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Muni Market Divides Over Disclosure.

Nearly a year after Securities and Exchange Commission Chairman Jay Clayton raised concerns about muni investors relying on stale disclosure, a fundamental disagreement has emerged about whether issuers are doing enough to provide fresh information.

While investor analysts seek more frequent continuing disclosure, underwriters and issuers maintain that the data they provide in accordance with the agreements they enter into when they sell their bonds is adequate. That impasse has been a subject of increased contention in recent months, and reared its head again Tuesday during a panel discussion at The Bond Buyer's California Public Finance Conference.

"When they are in compliance, it's still not enough," said William Oliver, a panelist who is industry and media liaison for the National Federation of Municipal Analysts.

The panel's discussion on the subject of regulation focused on the question of disclosure of interim financial information, something that has been a hot topic especially since Clayton's initial December, 2018, pronouncement that he is concerned that investors in the muni market are relying on information that is many months old.

Clayton has returned to the topic in other public statements, and NFMA earlier this year acted on his interest to ask for the SEC to provide guidance about the types of information it would consider valuable to improving disclosure. Issuers have said that producing audited financials necessarily takes time, and have raised concerns that they might expose themselves to liability if they were to post interim unaudited financial information that turned out to be inaccurate.

"Maybe we should focus in on compliance with the continuing disclosure requirements as written," said Leslie Norwood, a managing director and head of munis at the Securities Industry and Financial Markets Association. Norwood said she wanted to make sure to draw a distinction between issuers who are not living up to their continuing disclosure agreements and those who are in compliance.

She noted that in sectors where the market has demanded interim data, such as healthcare, it has become the standard practice for issuers to release that information much more regularly. But most investors are able to sell their bonds without doing so, she said, adding that it may be unwarranted to impose additional responsibilities on issuers. She wondered whether this is what investors really want.

"It is what investors want," Oliver said. "It's what they've wanted for the last 25 years."

Heidi Schrader, the debt and treasury manager for the City of Riverside, California, pushed back on the ideas that issuers could reasonably provide this information and that investors are demanding it.

"We don't operate on a profit like a corporation, and we have limited resources," she said. "We're not having any problems selling to the market because they do think we have sufficient disclosure."

Daniel Kurz, a vice president at Morgan Stanley (MS), said he doesn't think issuers are being

penalized in the primary market due to any perception of sluggish disclosure.

“In today’s market, we’re not seeing a pricing penalty,” he said.

“I do think it can impact the secondary market,” he added, explaining that some investors might choose to hold off on a purchase until fresh financial information comes out. But in the primary market, with such strong demand and moderate supply, issuers aren’t suffering due to their disclosure agreements.

Kurz said underwriters can be hesitant to ask issuers to agree to more regular disclosure in a continuing disclosure agreement because issuers often say they can’t provide accurate information more quickly.

“We’d rather have the information be late than inaccurate,” Kurz said.

By Kyle Glazier

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