (Government Code section 5703.) As a matter of longstanding practice, the Treasurer's Office has established such pools not just for underwriters, but also for bond counsel firms and financial advisors. Generally speaking, the pools are "re-established" every two years via a Request for Qualifications process. Much like any other procurement process initiated by government agencies, the Treasurer's Office issues an RFQ that outlines the types of

> services the office may contract for, minimum qualifications for both entrance into and on-going membership in the pools, and proposal requirements. Interested firms then submit proposals and those firms that meet the minimum requirements are admitted to the pools. The recently announced requirement for municipal finance firms was introduced in conjunction with this process. It is an on-going requirement for current pool members and will be incorporated into the next round of RFQs, when the pools are re-established in the near future.
>
> Because this is a procurement process relating to this office's need to contract for services with municipal finance firms, the Administrative Procedures [sic] Act does not apply, as it does not apply to other procurement processes utilized by government agencies throughout California. Generally speaking, the requirements and qualifications for procurements are laid out in the procurement documents themselves and not through regulations adopted pursuant to the Administrative Procedures Act.

The Treasurer's office may think it has a good dog, but I don't think it will hunt.

Government Code Section 5703 does not exempt the Treasurer's office from compliance with the APA. As explained in this determination from the California Office of Administrative Law (OAL):

> Provisions of a contract, which are rules of general applicability interpreting a statute (or a regulation), are not shielded from APA challenge. There is no express statutory language which provides that agency rules placed in contract provisions are exempt from the APA. Applying Government Code section 11346, which requires that exemptions be expressly stated in statute, OAL presumes that no such exemption exists.
>
> In addition, it appears the Legislature intended that there be no exemption for contract provisions. Exempting public contracts was – and is – a clear policy alternative. The federal APA first enacted in 1946, exempted "matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts" (emphasis added) from rulemaking requirements. In enacting the California APA in 1947, the Legislature rejected a proposal to exempt "any interpretative rule or any rule relating to public property, public loans, public grants or public contracts" (emphasis added) from APA notice and hearing requirements. It therefore seems that the 1947 Legislature considered and rejected the idea of following the federal example of exempting rules contained in public contracts from notice and comment requirements.

1998 OAL D-30 (footnotes omitted). See also 2000 OAL D-17 ("The fact that a rule or criteria may have been issued or utilized as part of a bidding and proposal process does not insulate them from scrutiny under the APA.").

Readers with a long memory may recall that in 2009 I challenged a CalPERS' attempt to impose disclosure requirements on placement agents without complying with the APA. After the OAL accepted my petition for review of the requirements, CalPERS backed down and adopted regulations under the APA. See CalPERS' Proposed Placement Agent Disclosure Rule Likely to be Amended.

by Keith Paul Bishop | Allen Matkins Leck Gamble Mallory & Natsis LLP

8/11/2016

Memphis Ministry's Conduit Debt Put on Watch by S&P on HUD Probe.

Credit ratings on about $360 million of multifamily-housing bonds issued by Global Ministries Foundation, a Tennessee-based operator of low-rent apartments, were placed under review for possible downgrades by S&P Global Ratings because the U.S. Department of Housing and Urban Development is probing the non-profit.

The placement on CreditWatch with "negative implications" affects 23 municipal-debt issues sold in states including Alabama, Florida, Indiana, Louisiana and Tennessee, the rating company said in a news release.

"In our view, effective ownership and management are essential to an affordable housing program's economic feasibility and sustainability," S&P said. "The HUD investigation therefore warrants our review of GMF's full portfolio and our assessment of the project owner's overall strategy and management."

GMF has come under scrutiny after the the U.S. Department of Housing and and Urban Development cut rent subsidies to more than 1,000 residents at GMF apartments in Memphis because the buildings were infested with roaches and had numerous health and safety violations. The loss of the federal funds caused bonds issued for the apartments to default, pushing the price to as little as 21 cents on the dollar.

HUD Section 8 subsidies support 15 of the 23 bond issues. S&P said that if it confirms that any of the Section 8 properties are at risk of losing their subsidies, it could downgrade or withdraw its ratings. Most of the issues carry investment-grade ratings, while four are already considered junk.

S&P said it was reviewing its assessment of GMF's strategy and management "based on our view of GMF's lack of strategic planning for the properties' current state and weak operational effectiveness."

"GMF is fully cooperating with recent HUD inquiries and requests for documentation, and we will continue to aid HUD and other government representatives should they have additional inquiries," said GMF spokeswoman Audrey Young in an e-mailed statement. "In the interim, GMF remains focused and committed to its mission to provide housing to some of America's families most in need of safe, affordable housing."

Daryl Madden, a spokesman for HUD's Office of Inspector General, confirmed that search warrants were executed at GMF's office in Cordova, Tennessee, and a third party based in Dexter, Missouri. The Commercial Appeal of Memphis reported that the third party was the Gill Group, which appraised many of the properties GMF has purchased in Memphis.

Bloomberg Business

by Martin Z Braun

August 9, 2016 — 1:16 PM PDT

MSRB Files Rule Change and Guidance Related to ABLE Programs.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a rule change under MSRB Rule G-45 to delay reporting of information by underwriters to programs established to implement the Achieving a Better Life Experience Act (ABLE). The MSRB's filing also provides guidance under MSRB Rules G-42 and G-44 to municipal advisors to sponsors or trustees of municipal fund securities, including ABLE programs. The amendments are effective immediately.

Read the regulatory notice.

View the SEC filing.

MSRB Provides Guidance on Trade Reporting Rule.

The Municipal Securities Rulemaking Board (MSRB) today published guidance in question-an--answer format to support compliance with MSRB Rule G-14, Reports of Sales or Purchases of Municipal Securities. Rule G-14 requires municipal securities dealers to report all executed transactions in most municipal securities to the MSRB's Real-Time Transaction Reporting System (RTRS) within 15 minutes of the time of trade, with limited exceptions.

Amendments to Rule G-14 to enhance post-trade price transparency became effective on July 18, 2016.

View the new guidance.

Memphis Ministry's Muni-Bond Sales Being Investigated by SEC.

The U.S. Securities and Exchange Commission is investigating a Tennessee ministry that owns two municipal bond financed low-income apartment complexes in Memphis that were infested with roaches, caked with sewage and replete with broken windows and damaged walls.

The SEC's Atlanta office is conducting an inquiry into Global Ministries Foundation and the 2011 sale of about $12 million of bonds to purchase the Warren and Tulane apartments, according to a letter filed in U.S. court in a case brought by the bondholders' trustee. The trustee, Bank of New York Mellon Corp., sued GMF in May and won the appointment of a receiver after the bonds defaulted.

"We believe you may possess documents and data that are relevant to an ongoing investigation being conducted by the staff of the United States Securities and Commission," EC senior counsel Michael Adler wrote in a July 18 letter to the receiver, Donald Shapiro. "Accordingly, we hereby provide notice that such evidence should be reasonably preserved and retained until further notice."

The letter from the SEC was filed as part of the receiver's report to the court for the period July 1 through July 31.

"GMF will continue to fully cooperate with the government's investigation as called upon," Audrey

Young, a spokeswoman for GMF, said in an e-mail statement.

In March, the U.S. Department of Housing and Urban Development cut off rent subsidies for more than 1,000 residents that backed the bonds and said it would relocate them because of numerous health and safety violations. As a result, the Warren and Tulane bonds defaulted.

GMF, which is run by Richard Hamlet, a Baptist minister, has built a 10,500-unit, low-rent real estate empire with money raised in the $3.7 trillion municipal-bond market. In 2011, GMF issued $12 million in bonds through the Memphis Health, Educational and Housing Facility Board, to finance the purchase of Warrant and Tulane in an area where as many as 40 percent of the families live in poverty. A Las Vegas-based environmental consultant concluded that the apartments were in "good to fair" condition at the time and an appraiser valued them at more than $15 million, according to an official statement for the bond issue.

The SEC told the receiver, Shapiro, to preserve documents created on or after June 1, 2010, by Hamlet, and three members of his staff or those related to the 2011 bond issue, HUD, and the GMF Preservation of Affordability Corp., the ministry's housing non-profit arm. The housing unit transferred $7.1 million to the ministry in 2014, according to federal tax filings, subsidizing its missionary work, which includes training pastors, producing a national radio program and undertaking evangelistic crusades overseas.

Bloomberg Business

by Martin Z Braun

August 11, 2016 — 5:22 AM PDT Updated on August 11, 2016 — 6:15 AM PDT

BDA and Others Submit Comments to the SEC on CDAs.

Today, BDA and other associations sent a letter to the SEC Office of Municipal Securities on amending issuer continuing disclosure agreements (CDAs).

"In the Adopting Release for the 1994 Amendments to Rule 15c2-12, the Securities and Exchange Commission ("SEC") promoted flexibility in drafting CDAs required by the amended Rule while adhering to a basic framework, in line with the official statement for the particular offering. As a result, there is no uniform CDA used by all over the last twenty years. Under current guidance, however, there is no simple way to amend and fix such CDAs and thus we are requesting that the SEC address this issue by elaborating on the SEC's outstanding guidance on CDA amendments."

You can find the final letter here.

NFMA Issues Comment Letter on Primary and Secondary Market Disclosure in the Municipal Market.

Read the NFMA's letter.

Issuers: Watch a Step-By-Step Video on Customizing EMMA Issuer Homepages.

Watch the video.

Who Will Be Joining the MSRB Board in October.

WASHINGTON – Colleen Woodell, former chief credit officer of global and corporate government ratings with S&P Global Ratings, will become the Municipal Securities Rulemaking Board's new chair on Oct. 1.

In addition to Woodell, the MSRB board elected Arthur Miller, a managing director at Goldman Sachs & Co., as vice chair as well as six new members at its quarterly meeting late last week. The six new members, chosen from more than 100 applicants, represent a change from the normal seven the board would name for a new fiscal year because the MSRB is starting its multi-year transition to a board whose members who serve for four years instead of three.

"The new class of board members includes highly experienced and knowledgeable public representatives and municipal securities professionals," said MSRB chair Nat Singer. "They join an exceptional new leadership team that will oversee the MSRB's pursuit of its mission to protect investors, municipal entities, obligated persons, and the public interest."

Woodell has been an MSRB board member since 2013 and is currently serving as its vice chair. Prior to her role as CCO of global and corporate government ratings, she worked as S&P's chief quality officer and team leader for U.S. public finance. She has also worked for First Albany Corp., Fitch Investors Service, and Moody's Investors Services. Woodell is a former member of S&P's analytic policy board and a past president and member of the board of governors of the Municipal Forum of New York. She has a bachelor's degree from Wells College in Aurora, N.Y.

Miller, who currently chairs the MSRB's finance committee, joined Goldman in 1985 and, in addition to his current position, has worked in the firm's new product development group and its fixed income research group. He earned his bachelor's degree from Princeton University and also holds a master's degree from the University of North Carolina, a law degree from Duke University School of Law, and a master's of law from New York University.

Of the six new members who will be joining the 21-member, majority public board, three are public and three are regulated.

The public members include J. Anthony Beard, chief financial officer of the city of Atlanta, and Robert Brown, treasurer at Case Western Reserve University in Cleveland. Beard is responsible for the oversight and management of Atlanta's financial condition and also advises the city's mayor and city council on municipal finance and other matters. Brown manages Case Western's debt and swap portfolios, credit rating agency relationships, investor relations, and relationships with the financial industry.

Julia Cooper, director of finance for the city of San Jose and former member of the Government Finance Officers Association's debt committee, will also join the board as a public member. She is responsible for oversight of the city's accounting, treasury, revenue management, and purchasing/risk management divisions. She has worked for San Jose for 29 years and has been responsible for the city's municipal debt issuance and management since 1990.

The regulated members who will join include Jerry Ford, president of the Florida-based municipal advisory firm Ford & Associates, Inc. Ford, whose firm specializes in tax-exempt financing, has worked as a financial advisor to a wide array of municipalities for the past 32 years.

Kemp Lewis, senior managing director at Raymond James & Associates, Inc., and Edward Sisk, managing director and head of public finance with Bank of America Merrill Lynch, are the other two regulated members who will be joining the board. Lewis leads Raymond James' northeast public finance group. Sisk leads a team of investment bankers responsible for municipal underwriting in the U.S.

Members slated to leave the board on Oct. 1 include: Singer; Robert Cochran, co-managing director and chairman of the board for Build America Mutual Assurance Company; Marcy Edwards, former senior financial policy advisor for the District of Columbia; Lakshmi Kommi, director of debt management for the city of San Diego; James McKinney, senior advisor with William Blair & Co; and Brian Wynne, co-head of public finance and head of the municipal syndicate desk with Morgan Stanley.

As part of the board's first of three fiscal years shifting to four-year tenures, Woodell, a public member, received a one-year extension.

Two regulated members, Miller and Lucy Hooper, executive vice president of Davenport & Co., will receive one year extensions for the MSRB's fiscal year 2018 along with public member Richard Froehlich, chief operating officer and general counsel for the New York City Housing Development Corp. Five new members will join the board for fiscal year 2018.

In fiscal year 2019, the last year of transition, three public members and two regulated members will receive one-year extensions while five new members join the board. The public members are: Richard Ellis, senior director of compliance and communications with Utah Educational Savings Plan; Chris Ryon, managing director of Santa Fe, N.M.-based Thornburg Investment Management; and Mark Kim, chief financial officer for the D.C. Water and Sewer Authority. The regulated members receiving an extension are Patrick Sweeney, senior vice president and manager of the municipal securities department for Fidelity Capital Markets and Renee Boicourt, managing director and partner with Lamont Financial Services Corp.

By fiscal year 2020, no further extensions will be needed and five new members will join the board. After that, new classes will be named annually in a repeating sequence of six members, then five members, then five members, then five members.

The Bond Buyer

By Jack Casey

August 2, 2016

MSRB Files Clarifying Amendment to Rule G-37.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange

Commission (SEC) an amendment to MSRB Rule G-37 to clarify that, consistent with the current regulatory policy under existing Rule G-37, contributions by persons who become associated with a dealer and become municipal finance professionals of the dealer, if made prior to August 17, 2016 are subject to the two-year look-back in Rule G-37 and may subject a dealer to a prohibition on municipal securities business.

The amendment is in addition to amendments to Rule G-37, on political contributions and prohibitions on municipal securities business, and related amendments to MSRB Rules G-8, on books and records, and G-9, on preservation of records, and Forms G-37 and G-37x that are effective on August 17, 2016 and extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business.

Read the regulatory notice.

Read the SEC filing.

GFOA: August Recess Is Here - Are you Ready?

Throughout the month of August, your congressional delegation typically puts business on hold in Washington D.C. and heads home. The August Recess is designed to give members of Congress and their staff some time to reorient themselves, so it's one of the very best times for constituents to meet with their members of Congress. Your advocacy during this period of time means the most because it allows your Congressional member to come face-to-face with the impact of federal preemption legislation, especially because of the deep fiscal impacts these have on localities within their districts. In the next several weeks, please consider meeting with your members of Congress and discussing the key 2016 issues below.

Bank-Qualified Debt Legislation

Bank-qualified bonds were created in 1986 to encourage banks to invest in tax-exempt bonds from smaller, less-frequent municipal bond issuers, and to provide municipalities with access to the lower-cost borrowing that they need in order to provide services and invest in schools, roads, bridges, and other projects. Governments issuing $10 million or less in bonds per calendar year can designate those bonds as bank-qualified, which allows them to bypass the traditional underwriting system and sell their tax-exempt bonds directly to local banks. But since bank-qualified bonds were created in 1986, the program's $10 million cap has not kept pace with inflation or the cost of labor, land, and materials associated with most public infrastructure projects. Increasing the cap to $30 million not only brings the program into the modern age but also enables governments to increase the amount of bank-qualified bonds they can issue and realize corresponding cost savings. For example, a cost savings of 25 to 40 basis points on a 15-year, $30 million bond at current interest rates ranges from $696,000 to $1.1 million.

