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MSRB Opts to Chuck Year-Old Rule Amendment in Unusual Step.

The municipal market is saying goodbye to a year-old requirement for all municipal advisors when advising on competitive sales.

At the Municipal Securities Rulemaking Board's quarterly board meeting last week, it decided to do away with Rule G-34's provision that all municipal advisors, whether dealer or non-dealer, have to apply for a CUSIP number in competitive sales. The MSRB still has to file the change with the Securities and Exchange Commission and get it approved.

"It is a rare step for the MSRB to rescind a new requirement so soon after adoption, but we learned through the comment process that the requirement imposed burdens on municipal advisors that were not necessary or appropriate in light of the limited benefits to the functioning of the market," MSRB Chair Gary Hall said in a press release.

Hall said the board determined that no real market harm was being solved with the provision, which only took effect last year after being approved by the SEC in late 2017, so it made sense to eliminate it.

"The hope is that you won't do this frequently, but we thought this alteration was warranted." Hall said.

The provision was part of the MSRB's ongoing retrospective rule review. Market participants were torn on the requirement, some saying it should be an underwriter's job and that apply for CUSIP's was burdensome to MA's, while other market groups disagreed and said the rule did not need to be revisited.

Hall emphasized the issuers could still request that their MA's obtain CUSIP's on their behalf.

The board also addressed at its meeting SEC Chair Jay Clayton's comments in December on improving the timeliness of financial disclosures. The MSRB will file a proposal with the SEC on looking for ways to enhance its EMMA site to enhance transparency of the timeliness of the issuers' annual audited financials.

The board considered a "counter" approach for enabling more transparency on filing times on EMMA. A counter would allow stakeholder to know how long it has been since an issuer has filed a financial statement and indicate how recent the issuer's information is.

The MSRB could take existing information on EMMA and put it into a format so that the user can have a better sense of when the issuer actually filed their annual financial information either audited or unaudited, said MSRB President and CEO Lynnette Kelly.

After filing, the MSRB will reach out for comments from the market.

“We want the entire community to engage in a public comment period because there clearly are lots of different perspectives on this very complicated issue and we think the public comment period can elicit all of those comments and concerns from different market participants,” Kelly said.

The board adopted its \$42 million budget for the fiscal year that begins Oct. 1, 2020, a \$2 million increase from last fiscal year. The MSRB will publish an executive budget summary on Oct. 1.

The increase was due to a temporary fee reduction they did for dealers for underwriting, transaction and technology fees last year, the MSRB said. Dealers had a three-month break in 2018 from paying those fees.

The board also discussed changes to the current fee structure for regulated entities. About 80% of the MSRB’s revenue is driven by market volume, connected to dealers. There will be a focus to see how that could be more equitable given increased work done in the MA space since muni advisors became regulated.

The board also elected new board members and leadership which will be announced in August. Hall’s term as chair ends Sept. 30.

The board is set to issue guidance soon on prearranged trading under its Rule G-11, on priority of order provisions, and Rule G-17 on fair dealing. The guidance could be similar to a current request for comment published in January.

In March, dealer groups responded in comment letters writing that the MSRB cast too wide a net with its January guidance and want clarification on what conduct constitutes a violation of Rule G-17.

The guidance warned that arrangements in which a dealer firm uses an intermediary to allow the firm to purchase bonds it might not have been able to obtain itself are against the rules and a threat to market integrity.

The type of prearranged trading the MSRB is focused on occurs when, prior to the completion of the distribution of a new issue, a dealer that is not a member of the underwriting syndicate arranges to purchase the bonds at or above the list offering price from either a syndicate member or an investor, typically once the bonds are free to trade. The non-syndicate dealer enters into the prearranged trade to increase the likelihood that it can purchase the bonds for its own account because an order for an investor would receive a higher priority allocation than an order placed directly by the non-syndicate dealer for its own account.

Participants in those arranged trades could be violating G-17, G-11 and G-25 on improper use of assets, the guidance said.

However, some groups said the guidance goes too far in roping in dealers who are not part of an underwriting syndicate.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 07/29/19 02:53 PM EDT