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Market Wary of Planned MSRB Primary Offering Concept Release.

PHOENIX – Market participants are a bit mystified about what the Municipal Securities Rulemaking Board could be looking for in its upcoming concept release on primary offering practices, although some groups are working to update their own guidelines.

Issuers, dealers, and municipal advisors all told The Bond Buyer that they are unaware of any pressing problems or uncertainties in primary offering practices or MSRB rules governing primary offerings.

The board announced last month that it plans to put out a lengthy concept release sometime in the next couple of months that will seek market input on numerous aspects of primary offering practices. Concept releases are the generally the precursor to proposed new rules or rule changes. But unlike the federally-mandated municipal advisor rulemaking the board has spent much of its time on during the last several years, the genesis of this effort is more difficult to pin down.

“They’ve been talking about this for a little bit,” said John Vahey, managing director of federal policy for Bond Dealers of America. Vahey noted that the MSRB has now moved through the rulemaking mandated by the Dodd-Frank Act, which included setting up a new regulatory regime for muni advisors, and is now taking a look at its other rules. The MSRB has multiple rules that touch on primary offering practices including Rule G-11, on primary offering practices and Rule G-32, on disclosures in connection with primary offerings, as well as rules on the collection of certain data.

“We don’t yet know what this concept release is going to look like,” said Vahey. “Our members pound on the table about niche issues, but to my knowledge they’re not really focused on MSRB rules on primary offerings.”

“Nothing is jumping off the page at me,” he said.

MSRB executive director Lynnette Kelly recently hinted at a connection between the board’s primary offering effort and the Securities and Exchange Commission’s August 2015 enforcement case against Edward Jones. In that case, its first on primary market pricing of bonds, the SEC ordered the St. Louis based, retail-oriented dealer to pay more than \$20 million for overcharging retail customers for new munis.

The SEC found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, and the former head of its syndicate desk, took bonds into the firm’s own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

The firm has since dropped out of the negotiated underwriting business. But while sources acknowledge that the Edward Jones case is likely a factor in the MSRB’s effort to update its rules, they said they generally prefer for the market to produce guidance or update practices rather than

regulators.

“That is a process that we as a trade association are doing as well,” said Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association. Norwood said that SIFMA has long maintained a model document for a master agreement among underwriters, a contract setting forth the legal relationships between syndicate members in a negotiated offering. Norwood said SIFMA feels that master agreement has served well, but is nonetheless working on updating it and hopes to have that done in the next few months.

“We’re looking at it as market participants working together contractually,” Norwood said. “The MSRB is certainly looking at it from a rules-based approach. We’re following the MSRB’s process towards rule change.”

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said GFOA members want to address the topic of primary offering disclosure in a new best practice that will be considered for approval this year, but that it has not lobbied the MSRB to propose further regulations on dealers or muni advisors. The MSRB does not regulate issuers, but does have a Dodd-Frank mandate to protect them.

“There are gray areas,” Brock said. “But no, we’re not asking for more regulation.”

The National Association of Municipal Advisors is also unsure of the MSRB’s specific aim, but has a general list of topics for which it will watch.

“NAMA will develop comments in response to specific practices the MSRB’s upcoming proposal will address,” said Susan Gaffney, the group’s executive director. “Some areas we will watch for include – ensuring issuer objectives are being followed, including structuring decisions; whether or not MSRB rules correspond with new Internal Revenue Service issue price rules; and if there are ways to enhance EMMA so that additional data can be utilized when pricing bonds.”

The MSRB has not committed to a timetable for the concept release, but has indicated it would likely be sometime in the fall.

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By Kyle Glazier

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