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MSRB To Weigh Complaints on Proposal to Determine Markups.

WASHINGTON - The Municipal Securities Rulemaking Board plans to weigh complaints it recently received on a proposal for determining markups, as well as comments on close-out procedures for dealers, during its meeting here next week.

At the meeting, scheduled for April 13 and 14, the board will also consider continuing education requirements for municipal advisors and possible enhancements to the MSRB's EMMA system to improve market transparency.

The board's proposed changes to its Rule G-30 on prices and commissions for determining markups mesh with an already established Financial Industry Regulatory Authority process that requires dealers to consider a "waterfall" of factors in determining the prevailing market price and markups or markdowns.

The board must decide whether to file the proposal with the Securities and Exchange Commission for approval.

Issuers and dealers criticized the MSRB's proposal with the harshest critique coming from Ben Watkins, director of bond finance for Florida. He said the "stringent definitions and interpretations of rules" found in the MSRB proposal would "only burden the market."

The Government Finance Officers Association did not submit a comment letter, but Dustin McDonald, director of the group's federal liaison center, said Watkins' comments reflects' GFOA's stance on the issue.

Both Bond Dealers of America and the Securities Industry and Financial Markets Association also complained about the administrative burden dealers would face. They argued the FINRA-based proposal does not fit the municipal market and should instead allow dealers the flexibility to adopt firm-specific policies and procedures within parameters the MSRB establishes.

However, SEC Investor Advocate Rick Fleming told the MSRB that his office supports the goal of the proposal and urged that it be tightened. He raised concerns about possible loopholes for non-arm's length affiliate transactions, where two dealers doing business with one another are part of the same company.

The discussion on close-out procedures will focus on SIFMA and BDA comments to an MSRB proposal released in January that would mandate municipal securities transactions be closed out within a 30-day period.

This would change a more than 30-year-old portion of Rule G-12 on uniform practices that the board believes would lessen the effect of interdealer transaction failures on the market. The MSRB currently recommends that dealers who fail to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

SIFMA responded to the proposal by recommending the MSRB cut the allowable period of time for close-outs to within 15 days of settlement, with the caveat that if both sides in a transaction agree more time is needed, they can extend the timeline another 15 days on a case by case basis.

BDA had concerns about the MSRB keeping the interdealer options for remedying a failed transaction the same through the transition, warning some dealers may not be able to utilize them or could run into prohibitive costs.

The options would allow the purchasing dealer to either: choose a “buy-in” and go to the open market to purchase the securities; choose to accept securities from the selling dealer that are similar to the originally purchased securities; or allow the purchasing dealer to require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB discussion of continuing education requirements for MAs follows a Dodd-Frank Act mandate that the board establish such requirements. The MSRB already administered a pilot professional qualification exam for MAs in January and February and plans to have a formal exam later this year.

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