

Bond Case Briefs

Municipal Finance Law Since 1971

Commentary: Reflections on the Municipal Market's Distinctive Regulatory Approach.

Oversight of the \$3.8 trillion municipal securities market is grounded in the concept of “self-regulation.” Under this long-standing model, the public and private sectors work together to protect investors’ ability to participate in a critical capital market that supports infrastructure financing, economic development and job creation in communities around the country.

The self-regulatory organization (SRO) model capitalizes on the collective and specialized knowledge of market practitioners to develop rules of conduct that are subject to strong government oversight, and, importantly, provides the financial resources to maintain a robust regulatory regime. While the SRO model has been periodically reexamined, federal lawmakers have largely reaffirmed the benefits of self-regulatory oversight of the capital markets. The Municipal Securities Rulemaking Board, which was created by Congress in 1975 to regulate the municipal securities market, has distinctive characteristics that can provide an important perspective in the ongoing dialogue about self-regulation.

There are four key advantages of the MSRB’s SRO model, outlined in a new report from the MSRB. First, Congress has given us clear marching orders, with our jurisdiction and mission well-defined in federal law. The MSRB is the only SRO specifically established by Congress, which authorized the MSRB to write rules of fair play for municipal securities dealers and municipal advisors, subject to oversight by the U.S. Securities and Exchange Commission. Congress enshrined in the federal securities laws the mission of the MSRB: “to protect investors, municipal entities, obligated persons, and the public interest, and to promote a fair and efficient market.” This statutory mandate gives the MSRB clear direction about its purpose, authority and jurisdiction. We adhere to our mission with the greatest sense of responsibility to those we are charged to protect and to the integrity of the market.

Second, our governance structure and regular engagement with stakeholders allow us to leverage the diverse and specialized expertise our market requires. The 21 members of our Board of Directors have the knowledge and experience to address the complexities and needs of the municipal securities market. Board members lend insights from their time managing investment portfolios, overseeing and advising on bond issuance in city budget offices, structuring transactions at underwriting desks and everywhere important decisions are being made about municipal securities. While the Board has strong and diverse representation of the dealers and municipal advisors who must follow our rules, the majority of the Board represent the interests of those our rules are designed to protect—bond investors, issuers and the public. A majority-public Board minimizes the risk that regulated entities, particularly large firms, could dominate the Board and perhaps improperly influence rulemaking.

The Board’s considerable experience and expertise allow the organization to design and develop practical rules that are specifically tailored to the municipal securities market. Further, the MSRB’s commitment to economic analysis and a participatory rulemaking process ensures market participants and the public can provide input and data on the potential effects of MSRB rules as they

are developed.

Third—and something that distinguishes us from many other financial market SROs—we don't run a securities exchange or answer to shareholders, and therefore have no profit motive. There is no centralized exchange marketplace for municipal securities because of the size and diversity of the market. Rather, the MSRB operates a free public platform—the Electronic Municipal Market Access (EMMA®) website—that centralizes previously diffuse municipal securities information and brings an entirely new level of transparency to the market.

The MSRB is completely self-funded and receives no taxpayer dollars. Our operations are funded primarily through fees on the entities we regulate. This reliance on industry for our revenues makes it even more important to hold ourselves to the highest standards of financial sustainability, corporate transparency and public accountability. In addition to publishing annual audited financial statements, we also now publish an annual budget summary, which demonstrates our strict financial management and illustrates how our resource allocation supports our mission-driven activities.

Fourth—and this is another distinction from our fellow SROs—we have no enforcement authority. Many SROs have the ability not only to write rules governing their members, but also to enforce those same rules. The MSRB has exclusive jurisdiction to write the rules for municipal market professionals, but we play a supporting role to other agencies when it comes to enforcement. This separation of rule-writing and rule-enforcement prevents dealers and municipal advisors, including MSRB Board members, from exerting any influence on the zealotry of enforcement of MSRB rules.

The SRO model leverages the benefits of the public and private sectors, with government providing oversight, and representatives of industry contributing insight into the practical realities of implementing regulatory objectives. The MSRB's distinctive SRO structure—defined in federal law, highly specialized, free of profit motive and without enforcement authority—effectively and efficiently achieves the benefits of self-regulation while mitigating the potential for conflicts of interest.

Our promise to the industry we regulate is to always remain open to dialogue about how we can do better. We are public and transparent about our regulatory agenda, releasing a list of regulatory discussion topics in advance of each quarterly Board meeting and publishing a summary of the Board's decisions immediately following each meeting. We participate in scores of market events each year, host dozens of educational webinars and regularly meet with trade groups to share information and respond to questions. We welcome the chance to contribute to an ongoing conversation about how to improve the execution of the MSRB's unique SRO model.

The Bond Buyer

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