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Lawyers Question Rating Disclosure Requirements.

NEW ORLEANS — Many bond lawyers feel that, with all municipal rating agencies already or preparing to beam rating changes to EMMA, the Securities and Exchange Commission should amend its rules so that issuers no longer have to worry about filing event notices of their upgrades and downgrades.

Many attendees at the National Association of Bond Lawyers' Tax and Securities Law institute conference here expressed that sentiment over two days in panel discussions and in separate interviews. The conversation is being driven by the Municipal Securities Rulemaking Board's announcement earlier this month that the ratings of Moody's Investors Service would soon begin appearing live on EMMA, joining those of Standard & Poor's, Fitch Ratings, and Kroll Bond Rating Agency.

The SEC's Rule 15c2-12 on disclosure prohibits dealers from underwriting bonds unless they reasonably determine that the issuer has entered into an agreement to disclose via EMMA its audited financial and operating information as well as "material events," including rating changes, when they occur.

During a panel discussion on continuing disclosure Thursday, MSRB executive director Lynnette Kelly said she hoped Moody's would begin providing ratings on EMMA and live updates to those ratings as soon as May. Panelist Bill Hirata, a former general counsel to Digital Assurance Certification who now runs his own firm in North Carolina, asked SEC muni office chief counsel Rebecca Olsen if the commission would drop rating changes from 15c2-12's material events list.

"Right now we're closely monitoring this development," Olsen said.

The conversation continued at a later panel on disclosure policy, where several lawyers were confident that the SEC would soon drop requiring issuers to manually upload notices that their ratings had been changed.

"They have to," one bond lawyer said.

Another attorney said that because of the new technology on EMMA, the SEC would be unlikely to think an issuer materially breached its continuing disclosure agreement by not uploading a notice of the rating change. But a few were less sure and thought the SEC might still think that was a problem.

"They would," another lawyer said. "The SEC would."

Ben Watkins, the director of Florida's division of bond finance and a lawyer himself, said in a separate interview that the current disclosure rule has never worked very well and that it might be time for the SEC to come around to adjusting it.

"Sometimes it's better to acknowledge that there's a defect in the system," Watkins said.

The rule has been the subject of much talk following an SEC Paperwork Reduction Act request made late last year for comments on the burdens associated with complying with the rule. Many market participants submitted comments that went beyond that scope, including NABL, which questioned the efficacy of many parts 15c2-12 in the digital age. The MSRB has called for the commission to take a comprehensive look at the rule.

The NABL conference concluded Friday.

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