Senator, SUPPORT & COSPONSOR S3257, the Municipal Bond Market Support Act of 2016
Representative, SUPPORT & COSPONSOR HR2229, Municipal Bond Market Support Act of 2015

Preservation of the Tax Exemption on Municipal Bonds

On November 8, 2016, voters across the United States will not only elect a new president but will also fill 34 Senate seats and all 435 House seats. Moving into the 115th Congress, elected officials are thinking about which proposals will make a significant impact in the post-election season. Now is the time for state and local governments to make sure Congress understands the issues that are of crucial importance to their communities—such as preserving the tax exemption on municipal bonds. The tax exemption on municipal bonds is an essential tool for jurisdictions across the United States for the creation and maintenance of infrastructure.

What needs to be communicated to senators and representatives: 1) it is essential for my jurisdiction that you preserve this critical public financing tool to promote job creation and improve the nation's infrastructure; and 2) We request that you ensure that state and local governments retain the authority to set their own tax policies.

What can I do?

Step 1: Figure out where your member of Congress will be and when during August. They often travel around the district while at home. Be sure to ask to set an appointment, preferably when you can get to sit down in a relaxed setting. [This link] will direct you to your senators' and representative's local contact information.

Step 2: Draft an op-ed and send it to your local newspaper. Your local paper is an extremely powerful mode of communication, and an op-ed piece that articulates your position on current legislation will be widely distributed for your entire district to read. GFOA's suite of advocacy materials, available on GFOA's Federal Government Liaison webpage, provides information you can use to craft a general message—but make sure to emphasize the infrastructure unique to your jurisdiction.

Step 3: If you do schedule an appointment with your member of Congress or his or her staff, or if you plan to see him or her at a local event, glance at the talking points for Bank-Qualified Debt and the talking points for preserving the tax exemption, and feel free to add in as many district-specific descriptive details as possible.

Please let Emily Brock, director of the Federal Liaison Center, know if you need any additional information, when your op-ed goes to print, and if you do have a discussion with your member of Congress. We look forward to working with you during the August Recess.

GOVERNMENT FINANCE OFFICERS OF AMERICA

Wednesday, August 3, 2016

Why MSRB Is Giving a $5.5M Rebate to Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board plans to rebate $5.5 million proportionally among dealers, file a proposal with the Securities and Exchange Commission on markup disclosure, and scrap the idea of requiring municipal advisors to disclose information about their issuer client's bank loans or privately placed municipal securities.

The board approved these actions at a wide-ranging meeting late last week.

The rebate will go to dealers that paid underwriting, transaction, or technology fees in the first nine months of the MSRB's fiscal year 2016, which started on Oct. 1, 2015. The decision was part of the board's discussions about the MSRB's budget and operating plan, both of which received approval.

MSRB executive director Lynnette Kelly said the rebate is a result of, among other things, the self-regulator consistently coming in under budget, which pushed the reserve funds above the board's set target. The last time the MSRB gave a rebate was in 2014.

The markup proposal the MSRB board approved for filing with the SEC would require dealers acting as principals to disclose on retail customer confirmations the markups and markdowns on same-day muni transactions, a departure from an earlier proposal to only incorporate trades within two hours of the transaction. The filing would also include guidance on how to calculate the prevailing market price, previous versions of which dealers and issuers have criticized as unworkable and overly burdensome to dealers. The markup disclosure proposal is a "top priority of the board right now," Kelly said. "I would expect [the filing] would be within the next couple of months."

The MSRB's most recent proposed changes to its Rule G-30 on prices and commissions to facilitate prevailing market price calculations is similar to a process the Financial Industry Regulatory Authority already uses. The process would require dealers to base their determination on a "waterfall" of factors, such as contemporaneous trades of the same or similar munis.

The MSRB plans to make some changes to the prevailing market price calculations in light of market participants' comments but the changes are still in progress, Kelly said. She added the board will continue coordinating with FINRA on markups.

Many market participants had also criticized the MSRB's now abandoned bank loan concept release, saying it would, among other things, threaten MAs' fiduciary duty to their clients under MSRB Rule G-42, which lays out municipal advisors' core duties. Many of the groups instead said the best way to ensure bank loan disclosure would be to amend SEC Rule 15c2-12 on disclosure, under which the SEC regulates, among other things, the actions of broker-dealers in primary offerings of munis.

Kelly said the MSRB board still believes that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness but added the commenters brought up good points, such as the possible unintended consequence of an issuer foregoing an MA to avoid having to disclose bank loans.

"The MSRB will continue to raise awareness of the need for bank loan disclosure among regulators and market participants," she said. "We also plan to encourage industry-led initiatives that support voluntary disclosure best practices."

Kelly said the MSRB plans to enhance its EMMA system both on the submission side and search side in response to criticisms from issuers and others about the difficulty they have had filing and finding bank loans on EMMA. Issuer officials who sit on the Government Finance Officers Association's debt committee expressed their frustrations about EMMA's bank loan system to MSRB chair Nat Singer in May during a meeting at the GFOA's annual conference.

In addition, the MSRB may soon get information such as yield curves from third parties which will it provide on EMMA. Board members agreed during their meeting that such information would benefit investors and issuers. Kelly said the information will be added "in the not too distant future."

The board plans to discuss an update to the MSRB's 2012 Long-Range Plan for Market Transparency Products, which includes EMMA improvements, but will wait until it has its strategic planning session in January 2017, Kelly said.

The board plans to file with the SEC amendments to Rules G-8 and G-9 on record-keeping as well as to G-10 on delivery of the investor brochure to both modernize requirements for dealers' handling of complaints by customers as well as to establish such requirements and processes for municipal advisors. The MSRB has not created a complaint system for MAs yet because of the self-regulator's relatively recent regulatory authority over advisors.

Additionally, the MSRB plans to file two interpretations with the SEC for immediate effectiveness related to Achieving a Better Life Experience (ABLE) programs, which allow individuals to open tax-advantaged savings accounts to help support individuals with disabilities. The MSRB is treating the ABLE accounts similarly to 529 college savings plans. The proposed interpretation for MSRB Rule G-42 on core duties of municipal advisors will explicitly provide that current 529 plan and local government investment pool guidance is equally applicable to ABLE programs. It will also clarify in its Rule G-44 on MA supervisory and compliance obligations that MA sponsors or trustees of 529 or ABLE plans are subject to the rule's supervision requirements.

The board will also file a change with the SEC for immediate effectiveness to Rule G-45 on reporting of information on muni fund securities. The change will delay the date that submissions are due from underwriters of ABLE plans to the reporting period ending June 30, 2018.

An additional and separate rule amendment the board approved would change Rule G-34, which details when underwriters and financial advisors must apply for a CUSIP number assignment for a new municipal issuance. The amendment would harmonize the definition of underwriter in Rule G-34 with that listed in Rule G-32. Rule G-32 takes its definition from that provided in SEC Rule 15c2-12(f)(8), which includes but is not limited to "a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering."

Kelly said the MSRB historically has included placement agents and dealers that purchase securities from an issuer as principal in Rule G-34's definition of underwriter, but that the change would codify that interpretation.

The Bond Buyer

By Jack Casey

August 1, 2016

State GOP Parties: SEC Was Legally Required to Reject Rule G-37 Changes.

WASHINGTON — The Securities and Exchange Commission was legally required by fiscal 2016 appropriation act provisions to reject changes to Rule G-37 that extended political contribution restrictions to municipal advisors, three state Republican groups told federal appeals court judges.

Lawyers for the three groups, which have sued the SEC for approving the rule changes, made their arguments in a response to an SEC motion to dismiss the suit that was filed in the Sixth Circuit Court of Appeals in Cincinnati. The parties are asking the court to throw the SEC's motion out. The court has halted proceedings in the case until it issues an order on the SEC's motion.

The SEC contends that it could not take any action on changes to the Municipal Securities Rulemaking Board's Rule G-37 because fiscal 2016 appropriations act provisions prohibit it from using funds to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions."

Under the Dodd-Frank Act, the commission has 45 days after it publishes an MSRB rule to approve it, disapprove it, or decide to take more time to consider it. The rule is considered approved if the SEC hasn't taken any action at the end of the 45 days.

The commission's inaction led to the rule's ultimate approval under that provision. It is scheduled to take effect on Aug. 17.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim that because the SEC opted to do nothing, and allowed the rule to be considered approved after the 45 days, it violated the appropriations act provisions by effectively finalizing the rule.

"The appropriations act required the SEC to disapprove the MSRB's proposed rule [and] not allow it take effect," the state GOP groups told the judges.

"Had the SEC disapproved the MSRB's rule, it would not have 'finalized, issued, or implemented' the rule; it would have prevented those very outcomes," wrote Christopher Bartolomucci, a partner with the law firm Bancroft in D.C. and the lead author of the parties' response to the SEC's motion to dismiss. "Thus, both the language and purpose of the act refute the SEC's perverse contention that, because it could not act to finalize or issue the MSRB's rule, the SEC had to sit back until the rule was finalized and issued."

The state parties' suit against the SEC and MSRB claims the revised Rule G-37 unconstitutionally forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional or a municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The state parties are disputing the SEC's argument that because of the circumstances under which the revised rule was approved, the approval doesn't constitute a "final order" by the commission, as defined in the Securities Exchange Act of 1934 or "agency action" as defined in the Administrative Procedure Act (APA). The absence of both standards means there are no grounds for the parties to challenge the rule in court, the SEC is arguing.

Lawyers for the state parties claim that the Exchange Act makes clear that when the MSRB proposes or revises a rule, the SEC is required to either approve or disapprove it. There is only one way for the SEC to carry out that duty under the Exchange Act, they argue: "by order."

"Thus, whether the SEC explicitly approves a proposed rule or simply declines to disapprove one, the result is the same — the proposed rule is 'approved by the commission' and becomes law," Bartolomucci and the parties' other lawyers wrote.

They also cited the 1986 Supreme Court case, Bowen v. Mich. Acad. Of Family Physicians, that held there is a "strong presumption that Congress intends judicial review of administrative action."

"The Supreme Court has repeatedly recognized that a court must find 'clear and convincing evidence of [congressional] intent' before precluding judicial review," the lawyers added, citing Bowen. "Here we have just the opposite. The entire statutory scheme is designed to force SEC orders of approval or disapproval on proposed rules, which ensures that, before any proposal from an [self-regulatory organization] becomes binding law, it is approved by the SEC and made subject to judicial review."

The APA also backs up the argument that the SEC approval is a reviewable "order," the parties' lawyers argue. The act defines "order" as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking," according to the parties' lawyers. Under that definition, the revised G-37 approval constitutes an "affirmative" and "final disposition," they say.

The MSRB has maintained that Rule G-37 is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend" its policies.

The Bond Buyer

By Jack Casey

July 28, 2016

Municipal Securities Rulemaking Board Names Woodell Chair.

The Municipal Securities Rulemaking Board named former S&P Global Inc. executive Colleen Woodell as chair, effective Oct. 1.

Woodell, who served as chief credit officer of global corporate and government ratings succeeds Nat Singer, the senior managing director at Swap Financial Group. Arthur Miller, managing director at Goldman Sachs Group Inc., will serve as vice chair, the $3.7 trillion municipal market's self-regulator said in a statement. The terms of the chair and vice chair are one year.

New board members include J. Anthony Beard, the chief financial officer of Atlanta; Robert Clarke Brown, treasurer of Case Western Reserve University; Julia H. Cooper, director of finance for San Jose; Jerry W. Ford, president of Ford & Associates Inc.; Kemp J. Lewis, a managing director of Raymond James & Associates and Edward J. Sisk, a managing director of Bank of America Corp.'s Merrill Lynch unit.

The board positions have been extended to four years from three, an action approved by the Securities and Exchange Commission — which oversees the MSRB — earlier this year in an attempt to smooth transitions between members.

The board, comprised of 11 independent public members and 10 members from firms regulated by the MSRB, sets policies and oversees the operations of the organization.

Bloomberg Business

by Molly Smith

August 2, 2016 — 10:19 AM PDT

BDA Submits Comment Letter to the SEC on FINRA's TRACE Academic Data Set Proposed Rule.

BDA submitted a comment letter to the SEC on FINRA's rule proposal to create a new TRACE data set for institutions of higher education.

BDA's letter opposes the creation of the new data set because it would create unnecessary business risks for broker-dealers. BDA requests that FINRA re-propose the rule proposal and have dealers grouped anonymously by size as opposed to individually.

New Academic Data Set: FINRA filed an updated proposal to create a TRACE Academic Data set exclusively available for research purposes and available only to institutions of higher education.

The proposal still includes an anonymous dealer identifier that will allow academics to research TRACE-reported transactions per dealer. However, based on BDA's comment letter and other industry comment letters the proposal has been amended to include the following features designed to protect dealer identities:

- **36 Month Delay:** FINRA's 2015 proposal included transaction data that was aged by 24 months. The updated proposal includes a 36-month delay.
- **Unique Dealer Identifiers per Data Request:** Based on a BDA request, each institution that requests data will receive different dealer identifiers for each data set.

BDA's August 2015 letter to FINRA (available here) expresses BDA's opposition to the 2015 version of the academic data set because it would include a dealer specific identifier.

BDA Submits Comment Letter to the SEC on FINRA's CMO Reporting and Dissemination Proposed Rule.

Today, BDA submitted a comment letter to the SEC on FINRA's rule proposal to require a new reporting and dissemination regime for CMOs.

BDA's letter expresses appreciation for the amendments that FINRA has proposed to its February 2015 request for comment. However, BDA argues that FINRA's proposed $1 million threshold for real-time dissemination will create a bifurcated market in which small-to-medium sized dealers and retail customers will be disadvantaged. Therefore, BDA urges FINRA to file an amendment to eliminate the $1 million threshold.

Proposed TRACE Reporting and Dissemination for CMOs:

- **60-Minute Trade Reporting Requirement:** FINRA proposes a 60-minute reporting requirement for CMO transactions.
- **Weekly or Monthly Dissemination for Trades Greater than $1 million:** CMO trades greater than $1 million in principal size for securities that are traded at least five times by at least 2 MPIDs over a given week or month would be subject to weekly and/or monthly reporting.
- **Real-time Dissemination for Trades less than $1 million:** CMO trades of less than $1 million would be required to be reported to TRACE within 60 minutes for immediate dissemination.
- **Pre-issuance CMO Transactions:** FINRA proposes to require TRACE reporting for transactions

that occur prior to issuance to occur no later than the first settlement date for the security.

BDA's April 2015 comment letter to FINRA on TRACE reporting and dissemination for securitized products, including CMOs can be read here.

MSRB Releases Muni Market Stats for 2016, Q2.

View the stats.

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 27-28, 2016 where it advanced several substantive rulemaking proposals and engaged in corporate and financial oversight matters in preparation for the start of the MSRB's upcoming fiscal year.

Operating Plan and Budget
The Board discussed and approved the organization's operating plan and budget for the fiscal year that begins October 1, 2016. The plan includes numerous objectives consistent with the MSRB's strategic goals and its mission to protect investors, state and local government issuers, other municipal entities, obligated persons and the public interest. The Board's discussion of the MSRB's budget included an extensive analysis of the MSRB's organizational reserves, resulting in the approval of a $5.5 million rebate distribution of excess reserves to brokers and dealers who paid any underwriting, transaction or technology fees during the first nine months of FY 2016. The excess reserves result from underwriting and trading volumes exceeding budgeted levels as well as careful management of expenses. The rebate will be distributed proportionately in September, relative to the fees paid. Details of the MSRB's operating plan will be announced at the start of its fiscal year.

Mark-Up Disclosure
At its meeting, the Board acted on multiple initiatives related to improving transparency in the municipal bond market and the activities of dealers and municipal advisors. It voted to file with the Securities and Exchange Commission (SEC) a rule proposal that would require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of same-day principal transactions. The proposal is also to include related guidance on the establishment of the prevailing market price used to calculate mark-ups. The mark-up disclosure proposal, which has been under development for several years, seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market. The MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on its parallel confirmation disclosure initiative for transactions in corporate bonds.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this Board for several years," said MSRB Chair Nat Singer. "Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making."

Bank Loan Disclosure
In another transparency-related issue, the Board discussed comments received on a concept release

to improve disclosure to investors of direct purchases and bank loans by municipal securities issuers. The Board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness and evaluating the impact of these financings on existing and potential investors. However, in light of comments received in response to the concept proposal, the Board will not pursue rulemaking at this time but will continue to raise awareness about the issue among regulators and market participants, and encourage industry-led initiatives that support voluntary disclosure best practices. In order to facilitate the filing of bank loan disclosures on EMMA, the MSRB has been working with issuer representatives to enhance the submission process. The MSRB will soon release changes to the website that improve this process by issuers and also enhances the ability of investors to locate available bank loan disclosures.

