U.S. Senator Asks SEC to Examine Puerto Rico Debt Negotiations.

A top ranking Republican U.S. Senator wants the Securities and Exchange Commission to examine the U.S. Treasury Department's possible involvement in creditor negotiations over restructuring of Puerto Rico debt.

Senator Orrin Hatch, the head of the finance committee, is asking the SEC to investigate the information shared between some investors, Puerto Rico and U.S. government officials about the island's fiscal state. He also requested the agency look into any potential illegal activity by brokers, advisers or underwriters.

Hatch asked in a June 23 letter to SEC Chair Mary Jo White that the agency investigate "whether information asymmetries, including asymmetries between public investors and government officials of Puerto Rico and the U.S. government have led to acts, actions and activities in violation of laws designed to protect investors and the integrity of the municipal debt market."

Judith Burns, a spokeswoman at the SEC, declined to comment.

The letter is the latest request to the regulatory agency to examine Puerto Rico's securities. Seven Democratic senators, the AFL-CIO and New York City Council Speaker Melissa Mark-Viverito have all urged the SEC to look into the island's debt.

Puerto Rico pushed a record amount of its bonds toward default by declaring on Thursday a moratorium on debt payments, after President Barack Obama signed a law shielding the commonwealth from investor lawsuits.

Bloomberg Business

by Michelle Kaske

June 30, 2016 — 3:51 PM PDT

Who Should Police Municipal Markets?

A questionable bond sale in Illinois has left some wondering why there's no one to stop financially troubled governments from borrowing.

Borrowers have long assumed that banks and other traditional lenders will only loan them as much money as they can responsibly afford. Almost a decade ago, the subprime mortgage crisis shattered that belief. But it might still persist in the municipal market.

Take Illinois, whose fiscal woes are no secret. It has the lowest credit rating (BBB+) — by far — of

all 50 states, its pensions are among the worst-funded in the country and it's entering its second fiscal year without a budget. Yet earlier this month, Illinois borrowed more than a half-billion dollars from municipal market investors with relative ease.

The state paid a higher interest rate for its troubles. But thanks to the high demand for municipal bonds these days, the rate was actually lower than the one Illinois paid on its last bond issuance in January.

"That's the biggest weakness of the municipal market," said Matt Fabian, managing director for Municipal Market Analytics. "We will help issuers borrow as much as they say they want, whether or not they can afford it."

No one is saying Illinois won't pay back the debt — it gives bondholders a high priority when it comes to repayments and it has a dedicated reserve fund for paying its bonds. Still, before Illinois went to market, a major investor in U.S. municipal debt said the bond sale should be boycotted. Citing the state's budget impasse and poor pension funding, BlackRock's Peter Hayes said investors "should really be penalizing [Illinois] in some way."

Illinois was penalized — to a degree. An analysis by DePaul University policy professor Martin Luby shows that the 3.75 percent interest rate the state was charged on 10-year bonds was about twice as high as that of a AAA-rated state. That difference is called the spread, and in Illinois' case, the spread on its bonds was even wider than it was in January before the state's most recent credit rating downgrade. That widening equates to a roughly $12 million financial condition penalty for the state's credit deterioration between January and June, meaning the state received that much less in proceeds from the sale.

"The financial condition penalty is somewhat obscured [by the fact that] interest rates are so low," added Luby. "But if this were the state of Maryland or Minnesota, they would have borrowed at 2 percent. There's a real cost associated with that."

The question of who, if anyone, should be in charge of fiscal discipline in the municipal market is a relatively new one. Before the 2008 financial crisis, it was incredibly rare for a government to default on debt. In addition, a lot of bonds were insured. Bond insurers are the closest the muni market has ever got to fiscal policing, according to Fabian. That's because before guaranteeing insurance on the debt, insurers have the power to ask a government for changes in the bond deal or in the government's own finances.

What's more, it's rare for issuers not to pay: Fewer than 1 percent of municipal bonds go into default. But high-profile municipal bankruptcies following the Great Recession in Detroit and Stockton, Calif., where bondholders swallowed significant losses on general obligation bonds, has some investors nervous.

"This is very new to the municipal market because in this cycle you're getting people who aren't actually made whole," said Marc Bushallow, managing director of fixed income at Manning & Napier.

There are no proposals on the table for how to police municipal markets should investors ever demand it. For now, it seems the bar is set relatively high for a government to actually be denied access to the market. Were it not for a lack of interest from investors, for instance, no one would have kept Puerto Rico's water utility from borrowing hundreds of millions in debt to avoid defaulting on an upcoming payment. This, despite the fact that the island has already defaulted twice on other bond payments and was seeking protection from Congress to restructure its massive $70 billion in

debt.

Since investors are more interested in their own bottom lines, they're unlikely to act to stop troubled governments from borrowing. A good clue as to whether investors even think about credit worthiness lies in who buys government bond debt in the first place. Puerto Rico's last major bond issue, for example, was mostly bought up by hedge fund firms, known for chasing high yield and often riskier assets.

GOVERNING.COM

BY LIZ FARMER | JUNE 30, 2016

BDA Submits Comment Letter to SEC on MSRB's Proposal to Update Close-Out Procedures.

Today, BDA submitted a comment letter in response to the MSRB's filing with the SEC on proposed amendments to MSRB Rule G-12 on close-out procedures. You can view the final letter here.

The MSRB's proposed rule change would update requirements related to the close-out of open inter-dealer transactions for municipal securities. More specifically, our letter addresses:

- BDA's general support for a shortened close-out requirement (10 calendar days and a total of 20 days in aggregate) to decrease the costs and risks associated with inter-dealer fails; and
- A request for additional close-out guidance concerning transfers via the Automated Customer Account Transfer Service ("ACATS") system, which are based off of 'validation' dates, not 'settlement' dates

Additional Information:

- You can view MSRB's original filing here.
- You can view BDA's December 2015 comment letter to MSRB here.
- You can view BDA's April 2016 comment letter to MSRB here.

We hope this information is helpful.

Jessica Giroux at jgiroux@bdamerica.org
John Vahey at jvahey@bdamerica.org
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NABL: House Bill Would Move Fines from MSRB Violations.

On June 21, Representative Ann Wagner (R-MO) has introduced H.R. 5553, which would amend the Securities Exchange Act of 1934 concerning fines collected from violations of the Municipal Securities Rulemaking Board (MSRB) rules. These funds would be deposited and credited as general revenue of the Treasury rather than split between the MSRB and FINRA or the SEC as provided for under Dodd-Frank. This same proposal had been included in the Financial CHOICE Act proposed by House Financial Services Chairman Jeb Hensarling (R-TX). H.R. 5553 has been referred to the

House Committee on Financial Services and is available here.

MSRB Seeks Approval to Create Municipal Market Data Product for Academic Researchers.

The Municipal Securities Rulemaking Board (MSRB) today sought approval from the Securities and Exchange Commission (SEC) to support academic research on municipal market trading practices with the creation of a new historical trade data product for higher education institutions. The MSRB's proposed academic data product would provide historical trade data that includes anonymous dealer identifiers to assist researchers in distinguishing transactions executed by specific parties, while still protecting their actual identity. The Financial Industry Regulatory Authority (FINRA) is also seeking SEC approval of a similar proposal that would apply to other areas of the fixed income market.

Read the MSRB's filing.

MSRB to Launch E-Learning Courses.

To address a need for high-quality educational content about the municipal market, the MSRB plans to launch a suite of interactive, online courses designed specifically for market participants this fall. The MSRB's MuniEdPro courses will provide up-to-date content relevant to municipal market activities and MSRB regulations. Each MuniEdPro course will allow the learner to apply MSRB rules to real-world scenarios.

Continuing education credit will be available through MuniEdPro, and the courses supplement the MSRB's existing library of free regulatory webinars.

Read more about MuniEdPro.

MSRB Notice of Filing of Proposed Rule Change Relating to Content of Municipal Advisor Representative Qualification Examination (Series 50).

On June 28, the Securities and Exchange Commission posted the Municipal Securities Rulemaking Board's (MSRB) filing of proposed revisions to the Series 50 examination content outline. The MSRB proposes to implement the revised Series 50 examination program on September 12, 2016. The proposed revisions reflect changes to the law, rules and regulations and incorporate functions and tasks currently performed by a Municipal Advisor Representative. The MSRB believes that the proposed rule change will ensure that certain key concepts and rules are tested on the Series 50 examination in order to test the competency of individuals seeking to qualify as Municipal Advisor Representatives.

Notice of Filing.

Why SIFMA, BDA Want Shorter Dealer Closeout Timeframes.

WASHINGTON – Dealer groups are urging the Municipal Securities Rulemaking Board to cut in half a proposed requirement that would mandate municipal securities transactions to be closed out within 20 days of settlement.

The change to a 20-day closeout requirement from the current 90-day recommendation under the MSRB Rule G-12 on uniform disclosure would lessen the effect of interdealer transaction failures on the market, the MSRB has said. The self-regulator filed the proposed change for approval with the Securities and Exchange Commission on May 11.

Mike Nicholas, Bond Dealers of America's chief executive officer, and Leslie Norwood, associate general counsel and co-head of munis for the Securities Industry and Financial Markets Association, agreed with the MSRB's reasoning for shortening the closeout timeframe.

However, they said in comment letters to the SEC that they believe the mandatory close-out deadline should be shortened to no later than 10 calendar days after settlement. The groups are also proposing that there be a caveat allowing a dealer to extend that deadline another 10 days, for a total of 20 days, if the dealer gets the consent of the buyer.

"We feel it is better for all market participants, the dealers as well as the investors, if failed transactions get settled sooner rather than later," Norwood said. SIFMA believes the majority of dealers would close out the transactions within the 10-day window because "the exemption to go another 10 days is not a slam dunk where it is just something that the dealer opts into," she added.

The MSRB originally proposed amending the rule to require transactions are closed out no later than 30 days after settlement. SIFMA responded similarly to that proposal, recommending the period be cut to 15 days with the possibility of an extra 15 days if the buyer consents. The MSRB chose against the 15-day timeframe because it said it was concerned small dealers would be overburdened by a shorter timeline and because it wanted to give all dealers the same fixed timeframe.

