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MSRB to Pull its Proposed Minimum Denomination Rule from the SEC.

WASHINGTON - The Municipal Securities Rulemaking Board is pulling its proposed standalone minimum denomination rule from the Securities and Exchange Commission after dealers argued it is overly complex and would hamper liquidity.

The SEC must approve the rule for it to take effect. But the board decided to pull the rule back during its quarterly board meeting here last week where it discussed comments market participants had submitted to the SEC.

The board also decided to seek a second round of comments on its controversial proposal to require CUSIP numbers for private placements and publish guidance for so-called solicitor municipal advisors, an MA that solicits issuers or others borrowers for business on behalf of certain other professionals.

The board is instructing its staff to have more discussions with stakeholders as it further considers the future form of the stand-alone minimum denomination rule, according to MSRB executive director Lynnette Kelly. The current minimum denomination requirements under MSRB Rule G15 will remain in place as the discussions continue, she said.

“The feedback [on the proposal] was very specific and quite negative,” Kelly said. “Given that feedback, the board decided it wanted to obtain more information regarding any proposed amendment and, in order to allow for this because of an upcoming statutory deadline for the SEC to act, the board agreed to withdraw its current rule proposal with the SEC and ... conduct additional outreach to a diverse, broad group of municipal market participants.”

Kelly added that the MSRB specifically will be soliciting feedback from issuers, which did not submit comments to the SEC on the proposal.

The standalone Rule G49, as it was proposed, would have contained current requirements from MSRB Rule G15 that prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by issuers. It also would have included two current exceptions to the prohibition as well as one more exception first proposed in April 2016. That exception would allow a dealer that has bought a customer’s liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

The standalone rule also would have eliminated the current requirement in G15 that a dealer, in some situations, must obtain a “liquidation statement” from a party that isn’t its customer but rather the party from which the dealer purchased the securities. The current rule requires the liquidation statement to be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

By taking away the liquidation statement, the MSRB felt that another safeguard was needed for an

existing exception under G15 that says a dealer can sell a below-minimum amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

It proposed a new “safeguard” that would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB’s goal by preventing the creation of additional below-minimum positions, the MSRB said.

Dealer groups complained that the proposed new safeguard would have limited interdealer transactions and thus liquidity.

Tom Dannenberg, Bond Dealers of America’s chair, said the proposed rule was complex and that the board had lost sight of the original intent of the regulations, protecting small investors.

The MSRB is going out for a second round of comments on the CUSIP rule proposal after participants said the change would have negative repercussions for the muni market in part because banks looking for loans would be dissuaded from buying municipal securities. Many market groups refer to the proposal as a change, but the MSRB has held that it is more of a clarification of its longstanding interpretation of its rule. The proposal additionally requires non-dealer MAs acting as financial advisors in a competitive sale to get CUSIPs.

Kelly said the first proposal “was quite proscriptive” and that the proposal underlying the next request for comment will be designed to provide dealers flexibility when they are acting as placement agents. It “will be more principles-based, which will give dealers more flexibility but require that dealers establish certain policies or procedures or conversations internally about whether or not a particular transaction needs a CUSIP,” Kelly said.

The MSRB, responding to other criticisms, is also holding off for the time being on an SEC filing about its proposed advertising rules designed to harmonize advertising regulations for dealers and MAs. An advisors’ group complained the proposal did not do enough to distinguish between dealers and MAs. The board instructed its staff to continue working on that proposal.

The board will be publishing regulatory guidance for solicitor municipal advisors some time in May, Kelly said, to provide more clarity and promote understanding of the MSRB rules that apply to those participants. The guidance will cover, among other things, registration, professional qualifications, supervisory responsibilities, and conflicts of interest.

There were also discussions on future staff work to study the way MSRB rules have affected municipal advisors and the current state of primary offering practices in the market.

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