"Our concerns about the need for improved disclosure of bank loans and other financings by municipal entities and obligated persons has not diminished whatsoever," Singer said. "While we acknowledge that MSRB rulemaking is not the best approach at this time, we continue to urge market participants to consider this shortcoming in our market."

Customer and Client Complaints
As part of its effort to update certain MSRB rules, the Board agreed to file with the SEC amendments to MSRB Rules G-8 and G-9, on recordkeeping and retention, and to MSRB Rule G-10, on delivery of the investor brochure. The changes modernize requirements for dealers' handling of complaints by customers and simplify the process by which dealers provide customers with regulatory information. The amendments also establish requirements for municipal advisors' handling of client complaints and establish a process for municipal advisors to provide municipal entity and obligated person clients with regulatory information. Separately, the Board agreed to extend, as relevant, to municipal advisors existing guidance for dealers under MSRB Rule G-32, on the use of electronic media to deliver to and receive information from customers.

ABLE Programs
In other municipal advisor rulemaking, the Board agreed to file with the SEC for immediate effectiveness two rule interpretations related to municipal advisors that provide advisory services to sponsors or trustees of Achieving a Better Life Experience (ABLE) programs. The proposed interpretation to MSRB Rule G-42, on duties of non-solicitor municipal advisors, will explicitly provide that current guidance applicable to 529 college savings plans and local government investment pools is equally applicable to interests in ABLE programs. The interpretation to MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors, will clarify that municipal advisors to sponsors or trustees of 529 plans or ABLE programs and other municipal fund securities are subject to Rule G-44's supervision requirements. The Board also agreed to file with the SEC for immediate effectiveness a proposed change to MSRB Rule G-45, on reporting of information on municipal fund securities, to delay until the reporting period ending June 30, 2018 the date submissions are due from underwriters of ABLE programs.

Definition of Underwriter
In its final regulatory action, the Board agreed to file an amendment to MSRB Rule G-34, which details when underwriters and financial advisors must apply for the assignment of a CUSIP number for a new issue of municipal securities. If approved by the SEC, the amendment would harmonize the definition of underwriter in Rule G-34 with that of MSRB Rule G-32, which defines underwriter as "a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering." The MSRB has historically interpreted the underwriter definition in Rule G-34 to include placement agents and dealers that purchase securities from an issuer as principal, and the

proposed amendment codifies the rule's original intent.

EMMA and Market Transparency
The Board discussed an update to its 2012 Long-Range Plan for Market Transparency Products and agreed to defer until its strategic planning session in January 2017 action on an updated plan. The Board did address the potential addition of third-party market indicators, including yield curves, to the MSRB's Electronic Municipal Market Access (EMMA®) website and agreed that the associated benefits for investors and issuers warrant adding such yield curves to EMMA.

Date: August 1, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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U.S. Muni Regulator Scraps Pursuit of Bank Loan Disclosure Rule.

The Municipal Securities Rulemaking Board (MSRB) said on Monday the U.S. muni market's self-regulating group would not pursue "at this time" a rule to facilitate disclosure of bank loans taken out by states, cities, schools and other bond issuers.

The board, which regulates muni dealers, bond underwriters and financial advisors, but not state and local government issuers, has been trying to devise a way to boost disclosure of such private loans because they add to an issuer's overall debt burden and could include terms impairing the rights of bondholders.

The MSRB's decision likely means that most investors would be deprived of this information. The regulator said in March that only a small number of issuers had disclosed the loans and other private debt sales on its Electronic Municipal Market Access or EMMA website.

"The board continues to believe that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness," MSRB Executive Director Lynnette Kelly told reporters on a conference call.

But feedback from market participants indicated a rule would not necessarily capture all bank loan activity by muni bond issuers, according to Kelly. She said the board would instead continue to push for voluntary disclosure, while making it easier for issuers to submit bank loan information on EMMA.

"We preserve our ability in the future to do rule-making, but we wanted to give it a little more time," Kelly said.

At its meeting last week, the MSRB voted to send a proposed rule to the U.S. Securities and Exchange Commission aimed at enhancing transparency of transaction costs charged to muni bond investors by dealers, Kelly said. While the board is self-regulating, its rules are subject to approval by the SEC.

"Providing investors with information about how much it costs to transact in municipal bonds has been a goal of this board for several years," MSRB Chair Nat Singer said in a statement. "Transparency around dealer compensation will allow investors to assess their transaction costs and use that information in their decision-making."

Kelly said the MSRB was also considering adding market indicators to its EMMA website, including yield curves that would be provided for free by private-sector vendors.

Reuters

(Reporting by Karen Pierog; Editing by Richard Chang)

Mon Aug 1, 2016 3:05pm EDT

California Treasurer Cracks Down on Pay to Play.

PHOENIX – California State Treasurer John Chiang announced policies Wednesday designed to limit what he calls questionable municipal bond industry bankrolling of local bond election campaigns.

Chiang announced that municipal finance firms seeking state business will be required to certify that they will make no contributions to local bond election campaigns.

California officials are concerned with "pay to play" tactics in which bond counsel, underwriters, and financial advisors are offering to fund or provide campaign services in exchange for contracts to issue the bonds once they are approved by voters. Chiang's move was backed by a coalition of county treasurers and tax collectors.

Those campaign payments or services, often made in connection with local school bond ballot measures, could violate state laws governing the use of bond proceeds and public funds, according to a recent California Attorney General's opinion. That opinion, which was not legally binding on courts, rested on a 1976 California Supreme Court case, Stanson v. Mott, in which the court ruled that public money could be used only to provide "a fair presentation of relevant information" related to a bond question.

"There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts," Chiang said in a statement. "Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds, which are vital tools for building classrooms and meeting the educational needs of our communities."

The new policy on bond campaign contributions applies to firms and their employees, and includes both cash and-in kind service contributions made either directly or through third parties. Firms that fail to make the pledge will be removed from the state's official list of acceptable vendors and barred from participating in state-issued bonds.

The California Association of County Treasurers and Tax Collectors expressed "solidarity" with Chiang, and California Forward, a nonpartisan group that works for government efficiency, also praised the move.

"Public trust should not be compromised in an effort to secure voter support for local bond projects," said James Meyer, the group's president.

Robert Doty, the president and proprietor of AGFS, a municipal securities litigation consulting firm in Annapolis, Md. who previously worked in California, said a few prominent California underwriter firms might be affected, but believes most have stopped making such contributions.

Doty said such ballot campaign contributions are “a particularly sleazy activity that makes most market participants uncomfortable.”

Common Cause, another advocacy group, blasted pay-to-play as undemocratic.

“Pay-to-play government contracts have no place in a democracy,” the group said in a statement. “School bond underwriting contracts should go to the most qualified firm, not the one that agrees to make the biggest ballot measure campaign contribution.”

A past Bond Buyer data review found a nearly perfect correlation between broker-dealer contributions to California school bond measure campaigns in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using “pay-to-play” tactics.

In 2013 twelve dealer firms asked the Municipal Securities Rulemaking Board to crack down on the behavior, which registrants are required to report to the board.

California currently has 66 underwriters, 26 law firms, and 13 advisory firms in the Treasurer’s muni bond business pool.

The Bond Buyer

By Kyle Glazier

July 27, 2016

Calif. Treasurer to Boot Bond Counsel That Back Campaigns.

SACRAMENTO — California Treasurer John Chiang announced Wednesday that he will bar municipal finance professionals—including attorneys—from working on state-issued bond sales if they and their firms continue bankrolling local bond election campaigns.

The move is an attempt to curb so-called pay-to-play politics in the industry, which has been plagued for years by accusations that law firms, advisors and underwriters make generous campaign contributions—mostly to school bond committees—with expectations of securing work preparing and selling the debt approved by voters. Such arrangements can inflate fees and create conflicts of interest for finance firms, the treasurer said.

“There are unscrupulous Wall Street firms offering to fund local bond campaigns in exchange for lucrative contracts,” Chiang said in a prepared statement. “Not only are these pay-to-play arrangements unlawful, they rip-off taxpayers and endanger the integrity of school bonds.”

In a letter sent to firms on Wednesday, Chiang asked them to submit by Aug. 31 “affirmative statements” that neither they nor their partners or employees will contribute to fundraising, polling, get-out-the-vote efforts or any other type of advocacy work on behalf of a general obligation bond campaign. Those that don’t could be tossed out of the treasurer’s public finance pool, Chiang said. That pool currently includes 26 law firms authorized to serve as bond counsel.

It’s difficult to calculate how much money a firm could lose by leaving the state pool. The amount of work an underwriter or legal group receives fluctuates greatly depending on the size and number of offerings in the works in any given year as well as the intricacies of the debt vehicles, Deputy Treasurer Tim Schaefer said.

But being a firm qualified by the treasurer's office carries a sort of stamp of approval that's valuable in securing other work.

"That's our hammer," Schaefer said.

Public finance leaders with Orrick, Herrington & Sutcliffe, historically one of the biggest players in bond counsel work in California, declined through a spokesman to comment on Chiang's letter. Messages left with three other law firms that are members of the treasurer's pool—and have also contributed in recent years to local school bond campaigns—were not returned.

The treasurer's directive has the backing of the association representing county tax collectors and treasurers. In most counties, treasurers by law or custom serve as the agent for school bond sales, Schaefer said. Good government groups Common Cause and California Forward also endorsed the new rules.

"Our hope is by cobbling together this coalition that we can persuade our local governments, especially school districts, to be more discerning," Schaefer said.

In the past, leaders of firms that provide bond counsel services have said that they make political contributions based on long-standing working relationships, not in expectation of some financial windfall.

"We are building a relationship," then-Orrick chairman Ralph Baxter told the Recorder. "How would an elected official feel if we don't make a contribution? Of course we think about that."

In January, Attorney General Kamala Harris issued an opinion concluding that it's illegal for a school district to contract with a municipal finance firm for election services in exchange for guaranteeing that firm post-election bond sales work. Most arrangements aren't so black and white, said Schaefer, who founded a public finance consulting firm in Orange County and has spent decades in the industry.

"It lives in the shadows and it's circumstantial evidence," he said. "But there is enough anecdotal evidence that we think it's a problem and it needs to be addressed."

Cheryl Miller, The Recorder

July 27, 2016

[Why the SEC Says it Can't Fight a Challenge to a Pay-To-Play Rule.]

WASHINGTON — The Securities and Exchange Commission is arguing it can't fight a lawsuit challenging a revised rule to curb municipal securities pay-to-play activity because the fiscal 2016 appropriations act prohibits it from spending money on any rules governing political contributions.

The Sixth Circuit Court of Appeals in Cincinnati, where the suit is pending, has responded by halting proceedings until it can issue an order on the SEC's motion for dismissal of the suit. The SEC is arguing that the restrictions, along with federal statutes, prevent the three state Republican parties from challenging it over the latest revisions of the Municipal Securities Rulemaking Board Rule's G-37 on political contributions.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional (MFP) or a municipal advisor professional (MAP) to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee claim Rule G-37 is unconstitutional because its political contribution language forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The state parties also argue that Congress did not empower the SEC or MSRB to regulate political contributions and instead made such regulation the exclusive jurisdiction of Congress and the Federal Election Commission.

In bringing their suit against the SEC and MSRB, the three state GOP groups relied on a provision of the Securities Exchange Act of 1934 that allows for appeals court review of a "final order" of the commission, according to the SEC lawyers. The parties also cited sections of the Administrative Procedure Act (APA) that would allow for court review of the MSRB rule if it can be proved that an SEC "agency action" took place.

The SEC's motion to dismiss the suit argues that there was neither a "final order" from the commission nor any "agency action" leading up to the rule's approval.

The Dodd-Frank Act states the SEC has 45 days after the date a proposed MSRB rule is published to approve, disapprove, or decide to take more time to decide on the rule. If the commission does none of those, the rule is deemed approved at the end of the 45-day period.

SEC lawyers said the commission, after publishing the proposed changes, did not take further action on the rule because of the restrictions in the fiscal 2016 appropriations act. The act prohibited the SEC from using any funds to "finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations."

But under Dodd-Frank, the SEC's inaction meant the revised rule was subsequently deemed approved 45 days after the commission published it. It is scheduled to take effect on Aug. 17.

"The commission did not approve or disapprove the proposed rule change, nor did it institute proceedings to determine whether to disapprove it, within the relevant time frame," said the SEC lawyers. "The commission did not issue an order regarding the amendments to Rule G-37 and it did not publish any further notice regarding the rule."

The commission never met the definition of "agency action" as laid out in the APA, according to the commission's lawyers. The act defines agency action to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent denial thereof, or failure to act."

"Except for 'a failure to act' … each 'agency action' requires an affirmative and discrete act 'of an agency,'" the SEC lawyers argue, something that did not happen during the course of approval.

The lawyers defended against the possible applicability of the "failure to act" portion by pointing to three Supreme Court cases that determined a failure to act means the agency did not take an action it was required to do and could be compelled to do by a court.

The definition does not apply to the SEC in this case because the state Republican groups are not asking the court to force the commission to take an action and even if they were, the court could not do so because of the appropriations act, the SEC's lawyers wrote.

A lawyer for the three Republican state groups said they plan to file a response within the next few days and do not believe the court will grant the SEC's motion.

The MSRB has maintained that Rule G-37 is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend the policies it believes should be in place to address quid pro quo corruption and the appearance of this type of corruption."

Rule G-37 was previously challenged after the SEC first approved it for dealers in 1994. Alabama bond dealer William Blount filed suit against the MSRB and SEC, arguing the rule violated his constitutional right to free speech. The D.C. Circuit Court rejected that argument in a 1995 ruling, saying the rule was "narrowly tailored to serve a compelling government interest." The Supreme Court declined to take up Blount's appeal after the ruling.

The Republican groups from New York and Tennessee that are currently opposing G-37 also unsuccessfully challenged an SEC-approved pay-to-play rule covering investment advisors. The U.S. Court of Appeals for the District of Columbia dismissed that lawsuit in August 2015 on a technicality, finding the two groups missed the 60-day deadline to challenge the rule after it went into effect.

The Bond Buyer

By Jack Casey

July 27, 2016

Why the MSRB is Shortening its Dealer Closeout Timeframes.

WASHINGTON – The Municipal Securities Rulemaking Board wants to cut in half a proposed requirement to mandate municipal securities transactions be closed out within 20 days of settlement after dealer groups pushed for the shorter timeframe.

The MSRB proposed a move to a 10-day closeout requirement, with the option for a one-time 10-day extension if the buyer of the municipal security consents, in a partial amendment with the Securities and Exchange Commission. The 10-day requirement, which the MSRB proposed on Monday, would join other proposed changes to MSRB Rule G-12 on uniform practice that the MSRB filed with the SEC for approval on May 11.

"Shortening the close-out period from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days will further reduce the risk and cost associated with interdealer [failures]," the MSRB said in its amendment.

The partial amendment mirrors suggested alterations that the Securities Industry and Financial Markets Association and Bond Dealers of America had proposed.

“We emphasize in our [comment] letter and the MSRB states in its amendments that failed transactions don’t get better with age,” said Leslie Norwood, associate general counsel and co-head of munis for SIFMA. “To that end, we are very pleased that the MSRB is taking this step to give investors greater certainty and reduce the risk and cost for regulated broker-dealers.”

John Vahey, director of federal policy for BDA, said BDA’s members “are pretty satisfied with the way the rulemaking is going.”

Under the MSRB’s current Rule G-12, there is no specific time requirement for closeouts, only a recommendation that any dealer that fails to deliver securities to another dealer by the agreed upon settlement date close out those interdealer trade failures within 90 days of the settlement date.

When the MSRB first proposed changing the rule, it recommended there be a requirement that failures be closed out no later than 30 days after settlement. SIFMA responded to that proposal by suggesting the MSRB instead require a closeout within 15 days of settlement with the possibility of an extra 15 days if the buyer consents.

The MSRB then changed its proposal to require a closeout within 20 days after the settlement date, citing both concerns that smaller dealers would be overburdened by a shorter timeline and a desire to ensure all dealers operated under the same, fixed timeline.