Norwood, in her most recent comment letter, said that after extensive discussions with SIMFA's broad range of broker-dealer members, the group feels the MSRB's concerns are not warranted.

The MSRB is also seeking rule changes that would allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business day window. Additionally, the proposal would change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after notice by telephone.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

In addition to their recommendations about the closeout timeframe, BDA and SIFMA also asked the MSRB to provide further guidance as to how the MSRB's multiple changes would work in practice.

SIFMA brought up an issue it had noted in past comments, saying it would be "extremely helpful" to

know whether a dealer should have the authority to close out a position by returning it to the seller when a customer with a self-directed account won't agree to do so. Dealers aren't allowed to use their discretion when working with self-directed accounts, SIFMA said, though the MSRB does have the ability to mandate dealers act as well as the ability to provide regulatory relief.

BDA is asking for further clarification on the closeout process for accounts transferred to a dealer through the Automated Customer Account Transfer Service (ACATS). The system facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

Nicholas wrote that the timeframe under the G-12 amendment would work for ACATS, though he said ACATS transfers are based on a "validation" date as opposed to a "settlement" date. Fail transfers can additionally be closed out by a fail reversal if the receiving firm cannot buy-in the security due to a lack of market availability, but the portion of G-12 that would be amended doesn't mention fail reversals as a closeout process, he wrote.

Dealers would have a 90-calendar day grace period after the MSRB's rule change is approved to resolve all outstanding dealer fails.

The Bond Buyer

By Jack Casey

June 24, 2016

MSRB Adds Economic Calendar to EMMA.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today it has added an economic calendar to its Electronic Municipal Market Access (EMMA®) website. Without having to leave EMMA, users can now freely access a calendar with dates and descriptions of key upcoming macroeconomic developments that could have an impact on the trading and issuance of municipal securities.

"EMMA's new economic calendar is a great resource for all market participants interested in assessing market-related events," said MSRB Executive Director Lynnette Kelly. "From an issuer's perspective, it could be the most informative tool we have added to EMMA in recent years."

The economic calendar features upcoming federal data releases, labor and housing statistics, and other leading economic indicators that can assist municipal market participants in monitoring real-time data releases. It is the first resource to be provided on the EMMA website that helps investors understand broader market activities that may affect the municipal bond market.

The economic calendar joins other free tools on EMMA aimed at assisting municipal market participants, including the price discovery tool, which enables users to identify and compare bonds that share key characteristics, and email alerts that help investors stay up to date when new information becomes available about an individual security or groups of securities on EMMA.

The MSRB's EMMA website is the official source of data and documents for the municipal market. The free website contains information on more than 1 million outstanding municipal securities and displays real-time trade price and yield data for every municipal bond. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the

public interest by promoting a fair and efficient municipal market.

Date: June 27, 2016

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Hawkins Advisory: MSRB Rule G-42.

Read the Advisory.

June 23, 2016

Hawkins Delafield & Wood LLP

Why the SEC Barred a Former Charter School Operator From the Market.

WASHINGTON – The Securities and Exchange Commission has settled with a former Chicago charter school operator over charges that he negligently approved and signed a misleading official statement for a $37.5 million bond offering to build three charter schools.

Juan Rangel, the former president of Chicago-based UNO Charter School Network, Inc. and former chief executive officer of United Neighborhood Organization of Chicago, agreed to pay $10,000 and be barred from participating in any future municipal bond offerings to settle the charges. The SEC refers collectively to both organizations Rangel led as "UNO" throughout its complaint.

"We allege that Juan Rangel signed off on the offering document without even reading it," said David Glockner, regional director of the SEC's Chicago regional office. "This kind of negligent behavior is unacceptable in the securities markets."

One market participant said the settlement is especially noteworthy because "a significant portion of municipal officials who sign don't actually read the document."

"[The SEC is] basically saying there has to be a widespread change in the actions of municipal officials with respect to approving official statements," the market participant said.

Rangel, in a statement responding to the settlement, said he takes "full responsibility for not reading the document and should have done more than rely upon others to brief [him] on its contents."

"Although questions were raised about UNO's overall school construction and contracting processes, it is important to note that new schools were indeed built for our community with every penny documented and accounted for," he added.

The settlement is related to a prior one between UNO and the SEC in 2014 over charges that UNO defrauded investors in the same $37.5 million 2011 bond offering.

The 2011 bond issuance listed UCSN as borrower, UNOC as guarantor, and the Illinois Finance

Authority as the conduit issuer. UNOC and UCSN were both liable to repay the proceeds of the bonds and had to rely on per pupil revenues that they would receive from Chicago Public Schools in exchange for operating the charter schools to do so. Some of the schools that would generate revenues still had to be built.

In 2009, the state of Illinois appropriated $98 million to fund school construction by UNO. In connection with the appropriation, UNO entered into two grant agreements with the Illinois Department of Commerce and Economic Opportunity (IDCEO) to build three schools. Each grant contained a conflicts of interest provision that required UNO to certify that there was no conflict of interest at the time that it signed the grant agreements and that it would immediately notify IDCEO in writing of any conflicts of interest that arose after the signing. IDCEO could suspend the payment of the grants and recover any grant funds that had already been paid if it found UNO violated the conflicts provision.

During 2011 and 2012, the SEC found that UNO violated the conflict of interest provision by engaging one company and approving the engagement of another company, both of which were owned by brothers of the then chief operating officer of UNOC.

UNO contracted to pay one of the companies, a window subcontractor, roughly $11 million to supply and install windows and the other about $1.9 million to serve as an owner's representative during construction.

Each of the engagements required Rangel's approval.

The official statement for the 2011 bond issuance that Rangel signed failed to disclose the engagement of the window subcontractor as well as the breach of the conflict of interest provision in one of its grant agreements by engaging the owner's representative and approving the window subcontractor without notifying IDCEO, the SEC found. The official statement also did not explain that IDCEO could recoup its grant money because of the failure.

The SEC said in its complaint that reasonable investors would have wanted to know those facts.

IDCEO discovered UNO's failure to disclose the conflicts of interest after the Chicago Sun-Times published an article in 2013 about UNO's use of the Illinois grant funds. IDCEO suspended one of the grants after discovering the failure. At the time of the suspension, UNO had received $25 million of the $53 million IDCEO had agreed to provide under the grant.

The SEC found that Rangel directly and indirectly violated Section 17(a)(2) of the Securities Act of 1933, which says it is unlawful to obtain money or property through untrue statements or omissions of material facts.

The Bond Buyer

By Jack Casey

June 21, 2016

SIFMA Submits Comments to the SEC on MSRB Rule G-12 Proposal.

SIFMA provides comments to the Securities and Exchange Commission (SEC) in response to the

MSRB proposal to update MSRB requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer fail transactions.

Read SIFMA's Comments.

June 22, 2016

MSRB: New Rules Coming this Summer.

Core Rules and Effective Dates for Municipal Advisors

Duties of Non-Solicitor Municipal Advisors

Rule G-42 to establish the core standards of conduct and duties of municipal advisors when engaging in municipal advisory activities
Effective June 23, 2016

Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

Amended Rule G-37 to extend the core standards under Rule G-37 to municipal advisors, their political contributions and the provision of municipal advisory business
Effective August 17, 2016

Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

Amended Rule G-8 to establish recordkeeping requirements that apply when a municipal advisor makes a suitability determination or reviews the recommendation of another party
Effective June 23, 2016

Additional amendments to Rule G-8 to impose the same recordkeeping requirements related to political contributions by municipal advisors and their associated persons that apply to dealers and their associated persons
Effective August 17, 2016

Preservation of Records

Amended Rule G-9 to require municipal advisors to preserve for six years the records required to be made concerning political contributions
Effective August 17, 2016

MSRB Makes ABLE Offering Documents Available on EMMA.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that for the first time, an offering document about securities established by states under the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) is available on the MSRB's Electronic Municipal Market Access (EMMA®) website. The ABLE Act allows states to establish tax-

advantaged savings vehicles that support individuals with disabilities in maintaining health, independence and quality of life.

ABLE offering documents—also known as program disclosure booklets—will be made available on EMMA both voluntarily by states and per MSRB regulations by municipal securities dealers involved in the primary offering of ABLE programs. The program disclosure booklet for the State of Ohio's ABLE program is now on EMMA.

"We are very happy to see that the first ABLE disclosure document was filed voluntarily by a state," said MSRB Executive Director Lynnette Kelly. "To promote a fair and transparent municipal securities market, we look forward to making all ABLE program disclosure booklets widely available to the public on EMMA."

ABLE programs sold by MSRB-regulated dealers, which underwrite other municipal fund securities such as 529 college savings plans, are required to comply with investor protection rules. These rules include providing a customer, no later than the settlement of the transaction, a copy of the program disclosure booklet, which now can also be found on EMMA.

The EMMA website is the MSRB's official repository for information on virtually all municipal securities, including municipal fund securities. EMMA provides free public access to official disclosures, trade data, credit ratings, educational materials and other information about the municipal securities market.

Date: June 21, 2016

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SEC: Muni Advisors Acted Deceptively With California School Districts.

The Securities and Exchange Commission today announced that two California-based municipal advisory firms and their executives have agreed to settle charges that they used deceptive practices when soliciting the business of five California school districts.

An SEC investigation found that while School Business Consulting Inc. was advising the school districts about their hiring process for financial professionals, it was simultaneously retained by Keygent LLC, which was seeking the municipal advisory business of the same school districts. Without permission, School Business Consulting shared confidential information with Keygent, including questions to be asked in Keygent's interviews with the school districts and details of competitors' proposals including their fees. The school districts were unaware that Keygent had the benefit of these confidential details throughout the hiring process. Keygent ultimately won the municipal advisory contracts.

This is the SEC's first enforcement action under the municipal advisor antifraud provisions of the Dodd-Frank Act.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this

type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting also is charged with failing to register as a municipal advisor.

"These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

Without admitting or denying the findings in the SEC's orders instituting settled administrative proceedings:

- School Business Consulting agreed to a censure and a $30,000 penalty.
- The firm's president Terrance Bradley agreed to be barred from acting as a municipal advisor and must pay a $20,000 penalty.
- Keygent agreed to a censure and a $100,000 penalty.
- Keygent's principals Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000 respectively.

