

# **Bond Case Briefs**

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## **Primary Offering Practices, Strategic Plan Among Topics at MSRB Meeting.**

WASHINGTON — The Municipal Securities Rulemaking Board will consider various topics at its meeting next week, including the market comments it received on whether new rules or guidance are needed on primary offering practices.

The board, which will meet Jan. 24 and 25, also said it will discuss the use of discretion in customer accounts and the potential of consolidating requirements in existing MSRB rules, as well as establishing limited, new requirements for greater consistency with similar rules of other regulators.

Another topic to be considered, according to an MSRB notice, is a proposed rule filing to update certain provisions of its professional qualification standards in its Rule G-3 so that they are in line with similar standards of other regulators.

The board will also review its multi-year strategy, its progress on efforts to facilitate understanding of and compliance with regulatory obligations, and its policy on interpretive guidance.

The MSRB published a concept proposal in September asking for input on numerous aspects of primary offering practices, which are covered by its Rule G-11. Also, the board's Rule G-32 covers the disclosure that must be made in connection with primary offerings.

But dealer and municipal advisor groups responded that they didn't think the board needed wholesale changes in its rules on primary offering practices and even questioned the MSRB's authority for certain suggested changes.

The board asked, for example, whether it should amend its Rule G-11 to require members of syndicates to make a bona fide public offering of the bonds allocated to them at the public offering price.

Syndicate members sometimes agree to this in documents signed before the sale, but do not always follow through on it.

The Securities Industry and Financial Markets Association told the MSRB that underwriters must abide by their agreements and said no new requirement should be created.

"SIFMA strongly believes that the issuer has the right to determine whether it wants its new issue to be sold in a bona fide public offering or by some other means," SIFMA said in its comments.

The dealer group said it was concerned that such a rule would require "line drawing" to account for instances where a bona fide public offering would be inappropriate, such as in a private placement or limited offering.

"Any such line-drawing raises the considerable risk of regulations driving market decisions rather than the intentions of the party or free market forces," SIFMA wrote in its comments to the board.

SIFMA also said that it doesn't see a need for a new MSRB requirement for the senior syndicate manager to inform all other syndicate members simultaneously when a bond purchase agreement is executed, and explicitly state that, in negotiated sales, retail or institutional priority orders must be allocated up to the amount of priority set by the issuer before being allocated to lower priority orders.

The National Association of Municipal Advisors took issue with the MSRB's question of whether it should require the submission of preliminary official statements to EMMA. Some issuers already submit POS' to EMMA voluntarily.

"We believe that the MSRB lacks the statutory authority to create such a rule for either municipal advisors or broker/dealers and that such a requirement would violate the Securities Exchange Act" of 1934," NAMA said in comments.

Not all of the comments were negative.

Robert Doty, the president and proprietor of muni bond consulting company AGFS told the board that it should amend G-32 to require a dealer that sells any offered municipal securities to a customer to disclose all of its compensation in a negotiated offering that is dependent upon the completion of either specific stages in an offering or the entire offering.

Doty noted that undisclosed compensation based on specific stages of the transaction were key pieces of a 2016 Securities and Exchange Commission enforcement action against the Rhode Island Economic Development Corporation and Wells Fargo (WFC), in which the commission alleged a conflict of interest that should have been disclosed to bond investors.

The MSRB can choose to ask for additional market comments, propose rules or rule changes for further comment, file proposals with the SEC, or take no further action.

By Lynn Hume

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