SIFMA said the concerns weren’t warranted and again argued the time period was too long. Both SIFMA and BDA then recommended the 10-day timeline with the possibility of a 10-day extension.

The dealer groups also brought up other issues, with SIFMA saying it would be “extremely helpful” to know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won’t agree to do so. BDA asked for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). ACATS facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The MSRB said in a footnote in its partial amendment that both concerns are “beyond the scope of the original proposed rule change and current proposed rule change.”

In addition to the changes to the timeline for resolving interdealer failures, the MSRB is also asking the SEC to approve proposals that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business-day window. The MSRB proposal would also change the earliest day for execution to four days after electronic notification instead of the rule’s current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a “buy-in” and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB plans to give dealers a 90-day grace period after SEC approval to come into compliance with the changes.

The Bond Buyer

By Jack Casey

July 26, 2016

SIFMA Submits Comments to the SEC on FINRA and MSRB Proposed Rules.

SIFMA submitted comments to the Securities and Exchange Commission (SEC) on the Financial Industry Regulatory Authority's (FINRA) Rule Filing SR-FINRA-2016-024 and the Municipal Securities Rulemaking Board's (MSRB) Rule Filing SR-MSRB-2016-09. MSRB and FINRA are proposing to create new Real-time Transaction Reporting System (RTRS) and Trade Reporting and Compliance Engine (TRACE) academic historical trade data products that would include anonymized dealer identifiers.

The RTRS and TRACE Academic Data Products would be made available only to institutions of higher education. SIFMA continues to support the MSRB's and FINRA's efforts to improve market transparency to investors and promote regulatory efficiency. Both FINRA and the MSRB have made a number of modifications to the proposals to address our concerns and we have provided comments on those modifications.

While we appreciate FINRA's and the MSRB's responsiveness on a number of aspects, we believe that the proposals, in some cases, could provide additional protections without impeding the goals of promoting academic access and research. SIFMA's comments include concerns about the scope of data available, data aging requirements, anonymizing dealer identities, and concerns about the potential for reverse engineering.

Read the letter.

July 28, 2016

MSRB Files Amendment to Proposal to Modernize Close-Out Procedures.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission an amendment to its proposal to update MSRB requirements for municipal securities dealers related to the close-out process of failed inter-dealer transactions. The amendment seeks to shorten the close-out period under MSRB Rule G-12 from 20 calendar days, as stated in the original proposed rule change, to 10 calendar days in order to further reduce the risk and cost associated with inter-dealer fails.

View the amendment.

MSRB Announces Regulatory Topics to be Discussed at Upcoming Board Meeting.

The Municipal Securities Rulemaking Board (MSRB) today published an agenda for its upcoming Board of Directors meeting, to be held July 27-28, 2016 in Washington, DC. The Board of Directors meets quarterly to oversee the strategic direction of the organization, make policy decisions, and authorize rulemaking and market transparency initiatives.

View the MSRB Board of Directors meeting agenda.

How Ramapo, N.Y. and its Attorney Are Disputing SEC Fraud Charges.

WASHINGTON – The town of Ramapo, N.Y. and one of four individuals charged with securities fraud by the Securities and Exchange Commission for misleading muni bond investors are disputing the charges and urging a federal judge to dismiss the case.

They are asking for a jury trial if the judge fails to dismiss the SEC's complaint.

Ramapo and town attorney Michael Klein detailed their defenses in recently filed separate answers to the SEC's April 14 complaint filed in the U.S. District Court for the Southern District of New York in Manhattan.

They argue, among other things, that they relied on the advice of others. Ramapo relied on advice from accounting and auditor professionals as well as legal counsel while Klein relied on legal counsel and the advice of the town's finance department and independent auditors, their lawyers said.

They also argue that the charges should be dismissed because nobody has suffered any loss or damage as a result of the alleged actions.

The SEC alleges that Ramapo, the Ramapo Local Development Corp., and the four individuals fraudulently hid the town's financial troubles in bond documents for 16 muni securities offerings made between September 2010 and September 2015.

The town not only wanted the town's financial picture to look good, but was also trying to prevent further political fallout from a minor league baseball stadium project that did not have Ramapo citizens' support, according to the SEC.

Fourteen of the offerings were from the town and two others were from the RLDC but were guaranteed by the town and related to the baseball stadium. The commission charged the town and each of the individual defendants with either knowingly or negligently engaging in the fraud.

The town faced deficits ranging between $250,000 and $14 million between the town's fiscal years 2009 and 2014, the SEC alleges. But the defendants, through a series of fabricated receivables over that time period, were able to make it look like the fund actually had positive balances of between $1.4 million and $4.1 million, according to the commission.

The commission is charging the town and each of the individual defendants with either knowingly or negligently engaging in the fraud. Both the town and Klein are also charged with aiding and abetting violations by the bond-issuing RLDC.

The SEC is seeking an unspecified amount of civil penalties and has asked the court to bar each of the named individuals from the muni market.

The commission also has asked the court, through various undertakings and injunctions, to require Ramapo and the RLDC to retain for five years a court-appointed independent consultant, an independent auditing firm acceptable to the commission staff, and, if either want to issue munis, an independent disclosure counsel also acceptable to the staff.

Ramapo and Klein claim the SEC failed to state a claim or provide particular evidence of any material misstatements or omissions that would support the charges. Ramapo's lawyer argues that the SEC's allegations "are improperly vague, ambiguous … confusing, and omit critical facts."

Their lawyers contend their clients acted within the bounds of federal and state laws and did so "in good faith and in a commercially reasonable manner."

Ramapo's lawyer also asserts the SEC's claims for injunctive relief should be barred because the "adverse effects of an injunction far outweigh any benefit from an injunction."

Klein contends no investor could have reasonably relied upon his alleged misrepresentations or omissions, if they exist. He also says that any amount that the SEC claims the defendants owe is attributable to the actions of the other defendants and not to him.

In addition, Klein's lawyer claims the court does not have personal jurisdiction over his client. Klein lives in Airmont, N.Y., approximately an hour away from the New York City.

Both defendants say the SEC should also be barred from bringing the charges by the statute of limitations, usually six years for fraud charges according to Klein's lawyer. They say they reserve their right to bring up future defenses as may be appropriate. Ramapo, through its lawyers, says it maintains the right to adopt and assert defenses used by co-defendants.

The town and Klein are the only defendants to have filed an answer to the SEC's charges. The three other individuals facing charges are: Christopher St. Lawrence, supervisor and director of finance for Ramapo; Aaron Troodler, the former executive director of the RLDC; and Nathan Oberman, the town's deputy finance director. Lawyers for the other defendants either could not be reached or did not have a set date by which an answer would be filed.

The U.S. District Attorney for the Southern District of New York, in a connected action, successfully indicted St. Lawrence and Troodler on 22 counts of wire fraud, securities fraud, and conspiracy to commit securities fraud.

The Bond Buyer

By Jack Casey

July 21, 2016

EMMA Now Indicates ATS and Non-Transaction-Based-Compensation Trades.

Read the MSRB Announcement.

Hultgren Introduces Municipal Advisor Choice Act in Congress.

On June 28, Rep. Randy Hultgren (R-IL) introduced H.R. 5596, the Municipal Advisor Choice Act. The bill amends the Securities Exchange Act of 1934 by specifying that municipal issuers are not required to engage municipal advisors when issuing securities. The bill was referred to the House Financial Services Committee. "Washington's regulatory regime has again confused consumers, investors and other participants in the market, and the Municipal Advisor Rule is only the latest example," Hultgren said. "The Municipal Advisor Choice Act ensures that both issuers of municipal debt, and those who advise them, know their obligations under the rule. I look forward to clearing up the confusion surrounding this rule and urge quick action on this legislation."

Bill Information

More Information on Trades Now Available on EMMA®

To help investors better understand municipal securities trade data, the Electronic Municipal Market Access (EMMA®) website now includes two new indicators to denote that a special condition applies to a specific trade. The first new indicator identifies inter-dealer trades that are executed with or using the services of an alternative trading system, or ATS. This will allow investors and others to better assess the extent to which ATSs are used in the municipal market.

The second new indicator flags customer trades that do not include a mark-up, mark-down or commission in the reported trade price. This indicator differentiates customer transactions that do not include a dealer compensation component, providing a more meaningful comparison of trade prices.

View a key to the special condition indicators on EMMA. For more information on understanding trade prices, visit the MSRB Education Center, an online library of free, objective information on the municipal securities market.

July 18, 2016

Expanding Municipal Securities Enforcement: Profound Changes for Issuers and Officials.

While many in the municipal securities market have been preoccupied with the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative, other significant developments have been occurring in the SEC's municipal regulation through enforcement.

Since early 2013 alone, apart from the MCDC Initiative, there have been enforcement actions brought against 18 state or local governmental entities and against 16 issuer officials. In contrast, in the 14 years from the beginning of 1999 through 2012, the commission resolved disclosure actions against only 11 state or local entities and 10 officials. There is a definite change in tone.

Municipal securities enforcement has experienced a number of significant firsts in the 3½ years since early 2013. Most, if not all, of those measures follow the SEC's expansion of the role of its

Public Finance Abuse Unit (formerly, Municipal Securities and Public Pensions Unit).

At about the time the SEC's more aggressive activity began, Mary Jo White, a former federal criminal prosecutor, became chair of the commission. White defined a priority of enforcement against the full range of securities law violations, even minor ones involving only negligence, as opposed to intent or recklessness. White described this as "Broken Windows" enforcement.

The commission's reliance on enforcement is not a surprise. Indeed, it is the market discipline contemplated in 1975 with the enactment of the Securities Acts Amendments of 1975. These included the Tower Amendment prohibiting the SEC from requiring pre-sale review of municipal official statements.

As a part of the bargain, Congress also amended the definition of "person" in Section 3(a)(9) of the Securities Exchange Act of 1934 to include "a government or political subdivision thereof." That seemingly minor statutory change gave affirmative congressional authority — a green light — to the SEC for post-offering pursuit of state and local entities and officials not only for acts of fraud in violation of SEC Rule 10b5, but also pursuant to Section 17(a)(2) and (3) of the Securities Act of 1933 for negligence.

To summarize the outcome in 1975, there are no pre-sale SEC reviews of municipal issuers' official statements and little in the way of pre-offering SEC disclosure mandates (other than in the definition of "final official statement" in SEC Rule 15c212), but post-offering review through SEC enforcement was clearly contemplated by Congress.

Importantly, the commission's change of direction from its prior reliance almost solely upon deferential cease-and-desist orders against municipalities and public officials has far-reaching implications.

In the past 3½ years, the SEC has asserted its enforcement role considerably. It is not unfair to describe this approach as a form of direct regulation of issuers.

The MCDC Initiative is only one SEC enforcement undertaking, albeit against multiple parties. The SEC has embarked on a much larger journey. This is not good news for issuers or officials (or others). Instead of SEC guidance through regulation in advance of bond issues, the enforcement approach provides after-the-fact guidance to which bond lawyers and others pay significant attention. Enforcement may provide a very rough form of post-offering guidance indeed for the particular issuers and officials (and others) affected directly. Yet enforcement does provide helpful information for the balance of the market.

As discussed below, the Commission has achieved the following examples of "firsts" since early 2013:

- Collected its first civil penalties from issuers;
- Obtained its first emergency court order against an issuer to halt an offering in progress;
- Prohibited issuers from issuing municipal securities in the future without first satisfying specific conditions precedent;
- Determined "control person" liability for key issuer officials—mayors—without alleging that the officials acted with fraudulent intent or even with negligence;
- Ordered the first bars of municipal officials from participation in future offerings, effectively preventing the officials from exercising significant official responsibilities (or from working with underwriters);
- Ordered an issuer official to pay a civil penalty and barred the official from future bond offerings,

although the official was alleged only to have been negligent due to a failure to read an official statement he signed;
- Taken its first action against a municipality for violations in public statements by the mayor — political speech — appearing together with annual financial reports on the issuer's website; in other words, held an issuer liable for information provided outside of official statements or continuing disclosure documents filed with the MSRB;
- Taken action against a municipality in connection with tax certifications to bond counsel and a pooled bond issuer, i.e., documents that investors never saw nor could be expected reasonably to see;
- Received the benefit of District and Appellate Court decisions that a municipal official is not entitled in securities law enforcement proceedings to qualified immunity in the performance of discretionary official duties;
- Taken its first action, based upon information relating to a private conduit borrower, against a governmental issuer providing credit enhancement for the borrower's payment obligations;
- Ordered an issuer to employ an independent monitor to review transactions for conflicts of interest;
- Taken its first action against local issuer counsel;
- And taken an action in coordination with a Justice Department criminal action in a municipal disclosure case pursuant to an announced policy of cooperation.

In another "first," the SEC is seeking potentially harsh monetary remedies in a pending action against a city that already is subject to a cease-and-desist order from a prior enforcement action.

Although the imposition of civil penalties on municipal officials is not a "first," previously the SEC imposed civil penalties only in a few instances. More recently, the commission has followed a pattern of imposing significant civil penalties on municipal officials in several separate actions within a brief period. Since the beginning of 2013, the Commission has levied $180,000 in civil penalties on eight officials. In contrast, five officials (in only two actions) paid $85,000—less than half as much—in civil penalties in the 15 years from 1998 through 2012. In pending actions, the SEC is seeking to levy civil penalties on five additional governmental entities and an additional six officials.

In connection with its increasing penalties, the commission is seeking, among other things, to place a greater emphasis on the responsibilities of individual officials, in addition to organizations for which the officials act.

Sometimes, in acting against municipal officials, the commission alleges control person and aiding and abetting liability. For example, in one settled action, for the first time, the SEC asserted that a former mayor "controlled" the actions of the city administrator and the city.

In a recent settled action against a sitting mayor the SEC alleged only that the mayor was a control person in relation to the city and the city's comptroller, that the mayor signed official statements and bond closing certificates, and the city and its former comptroller (as opposed to the mayor) had committed fraud. The commission made no explicit allegation that the mayor knew of disclosure violations, or even that he was reckless or negligent. The commission did not allege that the Mayor promoted or was involved in the project financed through the issuance of bonds. The commission did allege that the mayor asserted his Fifth Amendment privilege against self-incrimination during his investigative testimony before the commission in response to all substantive questions regarding the events at issue. Therefore, one is left to infer that the mayor did not have a good faith defense to overcome the commission's control person liability charge. Yet, that inference is part of the point. The burden of proof on the issue of good faith rested on the mayor, not the SEC. The remedies included a civil penalty and a bar against participation in future bond issues—a difficult outcome requiring a delicate balancing act for a sitting mayor, bond professionals working with the city, and investors purchasing the city's bonds. This approach may prove challenging for community leaders elsewhere in the future.

In another action against a former charter school CEO, the commission imposed a $10,000 civil penalty and barred the CEO from future bond issues for failing to read an official statement he signed. Despite the harsh remedies, the SEC did not charge the former CEO with fraud, only negligence. In the commission's press release regarding the action, David Glockner, regional director of the SEC's Chicago Regional Office, stated: "This kind of negligent behavior is unacceptable in the securities markets."

Perhaps as an indication of things to come in more egregious fact settings, another "first" includes the first time that the SEC has announced an intention to coordinate with the Justice Department regarding misconduct in the municipal bond market. One recent coordinated effort led to the indictment of municipal officials in a pending action in connection with alleged disclosure violations.

Reviewing the past 3½ years, in circumstances involving carelessness, the SEC has recognized issuer efforts to improve practices by adopting policies, assigning responsibility, and training staff, and has imposed less exacting remedies structured to provide future assistance to the issuers. The commission's message is heavily underscored, however, in more egregious circumstances by remedies that drive the message home with an emphasis that issuers, officials and the market should not mistake.

It is likely that those changes in enforcement will result in significant alterations in the behavior of the vast majority of market participants.

The Bond Buyer

By Robert Doty

July 12, 2016

Robert Doty is president and proprietor of AGFS, a municipal securities litigation consulting firm in Annapolis, Md. This commentary is excerpted from his forthcoming book, "Expanding Municipal Securities Enforcement: Profound Changes for Issuers and Of icials," to be published by the International Municipal Lawyers Association.

Analysts Call for Clarity on Municipal Restructurings.

Governments should give municipal-bond investors a clearer idea of how they would fare in a bankruptcy, the National Federation of Municipal Analysts said in paper released Wednesday.

