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MSRB Extends Effective Date, Clarifies Provisions in Markup Filing.

WASHINGTON - The Municipal Securities Rulemaking Board wants to amend its proposal to require dealers to disclose their markups and markdowns in certain transactions by lengthening its implementation timeline and clarifying provisions that market participants have criticized.

The MSRB filed its proposed amendments, which also made two changes in what a dealer would have to disclose on the confirmations, with the Securities and Exchange Commission late Monday.

The MSRB's original proposal, filed with the SEC for approval on Sept. 2, would modify MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The modifications would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

They also would establish a waterfall of factors for determining prevailing market price, which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Dealers had said in past comment letters that the one-year implementation timeline the MSRB had proposed would not give them adequate opportunity to address the complex changes that would be needed to automate compliance with the waterfall. They also pointed out that they will be dealing with other large market changes like the shift to a two-day settlement cycle at the same time.

The MSRB is now proposing to extend that timeline by six months in an effort to "assist dealers in meeting the requirements of the proposed rule change and mitigate the costs of implementations," according to the self-regulator.

John Vahey, managing director of federal policy for Bond Dealers of America, said that BDA is "happy to get an additional six months," but said dealers "could have used a longer time in light of all the rules that are out there."

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA appreciates the extended implementation period to

deal with the “monumental set of operational changes for dealers” under the rule.

The MSRB’s amendments would also make two changes to the information dealers would have to include on their customers’ confirmations. Dealers would only have to include the time of execution on confirmations to retail investors and not on confirmations for institutional customers as they would have been required to do before. The MSRB said it concluded that the likely costs of requiring dealers to give the information on institutional confirmations may exceed the benefits of the disclosure.

Dealers would also now be required to disclose, in a format specified by the MSRB, a reference and, if the confirmation is electronic, a hyperlink, to a webpage on EMMA that contains publicly available trading data for the specific security that was traded. That language is more generic than the original filing, which would have required dealers to disclose a link to a specific existing page on EMMA.

The MSRB said that using the slightly more general language would allow it to continue trying to make the landing page for investors that access EMMA more retail investor-friendly.

Two other changes the MSRB proposed would serve to clarify provisions of the rule. One would make clear that the rule would be triggered only when a customer trade for a non-institutional account has an offsetting principal trade. Another would modify the inclusion of spread in the non-exclusive list of relevant factors a dealer could use to determine whether a security is similar for purposes of calculating prevailing market price.

The original filing used the example of a spread between munis and U.S. Treasury securities of a similar duration for a prevailing market price determination, but market participants noted that Treasuries are most relevant to taxable munis, not tax-exempt bonds. In response, the MSRB is clarifying that dealers can consider the extent to which the spread over an “applicable index” at which the similar municipal security trades is comparable to the spread at which the subject security trades.

The Bond Buyer

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