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Why MSRB Is Giving a \$5.5M Rebate to Dealers.

WASHINGTON - The Municipal Securities Rulemaking Board plans to rebate \$5.5 million proportionally among dealers, file a proposal with the Securities and Exchange Commission on markup disclosure, and scrap the idea of requiring municipal advisors to disclose information about their issuer client's bank loans or privately placed municipal securities.

The board approved these actions at a wide-ranging meeting late last week.

The rebate will go to dealers that paid underwriting, transaction, or technology fees in the first nine months of the MSRB's fiscal year 2016, which started on Oct. 1, 2015. The decision was part of the board's discussions about the MSRB's budget and operating plan, both of which received approval.

MSRB executive director Lynnette Kelly said the rebate is a result of, among other things, the self-regulator consistently coming in under budget, which pushed the reserve funds above the board's set target. The last time the MSRB gave a rebate was in 2014.

The markup proposal the MSRB board approved for filing with the SEC would require dealers acting as principals to disclose on retail customer confirmations the markups and markdowns on same-day muni transactions, a departure from an earlier proposal to only incorporate trades within two hours of the transaction. The filing would also include guidance on how to calculate the prevailing market price, previous versions of which dealers and issuers have criticized as unworkable and overly burdensome to dealers. The markup disclosure proposal is a "top priority of the board right now," Kelly said. "I would expect [the filing] would be within the next couple of months."

The MSRB's most recent proposed changes to its Rule G-30 on prices and commissions to facilitate prevailing market price calculations is similar to a process the Financial Industry Regulatory Authority already uses. The process would require dealers to base their determination on a "waterfall" of factors, such as contemporaneous trades of the same or similar munis.

The MSRB plans to make some changes to the prevailing market price calculations in light of market participants' comments but the changes are still in progress, Kelly said. She added the board will continue coordinating with FINRA on markups.

Many market participants had also criticized the MSRB's now abandoned bank loan concept release, saying it would, among other things, threaten MAs' fiduciary duty to their clients under MSRB Rule G-42, which lays out municipal advisors' core duties. Many of the groups instead said the best way to ensure bank loan disclosure would be to amend SEC Rule 15c2-12 on disclosure, under which the SEC regulates, among other things, the actions of broker-dealers in primary offerings of munis.

Kelly said the MSRB board still believes that disclosure of alternative financings is important for assessing a municipal entity's creditworthiness but added the commenters brought up good points, such as the possible unintended consequence of an issuer foregoing an MA to avoid having to disclose bank loans.

"The MSRB will continue to raise awareness of the need for bank loan disclosure among regulators and market participants," she said. "We also plan to encourage industry-led initiatives that support voluntary disclosure best practices."

Kelly said the MSRB plans to enhance its EMMA system both on the submission side and search side in response to criticisms from issuers and others about the difficulty they have had filing and finding bank loans on EMMA. Issuer officials who sit on the Government Finance Officers Association's debt committee expressed their frustrations about EMMA's bank loan system to MSRB chair Nat Singer in May during a meeting at the GFOA's annual conference.

In addition, the MSRB may soon get information such as yield curves from third parties which will it provide on EMMA. Board members agreed during their meeting that such information would benefit investors and issuers. Kelly said the information will be added "in the not too distant future."

The board plans to discuss an update to the MSRB's 2012 Long-Range Plan for Market Transparency Products, which includes EMMA improvements, but will wait until it has its strategic planning session in January 2017, Kelly said.

The board plans to file with the SEC amendments to Rules G-8 and G-9 on record-keeping as well as to G-10 on delivery of the investor brochure to both modernize requirements for dealers' handling of complaints by customers as well as to establish such requirements and processes for municipal advisors. The MSRB has not created a complaint system for MAs yet because of the self-regulator's relatively recent regulatory authority over advisors.

Additionally, the MSRB plans to file two interpretations with the SEC for immediate effectiveness related to Achieving a Better Life Experience (ABLE) programs, which allow individuals to open tax-advantaged savings accounts to help support individuals with disabilities. The MSRB is treating the ABLE accounts similarly to 529 college savings plans. The proposed interpretation for MSRB Rule G-42 on core duties of municipal advisors will explicitly provide that current 529 plan and local government investment pool guidance is equally applicable to ABLE programs. It will also clarify in its Rule G-44 on MA supervisory and compliance obligations that MA sponsors or trustees of 529 or ABLE plans are subject to the rule's supervision requirements.

The board will also file a change with the SEC for immediate effectiveness to Rule G-45 on reporting of information on muni fund securities. The change will delay the date that submissions are due from underwriters of ABLE plans to the reporting period ending June 30, 2018.

An additional and separate rule amendment the board approved would change Rule G-34, which details when underwriters and financial advisors must apply for a CUSIP number assignment for a new municipal issuance. The amendment would harmonize the definition of underwriter in Rule G-34 with that listed in Rule G-32. Rule G-32 takes its definition from that provided in SEC Rule 15c2-12(f)(8), which includes but is not limited to "a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering."

Kelly said the MSRB historically has included placement agents and dealers that purchase securities from an issuer as principal in Rule G-34's definition of underwriter, but that the change would codify that interpretation.

The Bond Buyer

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