When deciding between two equally priced general obligation bonds, the NFMA wrote, investors would likely reject the one whose payments could easily be clawed back by a bankrupt government. "Yet in today's market, most investors are not able to make this distinction because they are not given the relevant information," the NFMA wrote.

Increased disclosure could benefit municipal-bond holders—ranging from mutual funds to insurance companies to retail investors—as they seek to avoid rare-but-costly government defaults. Mutual funds with billions tied up in once-lucrative Puerto Rico bonds are now facing significant losses as the commonwealth prepares to restructure its $70 billion debt load.

The NFMA called on public officials to clearly disclose in borrowing documents the existence of statutory liens that could keep tax dollars flowing to bondholders in a bankruptcy. They urged governments to also disclose "special revenue" pledges, which exempt the bond payments from an automatic stay in the event of bankruptcy.

"Detroit was a wake-up call to the market," said bankruptcy expert James Spiotto, of Chapman Strategic Advisers. In that city's agreed-upon bankruptcy settlement, holders of unlimited tax general obligation bonds were paid in full only after insurers supplemented the city's partial payment, he said, adding, "It made investors eager to ensure that any special revenues pledges or statutory liens were clearly spelled out and disclosed."

At least 30 states have some form of statutory liens protecting some government debt, according to a March presentation by Mr. Spiotto. The NFMA found that general obligation bondholders protected by statutory liens were paid 100 cents on the dollar in bankruptcies in Central Falls, R.I., and California's Sierra Kings Healthcare District. A study by Moody's Investors Service found, in most recent bankruptcies, bondholders with special revenue pledges received "significantly higher recoveries" than those without them.

Municipal bankruptcies are extremely rare. In 22 states, municipalities either lack state authority to file for bankruptcy, or can only do so with explicit state authorization, according to Moody's Investors Service.

In February, as Illinois Gov. Bruce Rauner was pushing to give Chicago's public school system the authority to declare bankruptcy, the junk-rated district was preparing to issue a $725 million bond. In public borrowing documents, the school district said it intended taxes pledged for debt payments to be treated as special revenues under the bankruptcy code.

A bankruptcy court could still disagree. But "having that written into bond documents was a critical piece of the marketability of the deal," said John Miller, co-head of fixed income at Nuveen Asset Management, which bought a roughly $300 million share of the bond issue.

Still, revenue pledges can only go so far. Analysts said even the strongest pledge is no substitute for simply having enough money to go around.

THE WALL STREET JOURNAL

By HEATHER GILLERS

July 13, 2016 6:56 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Why Issuers Must Increase Statutory Lien Disclosure.

WASHINGTON – The National Federation of Municipal Analysts wants issuers to improve their disclosures about statutory liens and how they could affect general obligation bonds following a slew of recent municipal bankruptcies where this was a key issue.

The group made the recommendation in its draft "White Paper on General Obligation Bond Payments: Statutory Liens and Related Disclosures," which it released on Wednesday. Members of the municipal securities industry will have an opportunity to comment on the paper through Oct. 15. NFMA is also sharing the paper with municipal regulators and other market groups.

While the paper is focused on statutory liens, the group notes that other issues that affect the treatment of bondholders, like whether pledged revenues constitute “special revenues” under the bankruptcy code, also deserve attention when thinking about disclosure.

“The NFMA has always believed that good disclosure benefits all market participants, not just the analyst community,” said Jennifer Johnston, chair of NFMA’s industry practices and procedures committee. “We think if there is uniform, transparent, and clear disclosure of the presence of a statutory lien, it really is a best practice.”

Johnston, a vice president and research analyst with Franklin Templeton’s municipal bond department, said the paper is the result of NFMA members expressing frustration about unclear statutory lien disclosure.

A statutory lien, according to the federal bankruptcy code, can only be created under a state statute that specifies the circumstances and conditions of the lien. Such liens are important, according to NFMA, because they allow lien revenues to continue to be collected even after the filing of a bankruptcy petition under Chapter 9.

NFMA said one potential barrier to better disclosure is determining whether a statutory lien is actually in place under state law. Not all states have laws establishing statutory liens and some have laws that do so without actually using the words “statutory lien.” Some states have laws that are written in a way that makes it difficult to tell if such liens exist.

For that reason, the NFMA paper instructs issuers to talk with their bond counsel to make a determination about the presence of such a lien. Issuers should disclose the information they have gathered whether it shows there is a statutory lien, it is unclear, or one does not exist.

The paper also asks that issuers include in bond documents: where the lien authorization comes from; the full text of the statutory lien; any opinions or analysis from the bond counsel; whether pledged revenues are commingled with non-pledged revenues; and whether the state is considering legislation that may institute or alter a statutory lien. Issuers in the same state could standardize statutory lien disclosure, the NFMA said.

Gathering lien information is important for all issuers, even though some states do not allow municipal bankruptcies, NFMA added.

“It may be tempting to point out that not all states allow municipalities to file for bankruptcy, and in those non-bankruptcy states, the issue of a statutory lien is moot,” the paper says. “But as with the financial condition of a city, laws can change.”

NFMA also uses its paper to walk through several examples of municipal bankruptcies from 1994 to 2013 where GO bond assumptions were challenged and statutory liens played a role. Many of the recoveries were negotiated instead of court ordered, NFMA noted.

In Orange County, Calif.’s 1994 bankruptcy, the U.S. district court found that the county’s approximately $60 million of tax and revenue anticipation notes were subject to a statutory lien. That debt was eventually refinanced and paid in full as part of the county’s debt adjustment. Similarly, in the bankruptcy proceedings involving Central Falls, R.I., in 2011 the state legislature instituted a statutory lien on local GO debt that allowed GO bondholders to realize a 100% recovery rate from the city’s bankruptcy plan while leaseholders, pension beneficiaries, and vendors were all subject to varying levels of reductions.

The paper juxtaposes those results with the ones from Detroit's bankruptcy in 2013 where the city's emergency manager, Kevyn Orr, argued that the city's unlimited tax GO bonds (ULTGOs) were not secured by a statutory lien. Michigan's legislature later made the statutory lien explicit, but in the settlement between the city and its ULTGO bondholders, ULTGO bonds had a recovery rate of 74% to insurers and 100% to bondholders with the 26% balance made up from the bond insurers under their insurance policy.

"This was the highest recovery rate among the city's debts, yet below that experienced by many statutory lien ULTGOs in other Chapter 9 proceedings," the NFMA wrote in the paper.

The white paper further gives examples of good disclosure from issuers in states like Colorado, Louisiana, and Rhode Island where they made explicit references to statutory liens. But the group said it could only find Connecticut as an example of a state where issuers disclosed that a statutory lien either does not exist or may exist.

The Bond Buyer

By Jack Casey

July 13, 2016

MSRB and the Municipal Forum of New York Host Municipal Finance Day in Washington, DC.

Washington, DC – With an eye to exposing teens to possible careers in public finance, the Municipal Securities Rulemaking Board (MSRB) and the Municipal Forum of New York are hosting Municipal Finance Day on July 15, 2016 for high school graduates participating in the 2016 Urban Leadership Fellows Program.

The Urban Leadership Fellows Program enables New York City's underserved youth to explore careers in finance through a paid summer internship at a financial or finance-related company. Participants visit Washington, DC for Municipal Finance Day to merge the practical skills gained at their internships with an understanding of the legal, regulatory and policy implications facing the municipal securities market.

Featured speakers for this year's Municipal Finance Day include Representative Gregory W. Meeks of New York; Hester Pierce, Director, Financial Markets Working Group and Senior Research Fellow, Mercatus Center at George Mason University; and MSRB Executive Director Lynnette Kelly.

"The MSRB is excited to host Municipal Finance Day with the Municipal Forum of New York for the fifth year running," Kelly said. "This is a great opportunity to engage young people and encourage them to apply their talents and skills to a career in public finance."

The Municipal Forum of New York has sponsored the Urban Leadership Fellows since 1992 through its Youth Education Fund.

Date: July 14, 2016

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DOL Fiduciary Rule Gets It Half Right On the Municipal Bond Market.

Shrinking the pool of muni sellers does not help investors

While some modifications have been made, municipal-bond investors are still left in a potentially tight spot with regard to the Department of Labor's fiduciary rule.

To its credit, the DOL seems to be listening to feedback with an open mind, which was illustrated by a revision to the 2015 draft version of the rule. Originally, firms acting as principals would have been prohibited from directly purchasing and selling muni bonds from or into a client's retirement account. The April version of the rule was changed to allow principals, which hold muni bond inventories, to purchase bonds from clients, essentially expanding the market of potential buyers of the bonds.

This is good for investors. The DOL clearly recognized that, particularly in times of market stress, there is no logical upside to limiting the universe of potential buyers of a security that an investor wants to sell.

However, for some reason, the DOL seems to be holding firm, for the time being, on not allowing principals to sell muni bonds out of its inventory to clients investing through their individual retirement accounts.

For a lot of financial advisers this might seem like a small or even a non-issue. Some might argue that it's more important that a client has better access to a buyer of a security, particularly in times of market turbulence, than a seller.

But, considering the breadth and depth of the sweeping DOL rule, this looks more like an oversight, which could negatively affect investors in muni bonds.

To be clear, prohibiting firms that hold bond inventories from selling muni bonds to clients in their IRA accounts doesn't mean those clients can't buy muni bonds — it just means the principal can't participate or compete with other broker-dealers looking to sell bonds to that investor.

The logic behind this is not clear, especially when the DOL has already revised its rule to allow principals to buy muni bonds from clients in IRA accounts.

A statement from the DOL regarding the principal transaction exemption that allowed for the purchase, but not the sale to investors in retirement accounts, failed to address the specific issue. However, it alluded to a means of seeking a specific exemption to this aspect of the rule.

"This is an area that was subject to public comments and, in fact, the department did make changes from the proposed principal transactions exemption," the statement reads.

"We also added a mechanism for parties wishing to expand the exemption as it applies to purchases by plans and IRAs, if parties seek an individual exemption, and we made changes so that municipal bonds can be sold in agency and riskless principal transactions under the [best interest contract] exemption," according to the statement.

In other words, without further comment or clarification from the DOL, one might conclude the rule is leaving a loophole for those principals willing to jump through some hoops.

Based on that, the question remains as to why the DOL didn't just open up the sale to retirement plan clients the same way it opened it up to purchases?

As the DOL pointed out, this particular limitation does not only apply to muni bonds, it also applies to some securities that don't meet certain liquidity or investment-grade standards.

But one reason it could negatively affect investors in muni bonds is that the $3.5 trillion municipal bond market is made up of 65,000 different issuers of debt. This is not a globally commoditized market, like Treasury bonds or even corporates.

The muni bond market is made up of participants with developed expertise in specific markets, but not necessarily all markets, or all 65,000 issuers across the country.

With that in mind, it makes even less sense to limit the number of participants available to sell bonds to investors.

"The DOL recognized that when the market is falling there's no reason to limit the pool of potential buyers of a security, but why are they still limiting the pool of potential sellers especially when sellers are required by the rule to put their clients' interests first?" said Ron Bernardi, president of Bernardi Securities.

"We can deal with it," he added. "But in certain instances it might be limiting our clients' choices."

Essentially, unless the DOL can find a way to lift the restrictions on muni bond sales to IRA accounts, it is merely requiring advisers to act as fiduciaries without actually enabling them to act as fiduciaries.

Investment News

By Jeff Benjamin

Jul 7, 2016 @ 12:09 pm

Cedar Rapids, SEC Negotiating Settlement Over Federal Securities Violation.

CEDAR RAPIDS — Cedar Rapids officials are negotiating a settlement with the United States Securities and Exchange Commission as part of a nationwide crackdown on securities law violations.

Cedar Rapids self-reported the violation in November 2014 as part of the SEC's Municipalities Continuing Disclosure Cooperation Initiative, which was launched that year. The SEC claims the city violated federal bond disclosure requirements.

Those are in place to guard against fraud by providing information to investors considering municipal bonds, which cities issue to pay for a variety of functions and construction projects.

The SEC's disclosure initiative covers bond transactions dating back to September 2009, according to a city document briefing the City Council on the matter. However, city spokeswoman Maria Johnson said on Friday the 2007 and 2008 filings were late, prompting the self-reporting.

The City Council last month approved for City Manager Jeff Pomeranz to "negotiate, approve, and make the offer of settlement" to the SEC.

The city self-reported its violations in November 2014 in advance of a Dec. 1, 2014 reporting deadline set forth in the SEC initiative.

According to the SEC, bond issuers are required to provide continuing disclosure about "its financial condition and operating data," and disclose if they've failed to comply to previous commitments for disclosure.

Johnson said the settlement is being handled by city and SEC attorneys, similar to litigation, and as such the communications are considered confidential. She said more details will be released when the settlement is final. The SEC did not have a formal timetable for a decision, but it is expected soon, she said.

The city outlined the parameters for its settlement, which is consistent with an overview of the initiative by the SEC.

"Settlement will include consenting to adopting written policies and procedures and periodic training related to continuing disclosure obligations, comply with existing continuing disclosure undertakings, and disclosure of the terms of its settlement with the SEC in future bond offering materials," according to the city briefing.

SEC in its overview states its enforcement division would recommend no fine for self-reporting municipalities, but no assurances are provided for municipal officials "if they have engaged in violations of the federal securities laws."

The Government Finance Officers Association of the United States and Canada has been providing briefs about the initiative for its members. The association noted last month the SEC is requesting an "extraordinarily short turnaround for the settlements" once offered, as few as five to 10 days.

In February, the association stated as part of a similar crackdown in the private sector, 72 broker and underwriter firms paid more than $18 million over three rounds of settlements "for failing to identify misstatements and omissions before offering and selling bonds." The association said it wasn't clear how many issuer settlements it was pursuing.

The SEC declined to comment, through its press office.

by B.A. Morelli

The Gazette

Jul 8, 2016 at 10:01 pm

What MSRB Wants to Change in New Academic Data Product with SEC.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange

Commission to approve rule changes to create a new academic trade product with anonymous dealer identifiers.

The MSRB said in its filing that establishing the data product, which would only be available to researchers associated with a higher education institution, “would add to the MSRB’s current offering of data products and further the MSRB’s mission to improve the transparency of the municipal securities market.”

The self-regulator said it may consider expanding the distribution of the product at some point in the future after the SEC approves the preliminary introduction.

Dealers are currently required to report all executed transactions in munis to the Real-Time Transaction Reporting System within 15 minutes of the time of trade. The MSRB makes some of that post-trade information available to the general public for free and allows data vendors, industry utilities and others to access more information on a subscription basis. However, none of the available information currently contains dealer identifiers.

The new academic data product would be subscription based and require the researchers to pay a fee.

Academics largely welcomed the new idea when it was first proposed last summer, agreeing that it would bring more transparency to the municipal market. But some dealer groups relayed member concerns that the product and availability of identifiers would open them up to reverse engineering.

The MSRB said in its filing to the SEC that it took those past concerns into account while updating the original version.

Bond Dealers of America said in a September 2015 comment letter about the product that it felt the current information the MSRB makes available to the public includes a “sufficient level of detail to support rigorous study.” The Securities Industry and Financial Markets Association added that it did not feel the MSRB would put enough protections in place to prevent the reverse engineering.

One possible remedy SIFMA suggested was to change the “aging” requirement for the data to four years from the two MSRB originally proposed. Other individuals and firms made suggestions ranging from one year to four. The MSRB ultimately decided to change its requirement to a mandatory three-year wait before data can be released, after reviewing the comments.

SIFMA also recommended that the MSRB exclude primary trades from the product’s data sets, arguing the currently available public data without dealer identifiers is already subject to reverse engineering.

The MSRB agreed with that suggestion and said in its filing to the SEC that the product would not include list offering price and takedown transaction, which can be used to identify primary market transactions.

The self-regulator, which acknowledged that reverse engineering was a possibility, also listed other steps it plans to take to combat the practice and any harm that could result from it.

Those measures include: providing unique data sets with different anonymized dealer identifiers to each academic; requiring subscribers to sign an agreement stating they will not attempt to reverse engineer the data; prohibiting redistribution of the data in the product; and mandating users disclose each intended use of the data. It would also require the data to be returned or destroyed if the researcher’s subscription agreement is terminated.

The board has also promised to clarify the potential liability an academic would have under the subscription agreement and define key terms necessary to complying with the changes in the text of any final agreement an academic would sign before receiving the data product.

