

Bond Case Briefs

Municipal Finance Law Since 1971

MSRB Holds Quarterly Meeting.

Alexandria, VA - The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 30 - August 1, 2014 in Chicago, Ill., where it approved the advancement of significant regulatory proposals to enhance the transparency and integrity of the municipal securities market. These proposals include:

- Enhancing disclosure of pricing information for retail investors
- Expanding the availability of pre- and post-trade data on the MSRB's Electronic Municipal Market Access (EMMA®) website
- Establishing rules to curb pay-to-play practices for municipal advisors and the giving of gifts in their professional capacity
- Requiring all municipal advisors to take a professional qualifications exam

Price Transparency

In the MSRB's continued focus on enhancing price transparency for municipal securities investors, the Board developed a proposal regarding disclosure of information by municipal securities dealers to their retail customers to help them better understand some of the factors associated with the costs of their transactions. The proposal focuses on disclosure on customer confirmations of the price of a corresponding dealer transaction in the same security that occurs on the same day as the customer trade. The proposed approach would provide investors with information generally already publicly available on the MSRB's EMMA website but would provide it directly to investors in connection with their transactions so they can independently assess the prices they are receiving from dealers. The proposal, which will be published for public comment this fall, will also broadly seek input on alternative regulatory approaches, including markup disclosure on confirmations for trades that could be considered riskless principal transactions.

The MSRB has previously stated that it is working with the Financial Industry Regulatory Authority as it develops a similar proposal for the corporate bond market. The two regulatory authorities will continue to coordinate their approaches to the extent possible in advance of the public comment process.

"The MSRB recognizes the importance of a coordinated and workable approach to providing investors with additional information about the market for the securities they trade," said MSRB Board Chair Daniel Heimowitz. "We are committed to publishing a proposal that can be shaped with public input into regulations that address improved transparency."

In a related effort on price transparency, the MSRB Board approved a forthcoming request for comment on enhancing its Real-time Transaction Reporting System (RTRS) to collect additional post-trade information for public display on EMMA. MSRB market structure staff also will continue engaging in outreach with market participants to gather additional input for the first phase of an incremental approach for collecting and disseminating bid-wanted information and other pre-trade data on EMMA.

Additionally, the Board agreed to proceed with its proposed rule establishing a “best-execution” standard for transactions in the municipal market, with an exception for transactions with sophisticated municipal market professionals. The MSRB will seek Securities and Exchange Commission (SEC) approval of this first explicit obligation for dealers to use “reasonable diligence” when handling orders and executing municipal security trades for retail investors to obtain a price that is as favorable as possible under prevailing market conditions.

Municipal Advisor Regulation

As part of its ongoing effort to implement a comprehensive regulatory regime for municipal advisors, the Board agreed to publish for public comment a proposal to amend MSRB Rule G-37, the MSRB’s landmark pay-to-play rule for municipal securities dealers, to also cover municipal advisors. The proposal would prohibit municipal advisors from engaging in municipal advisory business with municipal entities for two years if certain political contributions have been made to those entities’ officials. The rule proposal intends to ensure that the high standards and integrity of the municipal securities market are maintained by municipal advisors.

Similarly, the Board agreed to request comment on applying to municipal advisors its existing rule governing the giving of gifts by municipal securities dealers to persons whose employers are engaged in municipal securities activities, MSRB Rule G-20.

“Establishing appropriate pay-to-play and gift regulations for municipal advisors will help ensure that all regulated municipal market professionals are held to the same standards of integrity,” said Chair Heimowitz. “Uniform rules on pay-to-play activities and gift-giving will serve to effectively and fairly guard against corruption, an appearance of corruption and conflicts of interest in the municipal market.”

The Board also agreed to seek approval from the SEC on an earlier proposal to set baseline professional qualification requirements for municipal advisors. The Board reviewed the comment letters received on its proposal to create two classes of municipal advisor professionals – representatives and principals – and to require all municipal advisor representatives to take and pass an exam within a year of its availability. The MSRB plans to file its proposed rule with the SEC without significant change.

The professional qualifications rule will be the third new municipal advisor rule filed with the SEC since the SEC’s adoption of a final definition of “municipal advisor” in September 2013. Last month, the MSRB filed its proposed supervision and compliance rule for SEC approval. In April 2014, the MSRB implemented a fee for municipal advisor professionals. The MSRB is continuing to solicit input on its revised draft rule to create core standards of conduct for municipal advisors through August 25, 2014.

Other Business

In addition to price transparency initiatives and municipal advisor rulemaking, the MSRB Board discussed and approved the annual operating plan and associated budget for the upcoming fiscal year in support of the organization’s strategic goals. Consistent with the MSRB’s risk management policy, the Board also reviewed the organization’s top risk report, which is the product of the MSRB structured risk management program to strengthen internal control environment and accountability, ensure responsible stewardship of all MSRB assets and generate information to inform strategic and operational decision-making.