The SEC's investigation was conducted by Brian P. Knight, Monique C. Winkler, and Deputy Chief Mark R. Zehner of the Public Finance Abuse Unit with assistance from John Yun of the San Francisco Regional Office.

Date 13/06/2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker/dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market.

Its muni disclosure requirements run through broker/dealers. SEC Rule 15c212 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.

WASHINGTON – In a first of a kind case, two California-based municipal advisory firms and their executives agreed to pay a total of $200,000 to settle Securities and Exchange Commission charges that they used deceptive business practices in dealing with five school districts.

This is the first enforcement action the SEC has taken under the municipal advisor antifraud provisions of the Dodd-Frank Act.

School Business Consulting, Inc. (SBIC) was censured and fined a $30,000 while its president and sole employee Terrance Bradley was barred from acting as a municipal advisor and agreed to pay $20,000. The other MA firm, Keygent LLC, agreed to a censure and penalty of $100,000 and two of its managing directors, Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000, respectively.

The SEC found that while School Business Consulting, through Bradley, was advising school districts about hiring financial professionals, it was simultaneously retained by Keygent LLC, which was seeking MA business from the school districts. During that relationship, Bradley improperly provided confidential information about the hiring processes of five school districts that were his clients to Keygent, Hsieh, and Wang, which may have led to the districts to hire Keygent as a municipal advisor.

The SEC found Bradley verbally disclosed his relationship with Keygent to the school district officials and Keygent's contracts with the school districts also disclosed that Bradley was on its advisory board, but the districts were not aware Bradley was sharing the confidential information.

The defendants settled the charges without admitting or denying the charges.

A spokesperson for Keygent said in a statement that Keygent "did not ask for this information, nor did [it] change [its] proposals or fees based on the information." However, the spokesperson said the firm acknowledges that mistakes were made and is taking responsibility.

"In addition to complying fully with the SEC's order, we have taken proactive steps to improve our compliance program and to ensure that all business practices are entirely in line with the SEC's regulations and best professional and ethical standards," the spokesperson said.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said municipal entities "should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

The events leading up to the enforcement action began in September 2010, when Keygent retained SBCI to serve on its advisory board for $2,500 a month. Bradley had numerous contacts in school districts across California and, through the relationship, Keygent gained access to those contacts with the possibility of introductions to officials in districts that Hsieh and Wang had identified as having refinancing opportunities, the SEC found.

Many of the school districts that Bradley solicited on Keygent's behalf were SBCI's own clients, the SEC said in its documents.

Bradley drafted, and assisted in drafting, the request for qualification documents that the five school districts used in their hiring process. Each of the school districts directed candidates not to make

contact with anyone other than specified officials in an effort to make sure the candidates were on an even footing, the SEC found.

Despite that direction, Bradley gave Keygent information like advanced copies of draft interview questions and details of competitors' proposals, sometimes including competitors' fees, the SEC said. He also had discussions with Keygent about how to answer interview questions and suggested topics to bring up during the interviews.

Although Bradley recused himself from four of the five school districts' interview processes, citing a conflict of interest, he never informed the districts he was sharing the information and continued to recommend Keygent to the districts, according to the SEC. The one process in which he participated was at the discretion of the district after Bradley informed the officials of his believed conflict of interest.

The SEC found that SBCI violated Section 15B(a)(1)(B) of the Securities and Exchange Act because it was soliciting for Keygent without being registered as a municipal advisor. The SEC said Bradley, as the firm's sole employee, caused the violation.

SBCI and Bradley also violated Section 15B(c)(1) of the Exchange Act because they did not act consistently with their fiduciary duty to its client. Additionally, they violated Municipal Securities Rulemaking Board Rule G-17 on fair dealing and Section 15B(a)(5), which prohibits MAs from engaging in any fraudulent, deceptive, or manipulative act or practice, while soliciting a municipal entity.

The SEC found Keygent and Hsieh also violated Section 15B(c)(1) and MSRB Rule G-17. The commission also said Keygent, Hsieh, and Wang were a cause of SBCI's and Bradley's violations of Sections 15B(c)(1), 15B(a)(5), and Rule G-17.

The Bond Buyer

By Jack Casey and Lynn Hume

June 13, 2016

White: SEC Focused on Possible Puerto Rico Bond-Related Violations.

WASHINGTON — The Securities and Exchange Commission is "very focused" on examining whether there were any securities law violations involving Puerto Rico bonds as the commonwealth's fiscal situation deteriorated over the last few years, SEC chair Mary Jo White told the Senate Banking Committee on Tuesday.

She made her comments after Sen. Bob Menendez, D-N.J., pressed her on the topic during a committee hearing. After the hearing, Menendez and six other senators sent White a letter asking the SEC to investigate potential fraud and illegal conduct that may have contributed to Puerto Rico's debt and fiscal crisis.

"The people of Puerto Rico deserve to know whether illegal activity by advisors to Puerto Rico and its municipal entities contributed to the current debt crisis," Menendez said during the hearing.

The letter from the seven senators urged the SEC to "immediately commence an investigation into

the acts, actions and activities in connection with the underwriting, sale, distribution and trading of Puerto Rico debt in the years leading up to the present crisis."

The commonwealth is currently struggling with roughly $70 billion in debt and $46 billion in unfunded pension liabilities.

The Senate lawmakers also asked White to update them on the recommendations listed in the 2012 Report on the Municipal Securities Market and "whether the SEC needs new authorities to better protect municipal entities in Puerto Rico and elsewhere."

Sens. Elizabeth Warren, D-Mass., Chuck Schumer, D-N.Y., Kirsten Gillibrand, D-N.Y., Jeff Merkley, D-Ore., Richard Blumenthal, D-Conn., and Bernie Sanders, I-Vt. co-signed the letter. White said during the hearing that the SEC has been involved in these issues, with its enforcement division releasing several actions related to Puerto Rico bonds over the last few years and its division of investment management issuing guidance for investors assessing Puerto Rico bonds.

"I can't comment on specifics [of] ongoing [actions] … but I think we can say that we are very focused on the issues you have raised," she told Menendez.

Legislation designed to help the commonwealth deal with its debt crisis has also passed the House and is now waiting for consideration in the Senate. One amendment that was added to the House bill before it was approved would provide discretionary authority to a seven-person oversight board to to investigate whether brokers and investment advisers either failed to disclose or misrepresented the risks of Puerto Rico securities sold to retail investors.

The SEC, along with the Financial Industry Regulatory Authority, settled with UBS Financial Services, Inc. of Puerto Rico for $34 million in September 2015 after the regulators found the firm failed to supervise the suitability of transactions in Puerto Rican closed-end fund shares. The commission also charged a former broker with fraud after he had customers invest in the CEFs using money borrowed from an affiliated bank.

The action against the former broker, Jose G. Ramirez, Jr., is ongoing in Puerto Rico district court.

UBS did not admit or deny the SEC's findings that between Jan. 1, 2009 and July 31, 2013 UBSPR allowed 165 customer accounts with conservative investment objectives and $2 million or less in assets to be more than 75% concentrated in highly leveraged CEF shares. By mid-August 2013, Puerto Rico's bond market had declined considerably and most CEF shares and Puerto Rico munis lost between 20% and 50% of their value.

The SEC also brought two cases in 2014 and 2015 that led to settlements with 14 firms that the SEC found had sold bonds in amounts below the minimum denomination set by the issuer.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in the official statement. Issuers sometimes set minimum denominations on bonds that are risky to discourage retail investors from buying them.

The Bond Buyer

By Jack Casey

June 14, 2016

Phoenix Investment Firm Probed on Muni-Bond Sales.

A financial regulatory group has accused a Phoenix investment company of securities fraud in connection with municipal bond sales to finance an Arizona charter school and two Alabama health-care facilities.

FINRA, or the Financial Industry Regulatory Authority, filed a complaint against Lawson Financial Corp. and Robert Lawson, the firm's president and CEO, alleging securities fraud over the sale of millions of dollars worth of municipal bonds. Lawson denied the allegations in an interview with The Arizona Republic.

FINRA also charged Robert Lawson along with Pamela Lawson, his wife and the company's chief operating officer, with self-dealing and misuse of customers funds by abusing their positions as co-trustees of a charitable-remainder trust. A statement released Thursday said they improperly used trust funds to prop up bonds issued for the charter school, Hillcrest Academy in Mesa, which is being opened as a campus of an unaffiliated company, the Leman Academy of Excellence.

The charter-school bonds were sold in a $10.5 million offering that Lawson Financial underwrote in October 2014. According to FINRA, the bonds were sold to Lawson Financial's customers. Lawson Financial also sold muni bonds to raise financing for two assisted-living facilities in Alabama, the complaint said.

The complaint starts a formal proceeding by FINRA and doesn't represent a decision on the allegations. Companies or individuals named in a complaint can file a response and request a hearing. The complaint could result in a fine, censure, suspension or ban from the securities industry, as well as restitution or repayment of any gains that resulted from the alleged actions.

Robert Lawson said he believes FINRA's interpretation of the facts in the case and conclusions are incorrect. He said Lawson Financial will file a response and request a hearing.

"We've been in business in Phoenix for 32 years and always have tried to act in the best interest of our clients," Lawson told TheRepublic.

The complaint alleges that Lawson and the company were aware of financial difficulties faced by Hillcrest and the two Alabama facilities and fraudulently hid from bond buyers material facts that the school and health facilities were under financial stress.

The complaint alleges that Robert Lawson, with the knowledge of Pamela Lawson, improperly transferred millions of dollars from the account to assist the bond borrowers. FINRA said this came at a time the bond issuers weren't able to pay their operating expenses and, in some cases, were unable to make interest payments. Charitable-remainder trusts are vehicles that allow people to donate assets to a non-profit at death while receiving income from those assets while still alive.

Since 1988, Arizona charter schools have raised $1.5 billion in more than 120 municipal-bond sales, according to a 2015 report by Charter School Advisors. Arizona ranks second only to Texas in this regard, the report said.