The Bond Buyer

By Jack Casey

July 1, 2016

State Groups Challenging G-37 Ask Court to Consolidate Cases.

WASHINGTON – Three state Republican parties challenging the constitutionality of a revised Municipal Securities Rulemaking Board anti-pay-to-play rule are asking a federal circuit court to streamline the legal process by consolidating their two pending cases.

The Tennessee Republican Party filed a challenge to the MSRB's revised Rule G-37 on political contributions for muni advisors as well as dealers on April 12 in the U.S. Court of Appeals for the Sixth Circuit in Cincinnati. The challenge named the Securities and Exchange Commission and MSRB as respondents because MSRB rules are subject to SEC approval. The court's jurisdiction covers Tennessee, Kentucky, Michigan, and Ohio.

Two other groups, the Georgia Republican Party and the New York State Committee, filed a petition against the MSRB and SEC on April 13 in the U.S. Court of Appeals for the Eleventh Circuit in Atlanta. That court's jurisdiction covers Georgia, Alabama, and Florida.

The cases are now both before the Sixth Circuit after SEC lawyers successfully argued that federal appellate procedure required the case filed in the Atlanta court to be transferred because it was filed after the first petition.

Now that the two cases are pending in the same circuit court, the lawyers for the three Republican parties are arguing that consolidating them will "conserve both the court's and the parties' resources and promote the interests of judicial economy and efficiency."

The parties are asking the Sixth Circuit to set aside and vacate revisions to the rule, which has applied to dealers since 1994 and was recently revised to include municipal advisors beginning on Aug. 17.

The MSRB, which is represented by Joseph Guerra, a co-leader of Sidley Austin's Supreme Court and appellate practice in DC, and MSRB general counsel for regulatory affairs Michael Post, previously asked that the petition filed in the Sixth Circuit be transferred to the U.S. Court of Appeals for the District of Columbia because the MSRB and SEC, as well as all counsel representing both sides in the case were located in the area.

Sixth Circuit judges denied that petition on June 30. The state parties plan to raise the same challenges to the rule in both cases, wrote one of their lawyers Christopher Bartolomucci, a partner with the law firm Bancroft in D.C., in the July 1 motion to consolidate. Edmund LaCour Jr., an associate with Bancroft, and Jason Torchinsky, a partner at Virginia-based Holtzman Vogel Josefiak Torchinsky, are also representing the Republican organizations.

Under the revised Rule G-37, municipal advisors, similarly to dealers, will be barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee that is controlled by the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional (MFP) or a municipal advisor professional (MAP) to give a contribution of up to $250 to any candidate for whom he or she can vote for without triggering the two-year ban.

The Republican groups argue that the rule forces MAs and dealers, as well as their employees, to choose between exercising their constitutional right to support candidates through contributions and continuing to provide advisory and dealer services. That type of infringement is only allowed under Supreme Court precedent when it is done to prevent quid pro quo corruption, the parties' lawyers said, something that is not the case for political contributions that are not made in connection with efforts to control an officeholders' actions.

The state parties' lawyers also argued in previous filings that Congress did not empower the SEC or MSRB to regulate political contributions and instead made such regulation "the exclusive province" of Congress and the Federal Election Commission.

Rule G-37 was previously challenged after the SEC first approved it for dealers in 1994. Alabama bond dealer William Blount filed suit against the MSRB and SEC, arguing the rule violated his constitutional right to free speech. The D.C. Circuit rejected that argument in a 1995 ruling, saying the rule was "narrowly tailored to serve a compelling government interest."

The MSRB has maintained that the rule is a "vital measure promoting the integrity" of the muni market and has said it intends to "vigorously defend the policies it believes should be in place to address quid pro quo corruption and the appearance of this type of corruption."

The Bond Buyer

By Jack Casey

July 5, 2016

MSRB Reminds Municipal Securities Dealers of July 18, 2016 Effective Date of Changes to Trade Reporting Requirements.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal securities dealers that amendments to MSRB Rule G-14 on transaction reporting become effective on July 18, 2016. The amendments will enhance the post-trade price transparency information provided through the MSRB's Real-Time Transaction Reporting System by:

- Establishing a new indicator for customer trades not involving transaction-based compensation;
- Establishing a new indicator for alternative trading system (ATS) transactions;
- Expanding the application of the existing list offering price and takedown indicator to cases involving distribution participant dealers and takedown transactions that are not at a discount from the list offering price; and
- Eliminating the requirement for dealers to report yield on customer trade reports and, instead,

enabling the MSRB to calculate and disseminate yield on customer trades.

View the regulatory notice.

U.S. Senator Asks SEC to Examine Puerto Rico Debt Negotiations.

A top ranking Republican U.S. Senator wants the Securities and Exchange Commission to examine the U.S. Treasury Department's possible involvement in creditor negotiations over restructuring of Puerto Rico debt.

Senator Orrin Hatch, the head of the finance committee, is asking the SEC to investigate the information shared between some investors, Puerto Rico and U.S. government officials about the island's fiscal state. He also requested the agency look into any potential illegal activity by brokers, advisers or underwriters.

Hatch asked in a June 23 letter to SEC Chair Mary Jo White that the agency investigate "whether information asymmetries, including asymmetries between public investors and government officials of Puerto Rico and the U.S. government have led to acts, actions and activities in violation of laws designed to protect investors and the integrity of the municipal debt market."

Judith Burns, a spokeswoman at the SEC, declined to comment.

The letter is the latest request to the regulatory agency to examine Puerto Rico's securities. Seven Democratic senators, the AFL-CIO and New York City Council Speaker Melissa Mark-Viverito have all urged the SEC to look into the island's debt.

Puerto Rico pushed a record amount of its bonds toward default by declaring on Thursday a moratorium on debt payments, after President Barack Obama signed a law shielding the commonwealth from investor lawsuits.

Bloomberg Business

by Michelle Kaske

June 30, 2016 — 3:51 PM PDT

Who Should Police Municipal Markets?

A questionable bond sale in Illinois has left some wondering why there's no one to stop financially troubled governments from borrowing.

Borrowers have long assumed that banks and other traditional lenders will only loan them as much money as they can responsibly afford. Almost a decade ago, the subprime mortgage crisis shattered that belief. But it might still persist in the municipal market.

Take Illinois, whose fiscal woes are no secret. It has the lowest credit rating (BBB+) — by far — of all 50 states, its pensions are among the worst-funded in the country and it's entering its second fiscal year without a budget. Yet earlier this month, Illinois borrowed more than a half-billion dollars from municipal market investors with relative ease.

The state paid a higher interest rate for its troubles. But thanks to the high demand for municipal bonds these days, the rate was actually lower than the one Illinois paid on its last bond issuance in January.

“That’s the biggest weakness of the municipal market,” said Matt Fabian, managing director for Municipal Market Analytics. “We will help issuers borrow as much as they say they want, whether or not they can afford it.”

No one is saying Illinois won’t pay back the debt — it gives bondholders a high priority when it comes to repayments and it has a dedicated reserve fund for paying its bonds. Still, before Illinois went to market, a major investor in U.S. municipal debt said the bond sale should be boycotted. Citing the state’s budget impasse and poor pension funding, BlackRock’s Peter Hayes said investors “should really be penalizing [Illinois] in some way.”

Illinois was penalized — to a degree. An analysis by DePaul University policy professor Martin Luby shows that the 3.75 percent interest rate the state was charged on 10-year bonds was about twice as high as that of a AAA-rated state. That difference is called the spread, and in Illinois’ case, the spread on its bonds was even wider than it was in January before the state’s most recent credit rating downgrade. That widening equates to a roughly $12 million financial condition penalty for the state’s credit deterioration between January and June, meaning the state received that much less in proceeds from the sale.

“The financial condition penalty is somewhat obscured [by the fact that] interest rates are so low,” added Luby. “But if this were the state of Maryland or Minnesota, they would have borrowed at 2 percent. There’s a real cost associated with that.”

The question of who, if anyone, should be in charge of fiscal discipline in the municipal market is a relatively new one. Before the 2008 financial crisis, it was incredibly rare for a government to default on debt. In addition, a lot of bonds were insured. Bond insurers are the closest the muni market has ever got to fiscal policing, according to Fabian. That’s because before guaranteeing insurance on the debt, insurers have the power to ask a government for changes in the bond deal or in the government’s own finances.

What’s more, it’s rare for issuers not to pay: Fewer than 1 percent of municipal bonds go into default. But high-profile municipal bankruptcies following the Great Recession in Detroit and Stockton, Calif., where bondholders swallowed significant losses on general obligation bonds, has some investors nervous.

“This is very new to the municipal market because in this cycle you’re getting people who aren’t actually made whole,” said Marc Bushallow, managing director of fixed income at Manning & Napier.

There are no proposals on the table for how to police municipal markets should investors ever demand it. For now, it seems the bar is set relatively high for a government to actually be denied access to the market. Were it not for a lack of interest from investors, for instance, no one would have kept Puerto Rico’s water utility from borrowing hundreds of millions in debt to avoid defaulting on an upcoming payment. This, despite the fact that the island has already defaulted twice on other bond payments and was seeking protection from Congress to restructure its massive $70 billion in debt.

Since investors are more interested in their own bottom lines, they're unlikely to act to stop troubled governments from borrowing. A good clue as to whether investors even think about credit worthiness lies in who buys government bond debt in the first place. Puerto Rico's last major bond issue, for example, was mostly bought up by hedge fund firms, known for chasing high yield and often riskier assets.

GOVERNING.COM

BY LIZ FARMER | JUNE 30, 2016

BDA Submits Comment Letter to SEC on MSRB's Proposal to Update Close-Out Procedures.

Today, BDA submitted a comment letter in response to the MSRB's filing with the SEC on proposed amendments to MSRB Rule G-12 on close-out procedures. You can view the final letter here.

The MSRB's proposed rule change would update requirements related to the close-out of open inter-dealer transactions for municipal securities. More specifically, our letter addresses:

- BDA's general support for a shortened close-out requirement (10 calendar days and a total of 20 days in aggregate) to decrease the costs and risks associated with inter-dealer fails; and
- A request for additional close-out guidance concerning transfers via the Automated Customer Account Transfer Service ("ACATS") system, which are based off of 'validation' dates, not 'settlement' dates

Additional Information:

- You can view MSRB's original filing here.
- You can view BDA's December 2015 comment letter to MSRB here.
- You can view BDA's April 2016 comment letter to MSRB here.

We hope this information is helpful.

Jessica Giroux at jgiroux@bdamerica.org
John Vahey at jvahey@bdamerica.org
Justin Underwood at junderwood@bdamerica.org

NABL: House Bill Would Move Fines from MSRB Violations.

On June 21, Representative Ann Wagner (R-MO) has introduced H.R. 5553, which would amend the Securities Exchange Act of 1934 concerning fines collected from violations of the Municipal Securities Rulemaking Board (MSRB) rules. These funds would be deposited and credited as general revenue of the Treasury rather than split between the MSRB and FINRA or the SEC as provided for under Dodd-Frank. This same proposal had been included in the Financial CHOICE Act proposed by House Financial Services Chairman Jeb Hensarling (R-TX). H.R. 5553 has been referred to the House Committee on Financial Services and is available here.

MSRB Seeks Approval to Create Municipal Market Data Product for Academic Researchers.

The Municipal Securities Rulemaking Board (MSRB) today sought approval from the Securities and Exchange Commission (SEC) to support academic research on municipal market trading practices with the creation of a new historical trade data product for higher education institutions. The MSRB's proposed academic data product would provide historical trade data that includes anonymous dealer identifiers to assist researchers in distinguishing transactions executed by specific parties, while still protecting their actual identity. The Financial Industry Regulatory Authority (FINRA) is also seeking SEC approval of a similar proposal that would apply to other areas of the fixed income market.

Read the MSRB's filing.

MSRB to Launch E-Learning Courses.

To address a need for high-quality educational content about the municipal market, the MSRB plans to launch a suite of interactive, online courses designed specifically for market participants this fall. The MSRB's MuniEdPro courses will provide up-to-date content relevant to municipal market activities and MSRB regulations. Each MuniEdPro course will allow the learner to apply MSRB rules to real-world scenarios.

Continuing education credit will be available through MuniEdPro, and the courses supplement the MSRB's existing library of free regulatory webinars.

Read more about MuniEdPro.

MSRB Notice of Filing of Proposed Rule Change Relating to Content of Municipal Advisor Representative Qualification Examination (Series 50).

On June 28, the Securities and Exchange Commission posted the Municipal Securities Rulemaking Board's (MSRB) filing of proposed revisions to the Series 50 examination content outline. The MSRB proposes to implement the revised Series 50 examination program on September 12, 2016. The proposed revisions reflect changes to the law, rules and regulations and incorporate functions and tasks currently performed by a Municipal Advisor Representative. The MSRB believes that the proposed rule change will ensure that certain key concepts and rules are tested on the Series 50 examination in order to test the competency of individuals seeking to qualify as Municipal Advisor Representatives.

Notice of Filing.

Why SIFMA, BDA Want Shorter Dealer Closeout Timeframes.

WASHINGTON – Dealer groups are urging the Municipal Securities Rulemaking Board to cut in half a proposed requirement that would mandate municipal securities transactions to be closed out within 20 days of settlement.

The change to a 20-day closeout requirement from the current 90-day recommendation under the MSRB Rule G-12 on uniform disclosure would lessen the effect of interdealer transaction failures on the market, the MSRB has said. The self-regulator filed the proposed change for approval with the Securities and Exchange Commission on May 11.

Mike Nicholas, Bond Dealers of America's chief executive officer, and Leslie Norwood, associate general counsel and co-head of munis for the Securities Industry and Financial Markets Association, agreed with the MSRB's reasoning for shortening the closeout timeframe.

However, they said in comment letters to the SEC that they believe the mandatory close-out deadline should be shortened to no later than 10 calendar days after settlement. The groups are also proposing that there be a caveat allowing a dealer to extend that deadline another 10 days, for a total of 20 days, if the dealer gets the consent of the buyer.

"We feel it is better for all market participants, the dealers as well as the investors, if failed transactions get settled sooner rather than later," Norwood said. SIFMA believes the majority of dealers would close out the transactions within the 10-day window because "the exemption to go another 10 days is not a slam dunk where it is just something that the dealer opts into," she added.

The MSRB originally proposed amending the rule to require transactions are closed out no later than 30 days after settlement. SIFMA responded similarly to that proposal, recommending the period be cut to 15 days with the possibility of an extra 15 days if the buyer consents. The MSRB chose against the 15-day timeframe because it said it was concerned small dealers would be overburdened by a shorter timeline and because it wanted to give all dealers the same fixed timeframe.

Norwood, in her most recent comment letter, said that after extensive discussions with SIMFA's broad range of broker-dealer members, the group feels the MSRB's concerns are not warranted.

The MSRB is also seeking rule changes that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business day window. Additionally, the proposal would change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

In addition to their recommendations about the closeout timeframe, BDA and SIFMA also asked the MSRB to provide further guidance as to how the MSRB's multiple changes would work in practice.

SIFMA brought up an issue it had noted in past comments, saying it would be "extremely helpful" to know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won't agree to do so. Dealers aren't allowed to use their discretion when working with self-directed accounts, SIFMA said, though the MSRB does have the ability to mandate dealers act as well as the ability to provide regulatory relief.

BDA is asking for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). The system facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

Nicholas wrote that the timeframe under the G-12 amendment would work for ACATS, though he said ACATS transfers are based on a "validation" date as opposed to a "settlement" date. Fail transfers can additionally be closed out by a fail reversal if the receiving firm cannot buy-in the security due to a lack of market availability, but the portion of G-12 that would be amended doesn't mention fail reversals as a closeout process, he wrote.

Dealers would have a 90-calendar day grace period after the MSRB's rule change is approved to resolve all outstanding dealer fails.

The Bond Buyer

By Jack Casey

June 24, 2016

MSRB Adds Economic Calendar to EMMA.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today it has added an economic calendar to its Electronic Municipal Market Access (EMMA®) website. Without having to leave EMMA, users can now freely access a calendar with dates and descriptions of key upcoming macroeconomic developments that could have an impact on the trading and issuance of municipal securities.

