# Bond Case Briefs

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## Muni Regulator to Seek Comment on 'Pennying' by Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board, seeking comment on various initiatives and potential guidance, wants feedback on “pennying” or “last look” practices by dealers, and how they may reduce market liquidity.

MSRB president Lynnette Kelly said Monday that the board agreed at a meeting last week to seek public comment on potential rule updates and interpretations on several market practices.

Pennying occurs when a dealer places a retail client’s bid-wanted out to the market and determines the winning bid, but then, rather than executing the trade with the winning bidder, instead marginally outbids the high bid and buys the bonds for the dealer’s own account.

Market participants will be asked to comment on draft interpretive guidance for dealers that would clarify existing regulations on the practice. The MSRB raised concerns about pennying in a letter to the Securities and Exchange Commission in October.

The MSRB has previously released guidance warning dealers against putting out a bid-wanted solely for the purpose of price discovery so that they can buy the bonds for their own accounts. Pennying was one of two market practices the MSRB said it was concerned about in last year’s letter to the SEC’s Investor Advocate.

While the practice is beneficial to the retail customer in the short term, Kelly said Monday that the MSRB remains concerned about the broader implications of the practice.

“If the practice is widespread, that will disincentivize other firms to bid,” she said. “It’s possible that this practice could negatively impact liquidity.”

The board also agreed to publish a request for comment on the merits of any potential changes to 2012 guidance on its Rule G-17 on fair dealing covering duties owed by dealers to issuers when underwriting municipal securities. The guidance laid out a variety of disclosures underwriters are supposed to make to issuers at the beginning of a transaction, including the disclosure that underwriters are not fiduciaries and not required to act in the best interests of issuers. Kelly said the disclosures have largely become boilerplate and extremely lengthy, and that there is probably a lot of “room for improvement” in that practice.

“With over five years of experience with the application of our Rule G-17 guidance, we think it is the appropriate time to engage in a retrospective review to determine its effectiveness, as well as any opportunities to improve the guidance,” Kelly said.

The board also discussed other retrospective reviews, including potential guidance or uniform practices for underwriters related to the dissemination of information about new bond issues and refunding transactions.

The board approved proposed amendments to its Rule G-3 on professional qualification requirements and to Rule A-16 on examination fees, related to the filing of the Municipal Advisor

Principal Qualification Examination (Series 54) content outline to formally establish the Series 54 exam. The proposal includes a 12-month grace period for municipal advisor principals to take and pass the Series 54 exam once the permanent exam becomes available following a pilot of the exam.

The board also discussed some current topics, such as the fast-approaching effectiveness of new markup disclosure requirements on May 14, and the SEC's proposal earlier this month to require a broker-dealer to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. Kelly said discussions about that proposal, known as Regulation Best Interest, were "very preliminary" but could have implications for the MSRB's suitability rule if the SEC were to move forward with the proposal.

The next MSRB board meeting is scheduled for July 18-19.

By Kyle Glazier

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