Russ Wiles, The Republic | azcentral.com 5:50 p.m. MST May 19, 2016

Reach the reporter at russ.wiles@arizonarepublic.com or 602-444-8616.

GFOA Issues Alert on MCDC Initiative Settlement Terms for Issuers.

Issuers that self-reported under the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) initiative can expect to receive settlement offers containing standard provisions to which they must consent in the near future. The SEC is requesting an extraordinarily short turn-around for the settlement—5 to 10 days—but has indicated that it will extend the settlement offer upon request. This alert provides governments with an overview of the process and GFOA's recommendations that state and local governments participating in the MCDC initiative become familiar with the standard terms that are expected to be in the offered settlements. GFOA strongly recommends that issuers seek legal advice prior to finalizing or signing the proposed SEC settlement agreement and make sure they fully understand the consequences of the proposed settlement.

Click here for the alert.

Wednesday, June 8, 2016

MSRB Reminds Municipal Advisors of June 23, 2016 Effective Date of New Rule G-42.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that MSRB Rule G-42 on duties of non-solicitor municipal advisors and related amendments to MSRB Rule G-8 on recordkeeping become effective on June 23, 2016.

The new rule establishes core standards of conduct for municipal advisors that engage in municipal advisory activities, other than municipal advisory solicitation activities.

View the regulatory notice.

View the approval order.

Resources:
Watch an on-demand webinar (CPE credit available)
Read an overview of the rule for municipal advisors

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

On June 9, SIFMA and AMG jointly submitted a letter to SEC Chair Mary Jo White urging the SEC to amend Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issues is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested

several areas of Rule 15c2-12 ripe for amendment or interpretive guidance," said SIFMA president and CEO Kenneth E. Bentsen, Jr. "Additionally, SIFMA recently submitted our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance. Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12."

Read SIFMA's letter to SEC

Download SIFMA Rule15c2-12 Whitepaper to SEC

MSRB: Implications for Supervisory Procedures of Newly Effective Rules.

With several MSRB rules for municipal advisors effective in 2016, the MSRB reminds municipal advisors to make any necessary modifications to their written supervisory procedures and compliance policies.

For example, provisions for municipal advisors of MSRB Rule G-20 related to gift-giving became effective on May 6, 2016. Accordingly, a municipal advisor's written supervisory procedures should now include procedures reasonably designed to avoid improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal advisory activities of the recipients' employers. Written supervisory procedures should include a description of how the designated municipal advisor principal(s) will monitor and review the municipal advisory activities of associated persons for compliance with Rule G-20.

Since 2015, municipal advisors have been required under MSRB Rule G-44 to have supervisory procedures and compliance policies "reasonably designed to achieve compliance with all applicable rules" and since April 23 2016, to certify annually "processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures."

GFOA Issues Alert on Rule G-42.

The new G-42 rule from the Municipal Securities Rulemaking Board (MSRB) becomes effective June 23, 2016. Rule G-42, or Duties of Municipal Advisors, stems from the Dodd Frank Act and the SEC's subsequent municipal advisor rule. This rule does not establish any responsibilities for issuers, but it does create numerous responsibilities for the municipal advisors that are hired by state and local governments. GFOA's alert provides information on the types of information and written correspondence that municipal advisors will now be providing issuers, including disclosures of conflicts of interest and acknowledgement of the scope of services for which the advisor is hired. The primer also includes information on aspects of the overall municipal advisor rule and the types of exemptions that are in place when a party other than a municipal advisor provides advice to issuers.

Please click here to access the alert.

Wednesday, June 8, 2016

SIFMA to SEC: It's Time to Revise Rule 15c2-12 on Muni Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to amend its Rule 15c2-12 on municipal bond disclosure and provide more guidance in this area.

The dealer group made its request for changes to the SEC rule in a letter sent to SEC chair Mary Jo White from SIFMA president and chief executive officer Ken Bentsen.

The letter highlights recent requests from market groups to modify the rule to include bank loan disclosure as well as a white paper from SIFMA in April pressing for modernization of Rule 15c2-12.

“Given the recent discussions at the MSRB, the SEC’s own efforts in this area, and the industry’s keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12,” Bentsen wrote.

The Municipal Securities Rulemaking Board has consistently urged issuers to voluntarily disclose their bank loans. But after concluding the disclosures are still lacking in this area, the board released a concept proposal in March asking market participants about a possible rule that would require municipal advisors to disclose information regarding their municipal clients’ bank loans and private placements.

While some investor groups applauded the idea, many market groups said it would be harmful and ineffective. Almost every group that responded recommended that the SEC instead boost bank loan disclosure by requiring it under 15c2-12.

“SIFMA’s dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is … made transparent to the market,” Bentsen told White. “We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.”

SIFMA’s white paper, released on April 12, recommended a number of updates to 15c2-12.

It suggested that when municipal advisors help prepare official statements, they share with underwriters the due diligence responsibilities for reviewing those documents to ensure the information is not false or misleading.

Leslie Norwood, SIFMA associate general counsel, co-head of munis, and author of the white paper, said that while the paper calls for muni advisors to take on some continuing disclosure responsibilities, it is not trying to shift dealer’s duties onto them.

SIFMA also suggested that the commission eliminate the requirement that issuers file event notices for rating changes since those are now posted on the MSRB’s EMMA system.

Additionally, the group also asked for the SEC to affirm the position it took in its initial proposing release for 15c2-12 that, given the structure of a competitive deal, “the task of assuring the accuracy and completeness of the disclosure [in competitive deals] is in the hands of the issuer.”

SIFMA wanted the SEC to eliminate current complex language in 15c2-12 that dictates when a participating underwriter is expected to send customers copies of the final OS. Instead, the rule should require underwriters to provide final official statements to customers from when they are posted on EMMA until the offerings close, it said.

Rule 15c2-12 should also require issuers to set an actual date as the due date for their disclosures of annual financial and operating information, the group said in the white paper. Currently, issuers typically say the information will be disclosed within so many days after the close of the fiscal years, leaving underwriters to "burn brain cells" and count days, Norwood said at the time the paper was circulated.

Another recommendation is for the provision of 15c2-12 that exempts from disclosure requirements primary offerings with institutional investors to be expanded to explicitly include primary offerings with sophisticated municipal market professionals, qualified institutional buyers, and accredited investors.

An SMMP designation usually applies to banks, savings and loan associations, registered investment advisors, and any person or entity with total assets of at least $50 million. QIBS are defined by the SEC and must own and invest, on a discretionary basis, at least $100 million in securities or, if they are broker-dealers, must meet a threshold of $10 million. Accredited investors can be any individual who consistently earns $200,000 per year, has a net worth exceeding $1 million, or has a leadership role with the issuer of the security being offered.

The Bond Buyer

By Jack Casey

June 10, 2016

SIFMA: States Can do More to Improve Muni Issuer Disclosure.

WASHINGTON – The Securities Industry and Financial Markets Association is urging states to adopt policies to ensure issuers meet their disclosure requirements and provide investors with relevant information.

The recommendations come after SIFMA conducted a review of current state policies related to local government bond issuance, information disclosure, and financial audits. The study of state laws included all fifty states as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SIFMA also recently unveiled a state-by-state capital markets database that includes, among other things, downloadable data for each state detailing total muni bond issuance, top muni issuers, the number of broker-dealers and financial advisors, as well as total securities industry employment.

Michael Decker, a managing director and co-head of munis for SIFMA, said that the review of state laws is a response to muni market participants' concerns that the Securities and Exchange Commission may try to use disclosure problems to obtain authority from Congress to regulate issuers.

"I understand why issuers would be nervous about having the SEC as their regulator but there does

seem to be a need for somebody to be paying attention to this issue from an oversight perspective," Decker said. "If it's not the SEC … then states are in a perfect position to take that role."

The SEC does not currently have direct regulatory authority over issuers' disclosures in the market. Its muni disclosure requirements run through broker-dealers. SEC Rule 15c2-12 prohibits dealers from underwriting most bonds unless they have reasonably determined that the issuer has contractually agreed to disclose annual financial and operating data as well as material event notices. Underwriters also must obtain and review issuer official statements to make sure they do not contain any false or misleading information that would be material to investors.

The SIFMA review found that only one state, Louisiana, has a law in place that is designed to help ensure local governments meet their legal disclosure obligations. The Louisiana law requires local governments to maintain records of continuing disclosure agreements (CDAs) and compliance actions. It also requires auditors to examine governments' CDA records and check that local governments have made their required financial filings.

Using auditors to "poke" issuers about their disclosure responsibilities has been a topic of discussion at several municipal conferences and meetings over the past year and is something SIFMA recommended again after concluding the study.

Decker said SIFMA recognizes the auditor approach would not work for every state. Each state should adopt laws that accomplish the goal of overseeing issuers while fitting into the state's existing legal frameworks, he said.

SIFMA found that 17 states have policies in place that already require governments to file their official statements with state repositories and impose other disclosure requirements on local governments related to bond issuance. Four other states and the U.S. Virgin Islands have laws in place requiring governments to file financial audit information and make the filings publicly available.

"While these initiatives help improve the availability of financial information, they generally are targeted at citizens and taxpayers, not investors," SIFMA said.

Some states, like North Carolina, already have processes in place that can help them ensure compliance, according to SIFMA. North Carolina generally requires its Local Government Commission to approve all local government bond issues. That process could include compliance with outstanding CDAs as a condition of approving future bond issuances, SIFMA suggested.

SIFMA's review follows an ongoing discussion in the municipal market and among market groups on improving disclosure following the announcement of the SEC's Municipalities Continuing Disclosure Cooperation initiative. The initiative, begun in 2014, allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the market by underwriting volume. The SEC is expected to soon start releasing settlements with issuers. Some market groups and issuers are concerned the MCDC results could provide Congress with evidence that could be used to justify granting SEC regulatory authority over issuers.

The Bond Buyer

By Jack Casey

June 15, 2016

SIFMA Urges SEC to Amend Muni Disclosure Rule & Issue Additional Guidance.