"EMMA's new economic calendar is a great resource for all market participants interested in assessing market-related events," said MSRB Executive Director Lynnette Kelly. "From an issuer's perspective, it could be the most informative tool we have added to EMMA in recent years."

The economic calendar features upcoming federal data releases, labor and housing statistics, and other leading economic indicators that can assist municipal market participants in monitoring real-time data releases. It is the first resource to be provided on the EMMA website that helps investors understand broader market activities that may affect the municipal bond market.

The economic calendar joins other free tools on EMMA aimed at assisting municipal market participants, including the price discovery tool, which enables users to identify and compare bonds that share key characteristics, and email alerts that help investors stay up to date when new information becomes available about an individual security or groups of securities on EMMA.

The MSRB's EMMA website is the official source of data and documents for the municipal market. The free website contains information on more than 1 million outstanding municipal securities and displays real-time trade price and yield data for every municipal bond. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal market.

Date: June 27, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Hawkins Advisory: MSRB Rule G-42.

Read the Advisory.

June 23, 2016

Hawkins Delafield & Wood LLP

Why the SEC Barred a Former Charter School Operator From the Market.

WASHINGTON – The Securities and Exchange Commission has settled with a former Chicago charter school operator over charges that he negligently approved and signed a misleading official statement for a $37.5 million bond offering to build three charter schools.

Juan Rangel, the former president of Chicago-based UNO Charter School Network, Inc. and former chief executive officer of United Neighborhood Organization of Chicago, agreed to pay $10,000 and be barred from participating in any future municipal bond offerings to settle the charges. The SEC refers collectively to both organizations Rangel led as "UNO" throughout its complaint.

"We allege that Juan Rangel signed off on the offering document without even reading it," said David Glockner, regional director of the SEC's Chicago regional office. "This kind of negligent behavior is unacceptable in the securities markets."

One market participant said the settlement is especially noteworthy because "a significant portion of municipal officials who sign don't actually read the document."

"[The SEC is] basically saying there has to be a widespread change in the actions of municipal officials with respect to approving official statements," the market participant said.

Rangel, in a statement responding to the settlement, said he takes "full responsibility for not reading the document and should have done more than rely upon others to brief [him] on its contents."

"Although questions were raised about UNO's overall school construction and contracting processes, it is important to note that new schools were indeed built for our community with every penny documented and accounted for," he added.

The settlement is related to a prior one between UNO and the SEC in 2014 over charges that UNO defrauded investors in the same $37.5 million 2011 bond offering.

The 2011 bond issuance listed UCSN as borrower, UNOC as guarantor, and the Illinois Finance Authority as the conduit issuer. UNOC and UCSN were both liable to repay the proceeds of the bonds and had to rely on per pupil revenues that they would receive from Chicago Public Schools in exchange for operating the charter schools to do so. Some of the schools that would generate revenues still had to be built.

In 2009, the state of Illinois appropriated $98 million to fund school construction by UNO. In connection with the appropriation, UNO entered into two grant agreements with the Illinois Department of Commerce and Economic Opportunity (IDCEO) to build three schools. Each grant contained a conflicts of interest provision that required UNO to certify that there was no conflict of interest at the time that it signed the grant agreements and that it would immediately notify IDCEO in writing of any conflicts of interest that arose after the signing. IDCEO could suspend the payment of the grants and recover any grant funds that had already been paid if it found UNO violated the conflicts provision.

During 2011 and 2012, the SEC found that UNO violated the conflict of interest provision by engaging one company and approving the engagement of another company, both of which were owned by brothers of the then chief operating officer of UNOC.

UNO contracted to pay one of the companies, a window subcontractor, roughly $11 million to supply and install windows and the other about $1.9 million to serve as an owner's representative during construction.

Each of the engagements required Rangel's approval.

The official statement for the 2011 bond issuance that Rangel signed failed to disclose the engagement of the window subcontractor as well as the breach of the conflict of interest provision in one of its grant agreements by engaging the owner's representative and approving the window subcontractor without notifying IDCEO, the SEC found. The official statement also did not explain that IDCEO could recoup its grant money because of the failure.

The SEC said in its complaint that reasonable investors would have wanted to know those facts.

IDCEO discovered UNO's failure to disclose the conflicts of interest after the Chicago Sun-Times published an article in 2013 about UNO's use of the Illinois grant funds. IDCEO suspended one of the grants after discovering the failure. At the time of the suspension, UNO had received $25 million of the $53 million IDCEO had agreed to provide under the grant.

The SEC found that Rangel directly and indirectly violated Section 17(a)(2) of the Securities Act of 1933, which says it is unlawful to obtain money or property through untrue statements or omissions of material facts.

The Bond Buyer

By Jack Casey

June 21, 2016

SIFMA Submits Comments to the SEC on MSRB Rule G-12 Proposal.

SIFMA provides comments to the Securities and Exchange Commission (SEC) in response to the MSRB proposal to update MSRB requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer fail transactions.

Read SIFMA's Comments.

June 22, 2016

MSRB: New Rules Coming this Summer.

Core Rules and Effective Dates for Municipal Advisors

Duties of Non-Solicitor Municipal Advisors

Rule G-42 to establish the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities
Effective June 23, 2016

Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

Amended Rule G-37 to extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business
Effective August 17, 2016

Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

Amended Rule G-8 to establish recordkeeping requirements that apply when a municipal advisor makes a suitability determination or reviews the recommendation of another party
Effective June 23, 2016

Additional amendments to Rule G-8 to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons that apply to dealers and their associated persons
Effective August 17, 2016

Preservation of Records

Amended Rule G-9 to require municipal advisors to preserve for six years the records required to be made concerning political contributions
Effective August 17, 2016

MSRB Makes ABLE Offering Documents Available on EMMA.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that for the first time, an offering document about securities established by states under the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) is available on the MSRB's Electronic Municipal Market Access (EMMA®) website. The ABLE Act allows states to establish tax-advantaged savings vehicles that support individuals with disabilities in maintaining health, independence and quality of life.

ABLE offering documents—also known as program disclosure booklets—will be made available on EMMA both voluntarily by states and per MSRB regulations by municipal securities dealers involved in the primary offering of ABLE programs. The program disclosure booklet for the State of Ohio's ABLE program is now on EMMA.

"We are very happy to see that the first ABLE disclosure document was filed voluntarily by a state," said MSRB Executive Director Lynnette Kelly. "To promote a fair and transparent municipal securities market, we look forward to making all ABLE program disclosure booklets widely available to the public on EMMA."

ABLE programs sold by MSRB-regulated dealers, which underwrite other municipal fund securities such as 529 college savings plans, are required to comply with investor protection rules. These rules include providing a customer, no later than the settlement of the transaction, a copy of the program disclosure booklet, which now can also be found on EMMA.

The EMMA website is the MSRB's official repository for information on virtually all municipal securities, including municipal fund securities. EMMA provides free public access to official disclosures, trade data, credit ratings, educational materials and other information about the municipal securities market.

Date: June 21, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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SEC: Muni Advisors Acted Deceptively With California School Districts.

The Securities and Exchange Commission today announced that two California-based municipal advisory firms and their executives have agreed to settle charges that they used deceptive practices when soliciting the business of five California school districts.

An SEC investigation found that while School Business Consulting Inc. was advising the school districts about their hiring process for financial professionals, it was simultaneously retained by Keygent LLC, which was seeking the municipal advisory business of the same school districts. Without permission, School Business Consulting shared confidential information with Keygent, including questions to be asked in Keygent's interviews with the school districts and details of competitors' proposals including their fees. The school districts were unaware that Keygent had the benefit of these confidential details throughout the hiring process. Keygent ultimately won the municipal advisory contracts.

This is the SEC's first enforcement action under the municipal advisor antifraud provisions of the Dodd-Frank Act.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting also is charged with failing to register as a municipal advisor.

"These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

Without admitting or denying the findings in the SEC's orders instituting settled administrative proceedings:

- School Business Consulting agreed to a censure and a $30,000 penalty.
- The firm's president Terrance Bradley agreed to be barred from acting as a municipal advisor and must pay a $20,000 penalty.
- Keygent agreed to a censure and a $100,000 penalty.
- Keygent's principals Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000 respectively.

The SEC's investigation was conducted by Brian P. Knight, Monique C. Winkler, and Deputy Chief Mark R. Zehner of the Public Finance Abuse Unit with assistance from John Yun of the San Francisco Regional Office.

Date 13/06/2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker/dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker/dealers. SEC Rule 15c212 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

[SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.]()

WASHINGTON – In a first of a kind case, two California-based municipal advisory firms and their executives agreed to pay a total of $200,000 to settle Securities and Exchange Commission charges that they used deceptive business practices in dealing with five school districts.

This is the first enforcement action the SEC has taken under the municipal advisor antifraud provisions of the Dodd-Frank Act.

School Business Consulting, Inc. (SBIC) was censured and fined a $30,000 while its president and sole employee Terrance Bradley was barred from acting as a municipal advisor and agreed to pay $20,000. The other MA firm, Keygent LLC, agreed to a censure and penalty of $100,000 and two of its managing directors, Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000, respectively.

The SEC found that while School Business Consulting, through Bradley, was advising school districts about hiring financial professionals, it was simultaneously retained by Keygent LLC, which was seeking MA business from the school districts. During that relationship, Bradley improperly provided confidential information about the hiring processes of five school districts that were his clients to Keygent, Hsieh, and Wang, which may have led to the districts to hire Keygent as a municipal advisor.

The SEC found Bradley verbally disclosed his relationship with Keygent to the school district officials and Keygent's contracts with the school districts also disclosed that Bradley was on its advisory board, but the districts were not aware Bradley was sharing the confidential information.

The defendants settled the charges without admitting or denying the charges.

A spokesperson for Keygent said in a statement that Keygent "did not ask for this information, nor did [it] change [its] proposals or fees based on the information." However, the spokesperson said the firm acknowledges that mistakes were made and is taking responsibility.

"In addition to complying fully with the SEC's order, we have taken proactive steps to improve our compliance program and to ensure that all business practices are entirely in line with the SEC's regulations and best professional and ethical standards," the spokesperson said.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said municipal entities "should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

The events leading up to the enforcement action began in September 2010, when Keygent retained SBCI to serve on its advisory board for $2,500 a month. Bradley had numerous contacts in school districts across California and, through the relationship, Keygent gained access to those contacts with the possibility of introductions to officials in districts that Hsieh and Wang had identified as having refinancing opportunities, the SEC found.

Many of the school districts that Bradley solicited on Keygent's behalf were SBCI's own clients, the SEC said in its documents.

Bradley drafted, and assisted in drafting, the request for qualification documents that the five school districts used in their hiring process. Each of the school districts directed candidates not to make contact with anyone other than specified officials in an effort to make sure the candidates were on an even footing, the SEC found.

Despite that direction, Bradley gave Keygent information like advanced copies of draft interview questions and details of competitors' proposals, sometimes including competitors' fees, the SEC said. He also had discussions with Keygent about how to answer interview questions and suggested topics to bring up during the interviews.

Although Bradley recused himself from four of the five school districts' interview processes, citing a conflict of interest, he never informed the districts he was sharing the information and continued to recommend Keygent to the districts, according to the SEC. The one process in which he participated was at the discretion of the district after Bradley informed the officials of his believed conflict of interest.

The SEC found that SBCI violated Section 15B(a)(1)(B) of the Securities and Exchange Act because it was soliciting for Keygent without being registered as a municipal advisor. The SEC said Bradley, as the firm's sole employee, caused the violation.

SBCI and Bradley also violated Section 15B(c)(1) of the Exchange Act because they did not act consistently with their fiduciary duty to its client. Additionally, they violated Municipal Securities Rulemaking Board Rule G-17 on fair dealing and Section 15B(a)(5), which prohibits MAs from engaging in any fraudulent, deceptive, or manipulative act or practice, while soliciting a municipal entity.

The SEC found Keygent and Hsieh also violated Section 15B(c)(1) and MSRB Rule G-17. The commission also said Keygent, Hsieh, and Wang were a cause of SBCI's and Bradley's violations of Sections 15B(c)(1), 15B(a)(5), and Rule G-17.

The Bond Buyer

By Jack Casey and Lynn Hume

June 13, 2016

White: SEC Focused on Possible Puerto Rico Bond-Related Violations.

WASHINGTON — The Securities and Exchange Commission is "very focused" on examining whether there were any securities law violations involving Puerto Rico bonds as the commonwealth's fiscal situation deteriorated over the last few years, SEC chair Mary Jo White told the Senate Banking Committee on Tuesday.

She made her comments after Sen. Bob Menendez, D-N.J., pressed her on the topic during a committee hearing. After the hearing, Menendez and six other senators sent White a letter asking the SEC to investigate potential fraud and illegal conduct that may have contributed to Puerto Rico's debt and fiscal crisis.

"The people of Puerto Rico deserve to know whether illegal activity by advisors to Puerto Rico and its municipal entities contributed to the current debt crisis," Menendez said during the hearing.

The letter from the seven senators urged the SEC to "immediately commence an investigation into the acts, actions and activities in connection with the underwriting, sale, distribution and trading of Puerto Rico debt in the years leading up to the present crisis."

The commonwealth is currently struggling with roughly $70 billion in debt and $46 billion in unfunded pension liabilities.

The Senate lawmakers also asked White to update them on the recommendations listed in the 2012 Report on the Municipal Securities Market and "whether the SEC needs new authorities to better protect municipal entities in Puerto Rico and elsewhere."

Sens. Elizabeth Warren, D-Mass., Chuck Schumer, D-N.Y., Kirsten Gillibrand, D-N.Y., Jeff Merkley, D-Ore., Richard Blumenthal, D-Conn., and Bernie Sanders, I-Vt. co-signed the letter. White said during the hearing that the SEC has been involved in these issues, with its enforcement division releasing several actions related to Puerto Rico bonds over the last few years and its division of investment management issuing guidance for investors assessing Puerto Rico bonds.

"I can't comment on specifics [of] ongoing [actions] … but I think we can say that we are very focused on the issues you have raised," she told Menendez.

Legislation designed to help the commonwealth deal with its debt crisis has also passed the House and is now waiting for consideration in the Senate. One amendment that was added to the House bill before it was approved would provide discretionary authority to a seven-person oversight board to to investigate whether brokers and investment advisers either failed to disclose or misrepresented the risks of Puerto Rico securities sold to retail investors.

The SEC, along with the Financial Industry Regulatory Authority, settled with UBS Financial Services, Inc. of Puerto Rico for $34 million in September 2015 after the regulators found the firm failed to supervise the suitability of transactions in Puerto Rican closed-end fund shares. The commission also charged a former broker with fraud after he had customers invest in the CEFs using money borrowed from an affiliated bank.

The action against the former broker, Jose G. Ramirez, Jr., is ongoing in Puerto Rico district court.

UBS did not admit or deny the SEC's findings that between Jan. 1, 2009 and July 31, 2013 UBSPR allowed 165 customer accounts with conservative investment objectives and $2 million or less in assets to be more than 75% concentrated in highly leveraged CEF shares. By mid-August 2013, Puerto Rico's bond market had declined considerably and most CEF shares and Puerto Rico munis lost between 20% and 50% of their value.

The SEC also brought two cases in 2014 and 2015 that led to settlements with 14 firms that the SEC found had sold bonds in amounts below the minimum denomination set by the issuer.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in the official statement. Issuers sometimes set minimum denominations on bonds that are risky to discourage retail investors from buying them.

The Bond Buyer

By Jack Casey

June 14, 2016

Phoenix Investment Firm Probed on Muni-Bond Sales.

A financial regulatory group has accused a Phoenix investment company of securities fraud in connection with municipal bond sales to finance an Arizona charter school and two Alabama health-care facilities.

FINRA, or the Financial Industry Regulatory Authority, filed a complaint against Lawson Financial Corp. and Robert Lawson, the firm’s president and CEO, alleging securities fraud over the sale of millions of dollars worth of municipal bonds. Lawson denied the allegations in an interview with The Arizona Republic.

FINRA also charged Robert Lawson along with Pamela Lawson, his wife and the company’s chief operating officer, with self-dealing and misuse of customers funds by abusing their positions as co-trustees of a charitable-remainder trust. A statement released Thursday said they improperly used trust funds to prop up bonds issued for the charter school, Hillcrest Academy in Mesa, which is being opened as a campus of an unaffiliated company, the Leman Academy of Excellence.

