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MSRB Prioritizes Best Execution, Fiduciary Duty Rules.

The Municipal Securities Rulemaking Board will request comment on a best execution rule for the municipal market as early as this calendar year, and has also decided to prioritize rules governing municipal advisors, beginning with a fiduciary duty rule.

MSRB leaders announced the decisions Monday in a conference call following the board of directors' meeting in Alexandria, Va. last week. The meeting was the first for the fiscal year 2014 board, and the first since the release of the Securities and Exchange Commission's final rule on municipal advisor registration. MSRB Executive Director Lynnette Kelly said the board directed staff to develop a best execution rule based on the Financial Industry Regulatory Authority's rule governing corporate bonds, and would tackle fiduciary duty, supervision, political contribution, gifts and gratuities, and conduct rules for MAs in the coming months.

Kelly said that the best execution rule could be put out for public comment prior to the board's next meeting in January, and though based on the FINRA rule, would take the unique characteristics of the muni market into account. Broker-dealers have been wary about such a rule, which would require them to make an effort to execute transactions with prices as favorable as possible for their customers, as required in the corporate bond marketplace. Dealers have warned that copying the FINRA corporate rule would not work for the municipal bond market because munis are traded infrequently and there is no central platform where dealers can check prices quickly.

MSRB chairman Daniel Heimowitz, who assumed the role Oct. 1, said the board had a very robust discussion about municipal advisor rulemaking. He said that the MSRB would attempt to "define and clarify" the obligations of MAs under the fiduciary standard mandated by the Dodd-Frank Act, with particular attention to when that duty begins and ends for the advisor. Heimowitz said that while underwriters have a fair idea of when their roles begin and end on a particular transaction, the timing is a bit more unclear for MAs.

"We want to be as precise as we can be," Heimowitz said.

The chairman declined to be specific about when a fiduciary duty rule could be put out for comment, but said he was optimistic it could be well before next summer. Both Kelly and Heimowitz said the board would not be recycling rule proposals issued two years ago under the SEC's first crack at municipal advisor, proposals that the MSRB withdrew after the SEC decided not to move forward with its original MA rule.

"This is a new board," Heimowitz said. He added that as the MSRB moves forward, it will continue to host webinars and publish educational materials for MAs, who have not been subject to MSRB regulation before.

"We committed to an educational process," Heimowitz said.

Kelly said the new rules will be subject to the MSRB's new policy of formally incorporating economic analysis into the process, which will be visible in the requests for comment. She said the analysis does entail more work for MSRB staff “on the front end”, but would not be the cause of any delay in the process.

The board also decided to file with the SEC its proposals to consolidate existing rules and guidance on both fair pricing and MSRB registration. One proposal would consolidate guidance from the MSRB’s fair dealing and prices and commissions rules into a single fair-pricing rule. The other seeks to create a single rule, A-12, governing MSRB registration. That would allow the board to eliminate its Rules A-14 on an annual fee, A-15 on notification to the board of a change in status, name or address, and G-40 on electronic mail contacts, as well as Forms RTRS and G-40, according to the MSRB. The SEC has the authority to approve the rules, reject them, or seek further comment.

Kelly said the board also conducted a comprehensive review of professional qualifications exams and continuing education requirements for municipal securities dealers, and will issue a proposal seeking to amend the continuing education requirements sometime before the next meeting.

BY KYLE GLAZIER