Washington, D.C., June 10, 2016 – In a letter to SEC Chair White, SIFMA president and CEO Kenneth E. Bentsen, Jr. urges the SEC to amend Rule 15c2-12, which covers dealers continuing disclosure obligations, and release additional guidance. The text of the letter is as follows:

"The Securities Industry and Financial Markets Association ("SIFMA") and SIFMA's Asset Management Group (the "AMG") together respectfully submit this letter to urge you to direct staff at the Securities and Exchange Commission (the "SEC") to develop a proposal to amend Rule 15c2-12 and release additional guidance.

"The Municipal Securities Rulemaking Board (the "MSRB") recently requested comment on a concept proposal to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients to the MSRB's Electronic Municipal Market Access ("EMMA") system for public dissemination. SIFMA's dealer and asset management members collectively agree that SEC amendment or interpretation of Rule 15c2-12 would be a more comprehensive avenue for ensuring that information regarding direct purchases of securities and bank loans entered into by issuers is consistently and uniformly reported to the MSRB's EMMA Web site and made transparent to the market. We urge you to make this investor protection issue of bank loan disclosure a top priority for the SEC and its staff.

"The SEC itself, in its 2012 Report on the Municipal Securities Market (the "Report"), suggested several areas of Rule 15c2-12 ripe for amendment or interpretive guidance. Additionally, SIFMA recently submitted to you our Rule 15c2-12 Whitepaper, which offers a current perspective on the existing framework for providing disclosure in the municipal securities market, the relative burdens placed upon municipal market participants by that framework, and opportunities for improvement in framework structure and guidance interpreting application and compliance.

"Given the recent discussions at the MSRB, the SEC's own efforts in this area, and the industry's keen interest, we think that the time has come to move forward with a revision of Rule 15c2-12."

Release Date: June 10, 2016

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

MSRB Updates Content Outline for Municipal Advisor Qualification Exam.

Read the Outline.

SEC Said to Study Muni Bank Loan Disclosure That Vanguard Wants.

The U.S. Securities and Exchange Commission is considering whether to require state and local governments to disclose bank loans and private placements, according to people familiar with the matter, reflecting bondholders' concerns about the fast-growing segment of municipal finance.

The rule, known as 15c2-12, requires securities dealers to ensure that states and local governments report updated financial information and material events to bondholders. Mutual funds, investment banks and credit analysts have been pushing regulators to respond to extend such requirements to bank loans, which become more prevalent since the 2008 crisis, particularly among smaller borrowers.

"We need a full picture on the balance sheet of our issuers," said Hugh McGuirk, who oversees $23 billion of municipal bonds at T. Rowe Price Inc. in Baltimore. "If we're not seeing the breadth and depth of that market with the terms that go along with it that increases the probability of some sort of surprise."

Direct lending by banks has proliferated in the $3.7 trillion market as states, local governments and non-profits find they can borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. In 2015, S&P Global Ratings evaluated 126 bank loans totaling $5.2 billion. Estimates of the size of the market run as high as $80 billion a year, said Nat Singer, chair of the Municipal Securities Rulemaking Board, the municipal market's self-regulator.

Because loans aren't classified as securities, states and cities aren't immediately required to disclose them, despite the risk they can pose to bondholders. The loan terms can favor banks over other investors and add to a borrower's financial risk.

For example, banks can demand accelerated principal and interest if a payment is skipped or a government's cash falls below a specific target, which could push the borrower into a liquidity crisis if it can't cover the bills. Such provisions last year led S&P to cut one Wisconsin town's credit rating from the third-highest grade to junk until the terms were renegotiated.

"It has the potential to mask the level of indebtedness," said Chris Alwine, head of municipals at Vanguard Group Inc. which holds about $160 billion of the securities. " You might be in a subordinated position that you don't know about."

John Nester, an SEC spokesman, declined comment.

Since the SEC can't regulate state and local government bond issuers, other than through the anti-fraud laws, it imposes its disclosure rules indirectly through its authority over banks.

In 1989, the SEC adopted Rule 15c2-12, requiring bond underwriters to review official statements before a municipal issuer publicly sold securities. It was amended in 1995 and added requirements for continuing disclosure, which the SEC last revisited in 2010.

The rule requires municipal issuers to disclose 14 types of material events within 10 business days, such as failure to pay principal and interest, draws on reserve funds or changes to the security of bondholders. The disclosures are posted on the MSRB's website.

In January 2015, the MSRB asked the SEC to reconsider whether to require bank-loan disclosure. The regulator has encouraged issuers to voluntarily disclose key details about the loans on its online

repository, but few municipalities have done so.

The MSRB's call to revisit the rule has been joined by the Securities Industry and Financial Markets Association and the Bond Dealers of America, both of which represent underwriting firms.

Emily Brock, federal liaison for the Government Finance Officers Association, said the MSRB's EMMA website isn't user friendly, hampering voluntary disclosure of bank loans. GFOA encourages debt managers to voluntarily disclose.

"We're working with a system that can't accommodate the disclosure in an easy way," said Brock, whose organization hasn't taken a position on revisiting the SEC rules. "We too want quality data."

The SEC could use Form 8-K in the corporate securities market as a template for events that might be appropriate to include for continuing disclosure by municipal bond issuers. One such event is the "creation of a direct financial obligation or an obligation under an off-balance sheet arrangement."

"Requiring similar reporting by municipal issuers would address our concerns about these obligations that are not subject to Rule 15c2-12 and therefore are not now reported," wrote then-MSRB Chair Kym Arnone to the SEC in 2015.

Bloomberg Business

by Martin Z Braun

June 16, 2016 — 7:35 AM PDT

SEC Settles First Muni Advisor Action Under Provisions of Dodd-Frank Act.

Investing.com — The U.S. Securities and Exchange Commission agreed to settle charges with two California-based municipal advisory firms on charges they used deceptive practices while soliciting business opportunities from five California school districts.

The enforcement action marks the first of its kind under the municipal advisor antifraud provisions of the Dodd-Frank Act. Under the enforcement action, the SEC found that School Business Consulting, Inc., a general consulting services company, advised several school districts about their hiring process for a financial advisory company, while it was retained by Keygent, LLC, an ElSegundo, California management consultant. At the same time, Keygent allegedly sought municipal advisory business from the same school districts associated with the consulting company. School Business Consulting, according to the SEC, allegedly shared confidential information with Keygent, including the fees charged by their competitors' proposals and potential questions likely to arise at interviews during the hiring process. Ultimately, Keygent benefited from the confidential information by winning the municipal advisory contracts.

Without admitting or denying the SEC's findings, School Business Consulting agreed to pay a $30,000, while the company's president Terrance Bradley accepted a ban from acting as a municipal advisor. Bradley also agreed to pay a $20,000 penalty. Keygent agreed to pay a $100,000 fine, while two of its principals, Anthony Hsieh and Chet Wang, agreed to fines of $30,000 and $20,000 respectively.

"This unauthorized exchange of confidential client information could have given Keygent an

improper advantage over other municipal advisors that were candidates for the same business," said Andrew Ceresney, Director of the SEC Enforcement Division. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting engaged in the "solicitation of a municipal entity," since it received direct compensation from Keygent, the SEC said in an administrative order. Consequently, SBCI should have registered as a municipal advisor as soon as it started soliciting for Keygent, the SEC added. Section 975 of the Dodd-Frank Act prohibits municipal advisors from engaging in an y course of business that is not consistent with their fiduciary duty.

"These laws apply not only to municipal advisors, but also those who solicit business on behalf of municipal advisors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Municipal entities should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

Jun 13, 2016 08:26PM ET

SEC Announces Deal With Two California-Based Municipal Advisory Firms.

SAN FRANCISCO (Legal Newsline) – The Securities and Exchange Commission (SEC) announced that School Business Consulting Inc. and Keygent LLC will settle allegations of using deceptive practices when soliciting business from five California school districts.

According to the SEC, these school districts were using School Business Consulting to advise them on their hiring process for financial professionals. While this was underway, Keygent allegedly retained School Business Consulting. Keygent purportedly sought the municipal advisory business of the same school districts. School Business Consulting allegedly shared confidential information about the districts with Keygent.

"This unauthorized exchange of confidential client information could have given Keygent an improper advantage over other municipal advisors that were candidates for the same business," Andrew Ceresney, director of the SEC Enforcement Division, said. "The Dodd-Frank Act prohibits this type of deceptive behavior by advisors when dealing with municipal issuers."

School Business Consulting was additionally charged with failing to register as a municipal adviser.

"These laws apply not only to municipal advisers, but also those who solicit business on behalf of municipal advisers," LeeAnn Ghazil Gaunt, chief of the SEC Enforcement Division's Public Finance Abuse Unit, said. "Municipal entities should be able to trust that their selection of a municipal adviser is untainted by any breach of fiduciary duty."

School Business Consulting will pay $30,000, while its president will pay a $20,000 penalty. Keygent will pay $100,000 while its principals will pay $30,000 and $20,000 respectively.

by Mark Iandolo

Jun. 14, 2016, 8:03pm

MSRB to Launch Permanent Series 50 Exam September 12, 2016.

The Municipal Securities Rulemaking Board (MSRB) will make available the permanent Municipal Advisor Representative Qualification Examination (Series 50) beginning September 12, 2016. As provided for under MSRB Rule G-3, municipal advisor representatives are required to take and pass the Series 50 in order to engage in municipal advisory activities. The score required to pass the Series 50 exam is 71 percent.

Read the regulatory notice.

Refer to FAQs on the Municipal Advisor Representative Qualification Examination (Series 50).

Access information about the Series 50 exam on the MSRB's website.

DOJ's Recent Rulemaking Action for State and Local Government Websites Reveals Its Current Thinking on Web Accessibility.

Seyfarth Synopsis: *If you would rather not read the 30-page small print Federal Register notice, this summary will provide you with what you need to know about the Justice Department's most recent official pronouncement on web accessibility.*

As we reported, last week DOJ issued a lengthy Supplemental ANPRM (SANPRM) for state and local government websites, which some commentators have decried as a "do-over." This unusual move was a surprise, to be sure, but we do not view it as a complete setback. The SANPRM appears to be DOJ's attempt to preview its position on key issues and obtain public comment. As such, the SANPRM has very serious implications that go far beyond the realm of state and local governments. The rules that DOJ ultimately issues in the state and local government website rulemaking will likely provide the framework for the proposed rule for public accommodations websites — currently slated for 2018. Accordingly, public accommodations and the organizations that represent them need to submit comments in response to the SANPRM before the comment period closes on August 8, 2016.