The charter-school bonds were sold in a $10.5 million offering that Lawson Financial underwrote in October 2014. According to FINRA, the bonds were sold to Lawson Financial’s customers. Lawson Financial also sold muni bonds to raise financing for two assisted-living facilities in Alabama, the complaint said.

The complaint starts a formal proceeding by FINRA and doesn’t represent a decision on the allegations. Companies or individuals named in a complaint can file a response and request a hearing. The complaint could result in a fine, censure, suspension or ban from the securities industry, as well as restitution or repayment of any gains that resulted from the alleged actions.

Robert Lawson said he believes FINRA’s interpretation of the facts in the case and conclusions are incorrect. He said Lawson Financial will file a response and request a hearing.

“We’ve been in business in Phoenix for 32 years and always have tried to act in the best interest of our clients,” Lawson told TheRepublic.

The complaint alleges that Lawson and the company were aware of financial difficulties faced by Hillcrest and the two Alabama facilities and fraudulently hid from bond buyers material facts that the school and health facilities were under financial stress.

The complaint alleges that Robert Lawson, with the knowledge of Pamela Lawson, improperly transferred millions of dollars from the account to assist the bond borrowers. FINRA said this came at a time the bond issuers weren’t able to pay their operating expenses and, in some cases, were unable to make interest payments. Charitable-remainder trusts are vehicles that allow people to donate assets to a non-profit at death while receiving income from those assets while still alive.

Since 1988, Arizona charter schools have raised $1.5 billion in more than 120 municipal-bond sales, according to a 2015 report by Charter School Advisors. Arizona ranks second only to Texas in this regard, the report said.

Russ Wiles, The Republic | azcentral.com 5:50 p.m. MST May 19, 2016

Reach the reporter at russ.wiles@arizonarepublic.com or 602-444-8616.

GFOA Issues Alert on MCDC Initiative Settlement Terms for Issuers.

Issuers that self-reported under the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) initiative can expect to receive settlement offers containing standard provisions to which they must consent in the near future. The SEC is requesting an extraordinarily short turn-around for the settlement—5 to 10 days—but has indicated that it will extend the settlement offer upon request. This alert provides governments with an overview of the process and GFOA's recommendations that state and local governments participating in the MCDC initiative become familiar with the standard terms that are expected to be in the offered settlements. GFOA strongly recommends that issuers seek legal advice prior to finalizing or signing the proposed SEC settlement agreement and make sure they fully understand the consequences of the proposed settlement.

Click here for the alert.

Wednesday, June 8, 2016

MSRB Reminds Municipal Advisors of June 23, 2016 Effective Date of New Rule G-42.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that MSRB Rule G-42 on duties of non-solicitor municipal advisors and related amendments to MSRB Rule G-8 on recordkeeping become effective on June 23, 2016.

The new rule establishes core standards of conduct for municipal advisors that engage in municipal advisory activities, other than municipal advisory solicitation activities.

View the regulatory notice.

View the approval order.

Resources:
Watch an on-demand webinar (CPE credit available)
Read an overview of the rule for municipal advisors

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

On June 9, SIFMA and AMG jointly submitted a letter to SEC Chair Mary Jo White urging the SEC to amend Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issues is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance," said SIFMA president and CEO Kenneth E. Bentsen, Jr. “Additionally, SIFMA recently submitted our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance. Given the recent discussions at the MSRB, the SEC’s own efforts in this area, and the industry’s keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12.”

Read SIFMA’s letter to SEC

Download SIFMA Rule15c2-12 Whitepaper to SEC

MSRB: Implications for Supervisory Procedures of Newly Effective Rules.

With several MSRB rules for municipal advisors effective in 2016, the MSRB reminds municipal advisors to make any necessary modifications to their written supervisory procedures and compliance policies.

For example, provisions for municipal advisors of MSRB Rule G-20 related to gift-giving became effective on May 6, 2016. Accordingly, a municipal advisor’s written supervisory procedures should now include procedures reasonably designed to avoid improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal advisory activities of the recipients’ employers. Written supervisory procedures should include a description of how the designated municipal advisor principal(s) will monitor and review the municipal advisory activities of associated persons for compliance with Rule G-20.

Since 2015, municipal advisors have been required under MSRB Rule G-44 to have supervisory procedures and compliance policies “reasonably designed to achieve compliance with all applicable rules” and since April 23 2016, to certify annually “processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures.”

GFOA Issues Alert on Rule G-42.

The new G-42 rule from the Municipal Securities Rulemaking Board (MSRB) becomes effective June 23, 2016. Rule G-42, or Duties of Municipal Advisors, stems from the Dodd Frank Act and the SEC’s subsequent municipal advisor rule. This rule does not establish any responsibilities for issuers, but it does create numerous responsibilities for the municipal advisors that are hired by state and local governments. GFOA’s alert provides information on the types of information and written correspondence that municipal advisors will now be providing issuers, including disclosures of conflicts of interest and acknowledgement of the scope of services for which the advisor is hired. The primer also includes information on aspects of the overall municipal advisor rule and the types of exemptions that are in place when a party other than a municipal advisor provides advice to issuers.

Please click here to access the alert.

Wednesday, June 8, 2016

SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to amend its Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

The dealer group made its request for changes to the SEC rule in a letter sent to SEC chair Mary Jo White from SIFMA president and chief executive officer Ken Bentsen.

The letter highlights recent requests from market groups to modify the rule to include bank loan disclosure as well as a white paper from SIFMA in April pressing for modernization of Rule 15c2-12.

"Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12," Bentsen wrote.

The Municipal Securities Rulemaking Board has consistently urged issuers to voluntarily disclose their bank loans. But after concluding the disclosures are still lacking in this area, the board released a concept proposal in March asking market participants about a possible rule that would require municipal advisors to disclose information regarding their municipal clients' bank loans and private placements.

While some investor groups applauded the idea, many market groups said it would be harmful and ineffective. Almost every group that responded recommended that the SEC instead boost bank loan disclosure by requiring it under 15c2-12.

"SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is … made transparent to the market," Bentsen told White. "We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff."

SIFMA's white paper, released on April 12, recommended a number of updates to 15c2-12.

It suggested that when municipal advisors help prepare official statements, they share with underwriters the due diligence responsibilities for reviewing those documents to ensure the information is not false or misleading.

Leslie Norwood, SIFMA associate general counsel, co-head of munis, and author of the white paper, said that while the paper calls for muni advisors to take on some continuing disclosure responsibilities, it is not trying to shift dealer's duties onto them.

SIFMA also suggested that the commission eliminate the requirement that issuers file event notices for rating changes since those are now posted on the MSRB's EMMA system.

Additionally, the group also asked for the SEC to affirm the position it took in its initial proposing release for 15c2-12 that, given the structure of a competitive deal, "the task of assuring the accuracy and completeness of the disclosure [in competitive deals] is in the hands of the issuer."

SIFMA wanted the SEC to eliminate current complex language in 15c2-12 that dictates when a participating underwriter is expected to send customers copies of the final OS. Instead, the rule should require underwriters to provide final official statements to customers from when they are posted on EMMA until the offerings close, it said.

Rule 15c2-12 should also require issuers to set an actual date as the due date for their disclosures of annual financial and operating information, the group said in the white paper. Currently, issuers typically say the information will be disclosed within so many days after the close of the fiscal years, leaving underwriters to “burn brain cells” and count days, Norwood said at the time the paper was circulated.

Another recommendation is for the provision of 15c2-12 that exempts from disclosure requirements primary offerings with institutional investors to be expanded to explicitly include primary offerings with sophisticated municipal market professionals, qualified institutional buyers, and accredited investors.

An SMMP designation usually applies to banks, savings and loan associations, registered investment advisors, and any person or entity with total assets of at least $50 million. QIBS are defined by the SEC and must own and invest, on a discretionary basis, at least $100 million in securities or, if they are broker-dealers, must meet a threshold of $10 million. Accredited investors can be any individual who consistently earns $200,000 per year, has a net worth exceeding $1 million, or has a leadership role with the issuer of the security being offered.

The Bond Buyer

By Jack Casey

June 10, 2016

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The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker-dealers and financial advisors, as well as total securities industry employment.

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“I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective,” Decker said. “If it’s not the SEC … then states are in a perfect position to take that role.”

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The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

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"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

Washington, D.C., June 10, 2016 – In a letter to SEC Chair White, SIFMA president and CEO Kenneth E. Bentsen, Jr. urges the SEC to amend Rule 15c2-12, which covers dealers continuing disclosure obligations, and release additional guidance. The text of the letter is as follows:

"The Securities Industry and Financial Markets Association ("SIFMA") and SIFMA's Asset Management Group (the "AMG") together respectfully submit this letter to urge you to direct staff at the Securities and Exchange Commission (the "SEC") to develop a proposal to amend Rule 15c2-12 and release additional guidance.

"The Municipal Securities Rulemaking Board (the "MSRB") recently requested comment on a concept proposal to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients to the MSRB's Electronic Municipal Market Access ("EMMA") system for public dissemination. SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market. We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance. Additionally, SIFMA recently submitted to you our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance.

"Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12."

Release Date: June 10, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

MSRB Updates Content Outline for Municipal Advisor Qualification Exam.

Read the Outline.

SEC Said to Study Muni Bank Loan Disclosure That Vanguard Wants.

The U.S. Securities and Exchange Commission is considering whether to require state and local governments to disclose bank loans and private placements, according to people familiar with the matter, reflecting bondholders' concerns about the fast-growing segment of municipal finance.

The rule, known as 15c2-12, requires securities dealers to ensure that states and local governments report updated financial information and material events to bondholders. Mutual funds, investment banks and credit analysts have been pushing regulators to respond to extend such requirements to bank loans, which become more prevalent since the 2008 crisis, particularly among smaller borrowers.

“We need a full picture on the balance sheet of our issuers,” said Hugh McGuirk, who oversees $23 billion of municipal bonds at T. Rowe Price Inc. in Baltimore. “If we’re not seeing the breadth and depth of that market with the terms that go along with it that increases the probability of some sort of surprise.”

Direct lending by banks has proliferated in the $3.7 trillion market as states, local governments and non-profits find they can borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. In 2015, S&P Global Ratings evaluated 126 bank loans totaling $5.2 billion. Estimates of the size of the market run as high as $80 billion a year, said Nat Singer, chair of the Municipal Securities Rulemaking Board, the municipal market’s self-regulator.

Because loans aren’t classified as securities, states and cities aren’t immediately required to disclose them, despite the risk they can pose to bondholders. The loan terms can favor banks over other investors and add to a borrower’s financial risk.

For example, banks can demand accelerated principal and interest if a payment is skipped or a government’s cash falls below a specific target, which could push the borrower into a liquidity crisis if it can’t cover the bills. Such provisions last year led S&P to cut one Wisconsin town’s credit rating from the third-highest grade to junk until the terms were renegotiated.

“It has the potential to mask the level of indebtedness,” said Chris Alwine, head of municipals at Vanguard Group Inc. which holds about $160 billion of the securities. “ You might be in a subordinated position that you don’t know about.”

John Nester, an SEC spokesman, declined comment.

Since the SEC can’t regulate state and local government bond issuers, other than through the anti-fraud laws, it imposes its disclosure rules indirectly through its authority over banks.

In 1989, the SEC adopted Rule 15c2-12, requiring bond underwriters to review official statements before a municipal issuer publicly sold securities. It was amended in 1995 and added requirements for continuing disclosure, which the SEC last revisited in 2010.

The rule requires municipal issuers to disclose 14 types of material events within 10 business days, such as failure to pay principal and interest, draws on reserve funds or changes to the security of bondholders. The disclosures are posted on the MSRB’s website.

In January 2015, the MSRB asked the SEC to reconsider whether to require bank-loan disclosure. The regulator has encouraged issuers to voluntarily disclose key details about the loans on its online repository, but few municipalities have done so.

The MSRB’s call to revisit the rule has been joined by the Securities Industry and Financial Markets Association and the Bond Dealers of America, both of which represent underwriting firms.

Emily Brock, federal liaison for the Government Finance Officers Association, said the MSRB’s EMMA website isn’t user friendly, hampering voluntary disclosure of bank loans. GFOA encourages debt managers to voluntarily disclose.

"We're working with a system that can't accommodate the disclosure in an easy way," said Brock, whose organization hasn't taken a position on revisiting the SEC rules. "We too want quality data."

The SEC could use Form 8-K in the corporate securities market as a template for events that might be appropriate to include for continuing disclosure by municipal bond issuers. One such event is the "creation of a direct financial obligation or an obligation under an off-balance sheet arrangement."

"Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported," wrote then-MSRB Chair Kym Arnone to the SEC in 2015.

Bloomberg Business

by Martin Z Braun

June 16, 2016 — 7:35 AM PDT

SEC Settles First Muni Advisor Action Under Provisions of Dodd-Frank Act.

Investing.com — The U.S. Securities and Exchange Commission agreed to settle charges with two California-based municipal advisory firms on charges they used deceptive practices while soliciting business opportunities from five California school districts.

The enforcement action marks the first of its kind under the municipal advisor antifraud provisions of the Dodd-Frank Act. Under the enforcement action, the SEC found that School Business Consulting, Inc., a general consulting services company, advised several school districts about their hiring process for a financial advisory company, while it was retained by Keygent, LLC, an ElSegundo, California management consultant. At the same time, Keygent allegedly sought municipal advisory business from the same school districts associated with the consulting company. School Business Consulting, according to the SEC, allegedly shared confidential information with Keygent, including the fees charged by their competitors' proposals and potential questions likely to arise at interviews during the hiring process. Ultimately, Keygent benefited from the confidential information by winning the municipal advisory contracts.

Without admitting or denying the SEC's findings, School Business Consulting agreed to pay a $30,000, while the company's president Terrance Bradley accepted a ban from acting as a municipal advisor. Bradley also agreed to pay a $20,000 penalty. Keygent agreed to pay a $100,000 fine, while two of its principals, Anthony Hsieh and Chet Wang, agreed to fines of $30,000 and $20,000 respectively.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting engaged in the "solicitation of a municipal entity," since it received direct compensation from Keygent, the SEC said in an administrative order. Consequently, SBCI should have registered as a municipal advisor as soon as it started soliciting for Keygent, the SEC added. Section 975 of the Dodd-Frank Act prohibits municipal advisors from engaging in an y course of business that is not consistent with their fiduciary duty.

“These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors,” said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division’s Public Finance Abuse Unit. “Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty.”

Jun 13, 2016 08:26PM ET

SEC Announces Deal With Two California-Based Municipal Advisory Firms.

SAN FRANCISCO (Legal Newsline) – The Securities and Exchange Commission (SEC) announced that School Business Consulting Inc. and Keygent LLC will settle allegations of using deceptive practices when soliciting business from five California school districts.

According to the SEC, these school districts were using School Business Consulting to advise them on their hiring process for financial professionals. While this was underway, Keygent allegedly retained School Business Consulting. Keygent purportedly sought the municipal advisory business of the same school districts. School Business Consulting allegedly shared confidential information about the districts with Keygent.

“This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business,” Andrew Ceresney, director of the SEC Enforcement Division, said. “The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers.”

School Business Consulting was additionally charged with failing to register as a municipal adviser.

“These laws apply not only to municipal advisers, but also those who solicit business on behalf of municipal advisers,” LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division’s Public Finance Abuse Unit, said. “Municipal entities should be able to trust that their selection of a municipal adviser is untainted by any breach of fiduciary duty.”

School Business Consulting will pay $30,000, while its president will pay a $20,000 penalty. Keygent will pay $100,000 while its principals will pay $30,000 and $20,000 respectively.

by Mark Iandolo

Jun. 14, 2016, 8:03pm

MSRB to Launch Permanent Series 50 Exam September 12, 2016.

The Municipal Securities Rulemaking Board (MSRB) will make available the permanent Municipal Advisor Representative Qualification Examination (Series 50) beginning September 12, 2016. As provided for under MSRB Rule G-3, municipal advisor representatives are required to take and pass the Series 50 in order to engage in municipal advisory activities. The score required to pass the Series 50 exam is 71 percent.

Read the regulatory notice.

Refer to FAQs on the Municipal Advisor Representative Qualification Examination (Series 50).

Access information about the Series 50 exam on the MSRB's website.
