

Bond Case Briefs

Municipal Finance Law Since 1971

MSRB to Launch Disclosure Tool; Will it Lead to Dispute with DAC?

The Municipal Securities Rulemaking Board announced that it will soon launch a new tool to help municipal securities issuers keep track of the dates they must file periodic financial disclosures to its EMMA website.

But the announcement, which did not contain any details, has led some market participants to question whether this new tool will cause a dispute between the MSRB and Digital Assurance Certification, which sued the operator of a predecessor disclosure system in part because it alerted issuers when their disclosure documents were to be filed.

Asked about the this issue, MSRB Executive Director Lynnette Kelly wrote in an email on Wednesday, "We have assured ourselves that what we propose to do will not be precluded by any intellectual property claims of DAC."

Kelly said also that the MSRB has not entered into any arrangements with DAC.

Paula Stuart, chief executive officer of Orlando-based DAC, could not be reached for comment.

DAC sued the Texas Municipal Advisory Council, which operated the Central Post Office, a central collection place for issuers' secondary market disclosure documents, in January 2007, less than a month after DAC obtained a patent for its disclosure services.

The CPO was created by the Texas MAC for the Muni Council, about 20 muni market groups trying to improve muni bond disclosure. It began operating in September 2004 and was billed as a "one-stop" system for muni issuers or their agents to file secondary market disclosure documents.

The Securities and Exchange Commission's Rule 15c2-12 bars firms from underwriting muni securities unless the issuers have contractually agreed in writing to file annual financial information and operating data, as well as notices when material events occur.

Initially issuers had to file the documents with several nationally-recognized municipal securities information repositories, but issuers complained about the duplicative efforts. Additionally, the NRMSIRs operated their systems and filed the documents differently, making it hard to some dealers and banks to meet their disclosure obligations, which included checking issuers' material event notices and determining if issuers were filing financial disclosures on the dates they had specified for bondholders.

So the Muni Council worked with the Texas MAC to create the CPO, which collected issuers disclosures and sent them to the NRMSIRs.

In its lawsuit against the Texas MAC, which was filed in a federal court in Florida, DAC claimed that it had created a disclosure collection and dissemination system about three years before the CPO started operating and that DAC's system it was designed to be a one-stop filing system for issuers. It

asked the court to shut down the CPO.

The Texas MAC fought the suit, claiming the MSRB had started collecting disclosure documents long before DAC began operating.

DAC even forced the SEC to both remove any mention of the CPO from its website and to back away from the idea of essentially requiring issuers to use the CPO in order for firms to underwrite their bonds.

In May 2007, DAC and the Texas MAC agreed to the first of a series of steps to resolve the litigation, including that the Texas MAC would no longer send issuers receipts for their disclosure documents or alerts when those documents were due or not received on time.

The suit was finally settled in June without any money exchanging hands. The Texas MAC agreed to make changes, including disabling a feature that sent emails to CPO customers alerting them to filing deadlines for their annual financial and operating information.

In December, the SEC designated the MSRB's EMMA system as a free, central repository to which issuers must file bond-related secondary market documents beginning on July 1, 2009. At that time, the MSRB essentially replaced the CPO and the NRMSIRs as a collector and repository of secondary market disclosure filings. MSRB had been collecting and maintaining primary disclosure documents — official statements and escrow agreements for refundings — for many years before that.

by: LYNN HUME