We normally don't write long blog posts but the lengthy SANPRM — containing no fewer than 123 questions for public comment — warrants an exception. Below is a high level summary of the key issues, with some of our preliminary commentary:

- **Scope of Regulation.** DOJ is considering broadening the scope of the future rule from websites to "Web content." This expansion could potentially cover web content that a covered entity places on websites that it does not own or control (g. advertising), and could have far reaching implications.
- Accessibility Standard. DOJ believes that WCAG 2.0 AA should be the standard for Web content, as we've predicted.
- **Compliance Period.** DOJ is considering giving public entities "two years after the publication of a final rule to make their Web sites and Web content accessible in conformance with WCAG 2.0 Level AA, unless compliance with the requirements would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." This begs the question of why DOJ's enforcement attorneys have been demanding that businesses and state local governments make their websites comply with WCAG 2.0 AA right now. The two-year proposal is a shift away from DOJ's initial, 2010, ANPRM position where it contemplated different compliance dates for existing web pages versus new webpages or websites. The SANPRM also

notes DOJ is considering a longer three-year compliance period for captioning of live audio content.

- **Consultants.** DOJ wants to know if there is a shortage of consultants who can bring Web content into conformance with the proposed WCAG 2.0 AA standard. Rather than rely on anecdotal comments, we suggest that DOJ canvas the field of such consultants and interview them to see if they are actually qualified. DOJ will likely learn that there are very few truly experienced digital accessibility consulting firms – certainly not enough to assist the thousands of state and local governments, let alone the millions of public accommodations that will most certainly need guidance.
- **Less Demanding Standard for Small Entities.** DOJ is considering whether "small public entities" or "special district governments" should have a different compliance timetable or be subject to a less demanding standard such as WCAG 2.0 A, as opposed to AA. This approach could set the precedent for small businesses in a future proposed rule applicable to public accommodations.
- **Possible Exemptions.** DOJ is considering exempting the following Web content from compliance with the proposed WCAG 2.0 AA standard:
  Archived Web Content. To be considered "archived Web content," the content would have to be (1) maintained exclusively for reference, research, or recordkeeping; (2) not altered or updated after the date of archiving; and (3) organized and stored in a dedicated area or areas clearly identified as being archived. Covered entities would still have to provide accessible versions of this content if someone asks for it.
  Conventional Electronic Files (g. PDFs, Word documents, Excel spreadsheets, and PPT presentations) that existed on a Web site before the compliance date of any proposed rule.
  Third-party Web Content Linked from the Public Entity's Website. Note, however, there would be no exception for linked Web content if the public entity "uses the third-party Web site or Web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities." For example, if the state parking enforcement authority contracts with a third party to process parking ticket payments on a third party site, that site would also need to conform to WCAG 2.0 AA.
  Third Party Content. A public entity would not have to make content that is posted on its website by third parties conform with the proposed standard, unless the information is essential for engaging in civic participation or if the Web site owner has chosen to include the third party content on the Web site. This proposal strikes us as highly ambiguous. Would YouTube have to provide captioning for every video posted by third parties because it has chosen to invite such third parties to post the videos? Would allowing people to post be considered an affirmative choice by the website owner triggering the compliance obligation? What if a website owner needs to include key third party content on its site but the vendor but the vendor won't agree to make it accessible? Would the website owner be barred from including this third party content on its website, even if no vendor will provides it?
- **Social Media Platforms.** DOJ considers social media platforms such as Facebook, YouTube, Twitter, and LinkedIn to be covered by Title III of the ADA and proposes to not address the use of these platforms by state and local governments (subject to Title II) in this rule. However, DOJ says that any information provided by public entities on those social media platforms must also be available in some alternative way if the platforms are not accessible.
- **Web content of Educational Institutions.** DOJ is considering requiring educational institutions to make all content available to the public (as opposed to exclusively for students) on their Web sites conform to WCAG 2.0 AA. Universities should be gearing up to fight this proposition vigorously because their websites tend to be vast repositories of information (some of which may never be accessed or viewed), including thousands of videos, that would have to be made to conform to WCAG 2.0 AA. DOJ said that content relevant to a particular student or parent must be made accessible on demand "in a timely manner."

- **Conforming Alternate Versions of Web Pages and Web Content.** DOJ may permit the use of conforming alternate versions of a Web page and/or Web content (1) when it is not possible to make Web content directly accessible due to technical or legal limitations; or (2) when used to provide access to conventional electronic documents.
- **Undue Burden and Fundamental Alteration Defenses.** DOJ is considering the use of these defenses as grounds to not make Web content conform to WCAG 2.0 AA, but (1) the burden of proving defense would remain on the public entity; (2) the decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity; and (3) the decision must be documented with a written statement of the reasons for reaching that conclusion. Moreover, the public entity still has to take any other action that would not result in such an alteration or such burdens. Moreover, the public entity still has to provide access in some alternative fashion unless doing so would also result in a fundamental alteration in the nature of a service, program, or activity or undue financial and administrative burdens.
- **Does Compliance with WCAG 2.0 AA Satisfy a Public Entity's ADA Obligations?** Not entirely. DOJ says that a public entity would not be required to go beyond this standard even if a person with a disability is unable to access the Web content. However, the public entity would still have to utilize an alternative method of providing the individual with a disability equal access to the information, service, program, or activity on its Web site unless the public entity can demonstrate that alternative methods of access would result in a fundamental alteration in the nature of the service, program, or activity or undue financial and administrative burdens.
- **Measuring Compliance with WCAG 2.0 AA: DOJ is seeking public comment on how compliance with WCAG.** Level AA should be assessed or measured, particularly for minor or temporary noncompliance. Should the measurement be based on the percentage of Web content that is accessible, or some minimum threshold of compliance? The DOJ also wants to know if there are circumstances where Web accessibility errors may not be significant barriers to accessing the information or functions of a Web site. We strongly believe that the regulations must contain a clear statement that temporary noncompliance is not a violation of the ADA. Websites change all the time and there are bound to be bugs and issues that come up. And, guidance on how compliance with the standard will be measured given the dynamic nature of websites is essential.
- **Coverage of Mobile Apps.** DOJ asks whether its rule should cover mobile apps and which standard should be used. DOJ specifically called out WCAG 2.0, the User Agent Accessibility Guidelines 2.0, the Authoring Tools Accessibility Guidelines 2.0, or ANSI/Human Factors Engineering of Software Interfaces 200 as possible accessibility requirements for mobile apps.

As you can see, there are a many issues requiring public comment in the SANPRM. State and local governments, persons with disabilities, digital accessibility experts, vendors of third-party content and public accommodations all need

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Last Updated: May 27 2016

Article by Minh N. Vu and Kristina M. Launey

Seyfarth Shaw LLP

Why Market Groups Want MSRB to Abandon Bank Loan Proposal.

WASHINGTON – Muni market groups are resoundingly saying “no” to the Municipal Securities Rulemaking Board’s question of whether it should require municipal advisors to disclose information about their issuer clients’ bank loans or privately placed municipal securities.

The MSRB said it asked the question in a March 28 concept release exploring ways to increase the disclosure of bank loans because it worries the current lack of disclosure on EMMA hinders an investor’s ability to truly understand the risks of an investment.

Most groups applauded the MSRB’s intent to increase disclosure but presented a host of reasons for why the concept of having MAs disclose bank loans is flawed.

Only the National Federation of Municipal Analysts said the concept “is a positive step in improving disclosure of [bank loans].” But that group also proposed other ways to disclose bank loan information.

Terri Heaton, president of the National Association of Municipal Advisors told the board that the “proposal would not get the industry to [the MSRB’s] goal line” and would “place an unreasonable burden on municipal advisors.”

The MSRB acknowledged in the concept release that there may be impediments to writing such a rule under federal securities laws. The Securities Exchange Act of 1934 contains the Tower Amendment, which bars the MSRB and SEC from requiring information from issuers before offerings. It also bars the MSRB from requesting issuer information after offerings.

But the MSRB said it might be able to write such a rule for MAs along the lines of existing dealer rules like G-32 on primary offering disclosures and G-34 on CUSIPs, new issue, and market information requirements.

Heaton balked at the attempt to justify such a requirement with G-32 and G-34. Unlike dealers, MAs do not have a “customer” relationship with investors or the investing public at large and thus it goes beyond the MSRB’s authority to impose such a broad investor delivery requirement on MAs, she wrote.

If the proposal were enacted, it would also threaten the MAs’ fiduciary duty to their clients under MSRB Rule G-42, which lays out municipal advisors’ core duties, she added.

Ken Artin, president of the National Association of Bond Lawyers, echoed Heaton in a letter for NABL, saying the proposal may present “an unresolvable conflict of interest for the municipal advisor.”

He also questioned the MSRB’s statutory authority, comparing the possible regulation of MAs to the existing dealer regulation under Securities and Exchange Commission Rule 15c2-12 on disclosure. Under Rule 15c2-12, the SEC regulates the actions of broker-dealers in primary offerings of municipal securities. Dealers are regulated entities. Primary offerings are regulated transactions and municipal securities are regulated products, Artin wrote. The concept release would have the MSRB regulating disclosure of bank loans or direct purchases, which may or may not be municipal securities, he said.

Many industry groups have asked the SEC whether bank loans and private placements can be considered securities but the commission has not provided any guidance. Officials with George K.

Baum & Co. suggested in their letter that the MSRB should delay additional regulation on bank loans until the SEC settles the issue and releases guidance.

Leslie Norwood, managing director, associate general counsel, and co-head of munis for the Securities Industry and Financial Markets Association, wrote: “there is no colorable argument that the MSRB has the statutory authority to require disclosure of bank loans, because they are financial instruments that are not securities.”

Bond Dealers of America chief executive officer Mike Nicholas also argued that the idea floated by the MSRB is outside its authority because the board “proposes to require municipal advisors to step into the activities of issuers and issuer responsibilities under the federal securities laws,” a power that the exchange act does not give the self-regulator.

