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Muni Groups Mull Using Auditors, EMMA To Boost Disclosure Compliance.

WASHINGTON - Muni market groups are considering changes to issuer audits, improvements to EMMA, and additional guidance from regulators as part of a collaborative effort to shore up continuing disclosure and prevent additional rules or enforcement actions from the Securities and Exchange Commission.

The groups, which include the Government Finance Officers Association, the National Association of Bond Lawyers, the Securities Industry and Financial Markets Association, and Bond Dealers of America talked about these ideas at their second full meeting last week after first joining together in late October. Representatives from the National Association of Municipal Advisors, the Investment Company Institute, and National Federation of Municipal Analysts also were in attendance.

Dustin McDonald, director of GFOA's federal liaison center, said the groups are "still trying to feel out what might be the most effective tools to inspire and improve continuing disclosure compliance" but that it is a topic "everyone's really digging into and is excited about."

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said she anticipates the collaboration is "going to be a productive effort" that produces reasonable changes.

Securities Industry and Financial Markets Association managing director and co-head of municipal securities Michael Decker added SIFMA is committed to enhancing municipal disclosure and believes there is a common interest in moving forward on the discussed initiatives in "due course."

The effort to address continuing disclosure compliance comes as the SEC is expected to soon announce settlements with issuers under its Municipalities Continuing Disclosure Cooperation initiative. Under that program, issuers and underwriters are to get lenient settlements for self-reporting any time during a five-year period that an issuer said it was in compliance with its continuing disclosure obligations, when it was not. The SEC has already settled with 72 underwriters, ordering them to pay a total of \$18 million in fines for selling bonds using offering documents that contained material misstatements or omission about issuers' compliance with their continuing disclosure obligations. The SEC is now turning to issuers.

The groups have been concerned that the SEC could use the disclosure failures uncovered by the MCDC initiative to show that the commission's Rule 15c2-12 on disclosure is not working and that the SEC needs authority to regulate issuers. They contend this would be a particularly bad time for additional regulation as they adjust to a flurry of new rules for dealers and municipal advisors.

The muni groups have so far focused mostly on ways to work with auditors to ensure issuers are meeting their disclosure obligations. The groups are exploring whether the existing process for auditing issuers' financials could be modified so that auditors include disclosure compliance assessments in their opinions on issuers' comprehensive annual financial reports. Such a system could particularly help smaller or less frequent issuers and conduit issuers that have traditionally

had the most trouble keeping compliance systems in place. The groups talked with the American Institute of Certified Public Accountants and included several accountants present during their meeting.

They also considered how the Municipal Securities Rulemaking Board could help, particularly by making it easier to file and locate issuers' disclosure information on its EMMA site.

Giroux said the form of these changes is tricky because there is a question of whether market participants have to more effectively file information on the system or the MSRB staff has to better maintain EMMA to make sure filed information is listed in the right areas. She added that the MSRB is "on the same page" with the groups and supports the goal of improving disclosure to better help muni investors access important information.

In addition to the possible auditor assistance and changes to EMMA, the groups will likely put together some requests for guidance from the SEC. There is no set form those requests will take, but group members expect the requests to at least focus in part on gathering more specifics about the best way for issuers and dealers to comply with 15c2-12 as well as further attempts to find out what information the commission views as material.

The SEC has refused to establish any bright line tests to determine what information is material, saying that, according to case law this determination must be made by investors.

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