Bond Case Briefs

Municipal Finance Law Since 1971

Muni Entities Could Get Rebates, MSRB Says.

For nine years, Lynnette Kelly has led the Municipal Securities Rulemaking Board as it carries out its expanded investor-protection mission under the Dodd-Frank Act with respect to state and local governments and other municipal entities.

Now, the self-regulatory organization is weighing what to do with the extra reserves it has collected and may possibly issue rebates to regulated entities, Kelly, the MSRB's executive director, told Bloomberg BNA in a May 10 interview.

The board took in $41.3 million in 2015, 29 percent more than it generated the previous year (07 SLD, 1/12/16). The MSRB ended its 2015 fiscal year with approximately 16-months' operating reserves, versus the 12-month operating expense target, Kelly said. The reserves indicate the length of time the MSRB could operate with no funds being generated.

Revenue, Reserves, Rebates

"We've had a history of under-spending," Kelly said. Just because the board is sitting on extra cash doesn't mean it will spend it right away, she warned. Any excess funds flow into the board's reserves.

The board's revenue comes from primarily three sources: underwriting volume, trading volume, and ancillary revenue such as annual fees, subscriptions, and fines.

Currently, the finance committee is crafting a policy to address when organizational reserves exceed or fall below certain established levels (75 SLD, 4/19/16). Since the current reserves exceed the established reserve target by four months, the board is deciding what to do with the money. In the past, the board has issued rebates to regulated entities, Kelly said. In fiscal year 2014, for example, the board announced a discretionary technology fee rebate of $3.6 million to reduce reserve levels. The rebate was distributed to entities that paid the technology fee between Jan. 1 and June 30, 2014.

The board has several options other than rebates, Kelly said, including using the extra funds to enhance the Electronic Municipal Market Access website—EMMA—website. The final decision should be made by the board's July meeting and any rebate would likely be announced in August.

Muni Advisor Exam

Kelly is also overseeing the rollout of the first-ever qualifying exam for municipal advisors, a three-hour test tentatively scheduled to launch Sept. 12.

The board and a group of industry experts worked three years to develop the test—the Municipal Advisor Representative Qualification Exam (Series 50)—which will determine whether an individual is qualified to serve as a municipal advisor. It should also help weed out "bad actors" in the industry who don't put their clients' needs first, Kelly said.

Municipal dealers who don't also act as municipal advisors won't be required to take the Series 50 exam, as they have separate qualification requirements already in place.

New Authority

The Dodd-Frank Act gave MSRB authority to regulate municipal advisors, a group of approximately 4,000 professionals who advise state and local governments on municipal bond and other investment-related matters, and those who solicit muni bond business from issuers on behalf of others. Currently, municipal advisors who don't also serve as dealers aren't regulated by the MSRB or subject to qualification standards.

About 1,700 municipal advisors took a pilot exam in January (174 SLD, 9/9/15). Pilot participants will be notified of their results the week of May 30. Those who passed the pilot exam are considered qualified and won't have to sit for the new exam, Kelly said. Once registration for the test opens, the remaining 2,300 advisors will have a one-year grace period to pass the exam with a score of 71 percent or better.

The board is also considering how to develop a continuing education program for municipal advisors (75 SLD, 4/19/16). Once an advisor passes the exam, he or she won't have to re-test to keep the qualification current; continuing education is all that will be required. Many advisors also double as municipal dealers, so it's important to make sure there is no duplication of effort, Kelly said. The board is considering tailoring the continuing education requirements to each firm's specific needs, she said, but hasn't made a final decision. It plans to seek comments in the fall.

After the Series 50 exam gets underway, the board plans to create an additional qualification test for those serving as principals—those who manage and supervise the activities of municipal advisors.

Other Concerns

The board also is working with the Financial Industry Regulatory Authority on rule changes to require municipal dealers and member firms to disclose the amount of the mark-up on retail customer confirmations (33 SLD, 2/19/16) (39 SLD, 2/29/16). "It's a top priority that's moving along very quickly," Kelly said.

After reviewing comments on draft rule changes, the board is collaborating with FINRA to determine whether additional changes are needed to make the MSRB standard consistent with the FINRA standard for broker-dealers selling corporate securities.

A rule proposal should be filed with the Securities and Exchange Commission sometime this year, Kelly said. The board is also developing a measure for establishing the presumptive prevailing market price to ensure that retail investors are able to better compare transaction costs.

The board also is going to tackle the issue of bank loans to muni issuers. "Local governments should have access to all financing options, but the lack of disclosure surrounding bank loans is troubling," Kelly said. It has encouraged muni issuers to voluntarily disclose those loans on its public online repository, but that effort has proved ineffective (21 SLD, 2/2/16) (20 SLD, 1/30/15). Recently, the MSRB turned to muni advisors as a possible disclosure option and sought comment on whether its new powers under Dodd Frank enable it to require advisors to make the disclosures (60 SLD, 3/29/16) (207 SLD 207, 10/27/15). Comments are due at the end of May, and the MSRB board will consider them in July.

Bio

Before joining the board, Kelly, from Nelson, Neb., was a managing director and associate general counsel at the Securities Industry and Financial Markets Association where she focused on best market practices in the fixed income markets.

Kelly’s interest in the municipal industry began at the University of Nebraska, where she majored in urban design. Through her course work, she learned the importance of infrastructure financing.

After earning her law degree at Tulane University School of Law, Kelly worked on municipal finance matters at several New York law firms. She also served as general counsel for the Municipal Assistance Corporation for the City of New York.

Bloomberg BNA

from Securities Law Daily

By Antoinette Gartrell