Many groups, including the Government Finance Officers Association, NAMA, and BDA, also criticized the proposal for leaving MAs in the position to make a judgement about the materiality and need to disclose a bank loan when that power arguably should be left to the issuer.

Artin said the requirement could make MAs liable for antifraud violations under federal securities law because they could be considered the “makers” of the statement by disclosing, even though the issuer is the one who prepares it. Even if MAs were not considered “makers,” Artin argued they could still be subject to aiding and abetting liability.

Issuers’ concerns about potential liability as well as their possible desires to avoid bank loan or private placement disclosures may lead some to avoid hiring municipal advisors, several groups argued, which would undermine the purpose of the rule and the benefits of issuers hiring experienced advisors.

Heaton, echoing other comments, said the concept is problematic because there are numerous bank loans and direct purchases that are done without a municipal advisor. Other groups said that MAs who participate in transactions sometimes are not involved in negotiating the loan terms and may lack the required knowledge to make effective disclosures.

The groups offered several proposals of their own to bolster bank loan disclosure, including amending Rule 15c2-12 to include bank loans and private placements as a material event that is required to be disclosed. They also said EMMA should be improved in this area.

SIFMA, BDA, and George K. Baum said the 15c2-12 amendments would be the most comprehensive way to tackle the disclosure problem. Norwood suggested the MSRB could include non-dealer MAs working on direct placements under Rule G-32, which requires dealer MAs that prepare official statements for issuer clients to make electronic versions of the document are promptly made available after issuers approve the distribution of the statements.

Ben Watkins, Florida’s director of bond finance, was one of several commenters who said again that the MSRB needs to make it easier for issuers to upload their bank loan disclosures on EMMA. He suggested the MSRB provide a recommended threshold on the size of bank loans for which disclosures should be made.

The Bond Buyer

By Jack Casey

May 31, 2016

Muni Entities Could Get Rebates, MSRB Says.

For nine years, Lynnette Kelly has led the Municipal Securities Rulemaking Board as it carries out its expanded investor-protection mission under the Dodd-Frank Act with respect to state and local governments and other municipal entities.

Now, the self-regulatory organization is weighing what to do with the extra reserves it has collected and may possibly issue rebates to regulated entities, Kelly, the MSRB's executive director, told Bloomberg BNA in a May 10 interview.

The board took in $41.3 million in 2015, 29 percent more than it generated the previous year (07 SLD, 1/12/16). The MSRB ended its 2015 fiscal year with approximately 16-months' operating reserves, versus the 12-month operating expense target, Kelly said. The reserves indicate the length of time the MSRB could operate with no funds being generated.

Revenue, Reserves, Rebates

"We've had a history of under-spending," Kelly said. Just because the board is sitting on extra cash doesn't mean it will spend it right away, she warned. Any excess funds flow into the board's reserves.

The board's revenue comes from primarily three sources: underwriting volume, trading volume, and ancillary revenue such as annual fees, subscriptions, and fines.

Currently, the finance committee is crafting a policy to address when organizational reserves exceed or fall below certain established levels (75 SLD, 4/19/16). Since the current reserves exceed the established reserve target by four months, the board is deciding what to do with the money. In the past, the board has issued rebates to regulated entities, Kelly said. In fiscal year 2014, for example, the board announced a discretionary technology fee rebate of $3.6 million to reduce reserve levels. The rebate was distributed to entities that paid the technology fee between Jan. 1 and June 30, 2014.

The board has several options other than rebates, Kelly said, including using the extra funds to enhance the Electronic Municipal Market Access website—EMMA—website. The final decision should be made by the board's July meeting and any rebate would likely be announced in August.

Muni Advisor Exam

Kelly is also overseeing the rollout of the first-ever qualifying exam for municipal advisors, a three-hour test tentatively scheduled to launch Sept. 12.

The board and a group of industry experts worked three years to develop the test—the Municipal Advisor Representative Qualification Exam (Series 50)—which will determine whether an individual is qualified to serve as a municipal advisor. It should also help weed out "bad actors" in the industry who don't put their clients' needs first, Kelly said.

Municipal dealers who don't also act as municipal advisors won't be required to take the Series 50 exam, as they have separate qualification requirements already in place.

New Authority

The Dodd-Frank Act gave MSRB authority to regulate municipal advisors, a group of approximately

4,000 professionals who advise state and local governments on municipal bond and other investment-related matters, and those who solicit muni bond business from issuers on behalf of others. Currently, municipal advisors who don't also serve as dealers aren't regulated by the MSRB or subject to qualification standards.

About 1,700 municipal advisors took a pilot exam in January (174 SLD, 9/9/15). Pilot participants will be notified of their results the week of May 30. Those who passed the pilot exam are considered qualified and won't have to sit for the new exam, Kelly said. Once registration for the test opens, the remaining 2,300 advisors will have a one-year grace period to pass the exam with a score of 71 percent or better.

The board is also considering how to develop a continuing education program for municipal advisors (75 SLD, 4/19/16). Once an advisor passes the exam, he or she won't have to re-test to keep the qualification current; continuing education is all that will be required. Many advisors also double as municipal dealers, so it's important to make sure there is no duplication of effort, Kelly said. The board is considering tailoring the continuing education requirements to each firm's specific needs, she said, but hasn't made a final decision. It plans to seek comments in the fall.

After the Series 50 exam gets underway, the board plans to create an additional qualification test for those serving as principals—those who manage and supervise the activities of municipal advisors.

Other Concerns

The board also is working with the Financial Industry Regulatory Authority on rule changes to require municipal dealers and member firms to disclose the amount of the mark-up on retail customer confirmations (33 SLD, 2/19/16) (39 SLD, 2/29/16). "It's a top priority that's moving along very quickly," Kelly said.

After reviewing comments on draft rule changes, the board is collaborating with FINRA to determine whether additional changes are needed to make the MSRB standard consistent with the FINRA standard for broker-dealers selling corporate securities.

A rule proposal should be filed with the Securities and Exchange Commission sometime this year, Kelly said. The board is also developing a measure for establishing the presumptive prevailing market price to ensure that retail investors are able to better compare transaction costs.

The board also is going to tackle the issue of bank loans to muni issuers. "Local governments should have access to all financing options, but the lack of disclosure surrounding bank loans is troubling," Kelly said. It has encouraged muni issuers to voluntarily disclose those loans on its public online repository, but that effort has proved ineffective (21 SLD, 2/2/16) (20 SLD, 1/30/15). Recently, the MSRB turned to muni advisors as a possible disclosure option and sought comment on whether its new powers under Dodd Frank enable it to require advisors to make the disclosures (60 SLD, 3/29/16) (207 SLD 207, 10/27/15). Comments are due at the end of May, and the MSRB board will consider them in July.

Bio

Before joining the board, Kelly, from Nelson, Neb., was a managing director and associate general counsel at the Securities Industry and Financial Markets Association where she focused on best market practices in the fixed income markets.

Kelly's interest in the municipal industry began at the University of Nebraska, where she majored in

urban design. Through her course work, she learned the importance of infrastructure financing.

After earning her law degree at Tulane University School of Law, Kelly worked on municipal finance matters at several New York law firms. She also served as general counsel for the Municipal Assistance Corporation for the City of New York.

Bloomberg BNA

from Securities Law Daily

By Antoinette Gartrell

MSRB: Sept. 12 is Date For Permanent MA Qualification Exam.

WASHINGTON – Municipal advisor professionals who have not already passed the Municipal Securities Rulemaking Board's pilot qualification exam will have one year from Sept. 12 to pass the permanent exam, the self-regulator announced on Tuesday.

MAs will have to score a 71% or higher on the Series 50 exam in order to pass. They can take the test more than once. If they do not pass within the one-year grace period, they will no longer be able to practice as a municipal advisor.

The permanent exam will be modified before Sept. 12 based on the results from the MSRB's pilot qualification exam, which 1,679 individuals took between January 15 and February 15 of this year. The individuals who participated in the pilot represented roughly 41% of the MA market. More than 50% of MA firms had at least one professional take the exam. Eighty-four percent of the individuals passed.

All advisors who participated in the pilot exam, as well as the primary regulatory contact in their firms, will be notified at some point this week about whether they passed. Any MA that did not will have one free opportunity to retake the exam.

"We think the statistics in terms of the types of municipal advisors, the size of their firms, the geographic dispersions, really gave us the kind of data we needed to make sure the [permanent] exam follows all of the best practices in the industry," said Lynnette Kelly, the MSRB's executive director.

The high pass rate disproves the idea some people had that individuals were "going to just kind of walk in the door unprepared and give it a shot," said Kelly.

"I think people took it very seriously," she said. "I think people studied very hard." She added that, "the people who took the pilot exam were seasoned municipal advisor processionals so you would very much expect to see a strong showing from this group."

The MSRB will be releasing a revised Series 50 content outline on or before July 1 to reflect MA rules like G42 on core duties of municipal advisors, G20 on gifts and gratuities, and G37 on political contributions, that were not in place when the pilot exam outline was first published last year. The new outline will include topics covered on the exam, sample questions, and a list last year. The new outline will include topics covered on the exam, sample questions, and a list of reference materials to help the professionals prepare for the exam.

The MSRB also plans to both create continuing education requirements for MAs at some point in the future and implement a separate exam for municipal advisor principals. MSRB Rule G3 on professional qualifications defines an MA principal as a person associated with a municipal advisor who is qualified as an MA representative and is directly engaged in the management direction, or supervision of the MA activities of the firm and its associated persons.

The Bond Buyer

By Jack Casey

May 31, 2016

The SEC Is AWOL on Puerto Rico.

The Commonwealth of Puerto Rico is a financial ticking time bomb that will explode no later than July 1st when a $1.9 billion bond payment is due, which will almost certainly not be paid. Put simply, Puerto Rico is effectively bankrupt.

However, while those financial issues dominate the headlines, they obscure a much larger crisis: a burgeoning human catastrophe as basic social services, including fighting the growing Zika epidemic, are being severely cut to pay interest on bonds, which now consume an astonishing 36% of Puerto Rico's current budget. This is a serious problem and not just for Puerto Rico. The fiscal crisis and deteriorating services, combined with a bad economy creating too few jobs and growth, have sparked a mass exodus from Puerto Rico to the U.S. Zika will not be far behind.

But because Puerto Rico is a Commonwealth rather than a state or municipality, it cannot simply file for bankruptcy and realign its revenues and debts in an orderly, fair and reasonable way. To enable this and prevent a social disaster, a paralyzed, hyper-partisan Congress must act quickly. While Speaker Ryan and the Obama Administration have announced a deal that will permit Puerto Rico to address several of its immediate problems, including authority to restructure its debt, the final passage is still uncertain.

But what can and should have already happened is a thorough investigation by the Securities and Exchange Commission (SEC) into this municipal debt debacle, including in particular into the creation, packaging, selling and trading of Puerto Rico's bonds. This would not be an unfounded fishing expedition. There have been numerous high-profile allegations of misconduct regarding the structuring, sales and trading of some of Puerto Rico's bonds. The SEC is supposed to be in the investor and issuer protection business. It's time for them to get to work.

There is ample precedent for this. For example, between September 2010 and July 2011, the SEC held three field hearings to examine whether investors and issuers of municipal bonds were sufficiently protected. At one of the hearings was held in Jefferson County, Alabama, which three years earlier had been a victim of JP Morgan's corrupt municipal bond underwriting and advisory practices. Then-SEC Commissioner Elise Walter said policymakers must be "informed by [the] experiences of those who live and work outside of Washington, D.C…" adding that it is "particularly true with respect to municipal securities, given their impact on local communities and retail investors."

From the 2010-2011 hearings, the SEC released a report on the state of municipal securities market, calling for many far-reaching reforms, some of which the SEC still has to act on. These proposed-

reforms were in addition to what were then-still-new rules introduced by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 975 of the Act required, for the first time, that municipal advisors — the professionals who sit by the issuers during their negotiations with underwriters and broker-dealers when issuing bonds and selling them to investors — be subject to competency and conflict of interest rules, and above all, become fiduciaries of issuers. The same law also explicitly mandated that the SEC protect municipal entities.

Armed with this mandate, the SEC should immediately announce a series of actions, including field hearings in Puerto Rico, roundtables, forums and fact-finding missions, to address regulatory shortcomings related to Puerto Rico and, more broadly, financially distressed municipalities. It must, at a minimum, answer the key questions: Did municipal advisors, underwriters, and broker-dealers act in the best interest of the Puerto Rican issuers? Did they package, sell and trade bonds consistent with the laws protecting investors?

The SEC should also promptly determine if it should revise its rules on municipal advisors, broker-dealer conduct and standards of care, underwriter conflicts of interest, or disclosure-related regulations for financially distressed municipalities. Everyone is entitled to know if current laws and rules are adequate to protect municipal entities and investors from being exploited.

Congress must act promptly so that Puerto Rico can restructure its debts, stabilize its finances and provide basic services to its people, while also increasing transparency, oversight and accountability. But, the SEC must also act immediately and thoroughly investigate the origins of this debt-fueled crisis, determine if laws were broken, prosecute illegal conduct, and strengthen the regulatory structure where necessary.

The Huffington Post

Dennis M. Kelleher
President and CEO, Better Markets, Inc.

Co-authored by Lev Bagramian, Better Markets, Senior Securities Policy Advisor

05/23/2016 04:53 pm ET

How Groups Want To See Minimum Denomination Exceptions Changed.

WASHINGTON – Dealer groups are asking the Municipal Securities Rulemaking Board for more flexibility with exceptions to its rule preventing dealers from buying or selling bonds below issuers' prescribed minimum denominations.

"Below minimum denomination bond positions are often created in the marketplace and the rule needs to provide dealers with flexibility to manage these situations since a below minimum denomination quantity of bonds is a hard-to-sell position with limited liquidity," Mike Nicholas, Bond Dealers of America's chief executive officer, wrote in a letter to the board.

The comments from BDA and others respond to two proposed amendments to MSRB Rule G-15 on customer transactions that the self-regulator circulated in early April. The goal of the amendments is to ensure no additional customers with holdings below the minimum denominations are created as a result of exceptions.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in its official bond documents, usually $5,000. Issuers sometimes set higher minimum denominations on bonds that are risky to discourage retail investors from buying them. In addition to a minimum denomination, an issuer can also set a trading "increment" for its bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Although dealers are required to adhere to any minimum denominations set in transactions, some investors can be left with amounts below the stated minimums if they received allocations in a managed account or took control of a share of someone else's holdings, such as from a settlement after a divorce or an inheritance after a death. The MSRB exceptions allow those customers to avoid being stuck with these holdings.

BDA requested the MSRB consider including language in the draft amendments that could curb the risk of depreciation. The dealer group suggested allowing portions of holdings that would meet the minimum denomination threshold to be sold off instead of requiring the account to be liquidated as is the case now. It also asked that the MSRB expand the exceptions to allow sales below the minimum denomination to any customer who has an existing position in the bonds, whether it is above or below the designated minimum. Additionally, it wants the board to allow firms to correct transactions that violate the rule without punishment if the fix is done "within a reasonable timeframe."

Marc Joffe, president of the Center for Municipal Finance in California, went even further, asking the MSRB to eliminate minimum denominations in an effort to lower the barrier to entry in the market for potentially interested retail investors. In other words, the $5,000 minimum denomination found in most deals would no longer apply.

"Small investors are not protected from other types of risky investments," like penny stocks, Joffe said in his letter.

"Many Americans would undoubtedly welcome the opportunity to invest in their communities by purchasing municipal bonds," he said. "High minimum authorized denominations provide little meaningful protection, while excluding a large group of investors from the socially important municipal bond market."

Leslie Norwood, managing director, associate general counsel, and co-head of munis for SIFMA, who authored that group's letter, made clear that SIFMA believes the proposed amendments change current law by narrowing the existing exceptions. She said it is important for the MSRB to recognize that fact in order to guide dealer examinations and future enforcement efforts. However, Norwood said SIFMA supports the change and believes it would be a "positive change to the rule moving forward."

The current rule allows dealers to sell to a customer at an amount below the minimum denomination if the sale is a result of another customer liquidating his or her entire position in an issue. The other current exception allows dealers to buy from a customer below the minimum denomination if the dealer determines, based on customer account information or a written statement from the customer, that the customer is selling its entire position in the issue.

The first new exception would allow a dealer that has bought a customer's liquidated position that is less than the minimum denomination to sell these bonds, in amounts below the minimum, to one customer with no prior holdings in the bonds and to any customers who already have positions in the bonds. The second would allow a dealer to sell bonds to any customer with a prior position as long

as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds, so long as the sale is consistent with the issuer's stated increment.

Both SIFMA and BDA told the MSRB to make changes to allow exceptions for interdealer trades, especially those done on alternative trading systems.

"At a time when dealers believe that the [Securities and Exchange Commission] and other regulators are trying to encourage the use of alternative trading system platforms, this rule creates significant compliance challenges for those dealers using an ATS platform that anonymizes the counterparties," Norwood wrote. She added it would be helpful if the MSRB would waive the requirement that a dealer needs to determine if their dealer counterparty's selling customer has liquidated his or her entire position that was below the minimum denomination.

BDA's Nicholas said it should be the burden of the selling dealer in such a transaction to ensure the customer has liquidated his or her entire position. He added BDA believes that for interdealer transactions, dealers should only have to send a disclosure letter explaining the risks to a customer in instances where the customer is "known" and not have to do a "look through" to identify the counterparty customer.

Additionally, he requested the MSRB exempt sophisticated municipal market participants from the rule's protections.

Norwood also asked that the MSRB consider two other potential obstacles regarding information gathering for dealers trying to follow the rule. Some private placement memorandum documents are not currently on the MSRB's EMMA system and Norwood said that means some dealers cannot check minimum denomination and increment information that those documents would contain. If dealers are going to comply with the amendments, the MSRB should change its Rule G-32 on primary offering disclosures to require filing of all minimum denomination and increment information on EMMA.

Introducing increments in the rule language will also cause a delay in compliance, Norwood said, because increment amounts are not uniform across the industry and dealers would want to take time to reconfirm the information available through information service providers. If increments are to be included in the final rule, she asked that dealers have a longer implementation window.

The Bond Buyer

By Jack Casey

May 26, 2016

How SIFMA Is Helping MAs Before Rule G-42 Implementation.

TORONTO – The Securities Industry and Financial Markets Association has released four model documents designed to help municipal advisors as they work to come into compliance with the Municipal Securities Rulemaking Board's rule outlining the core duties for MAs.

The rule, G-42, becomes effective on June 23.

Leslie Norwood, managing director, associate general counsel, and co-head of munis for SIFMA, made clear that the documents that are catered to helping MAs comply with MSRB Rule G-42 are open to industry feedback until the end of May, at which time they will be finalized. She also said that while they were designed to aid SIFMA member firms, any MA can choose to adopt the documents or modify them to bring themselves into compliance by the rule's effective date.

The documents cover sample language for both existing MA relationships with issuers and obligated person as well as new engagements with those clients.

"SIFMA is pleased to provide municipal advisors with these compliance tools as the G-42 implementation date draws near," Norwood said. "We feel that the development and use of standardized model documentation plays a critical role in increasing legal certainty and decreasing legal costs and regulatory risk for firms in this business."

One model document outlines a possible MA engagement letter for new engagements on or after June 23. According to a drafting note attached to the document, it can be used for: a municipal or non-municipal entity client; an issuer or an obligated person; and engagements relating to new issues, municipal financial products, or both. The document must be promptly amended or supplemented during the term of engagement, according to the drafting note, to reflect any material changes or additions. The issuer also must promptly deliver the document to its client.

SIFMA also included a sample form, designed to supplement the letter for new engagement, that would provide an MA client with initial disclosures of legal and disciplinary events as Rule G-42 requires.

In addition to the documents for new engagements, SIFMA also provided a document for use by MAs with an ongoing engagement that would make required initial disclosures of legal and disciplinary events under the rule. Like the first two sample documents, SIFMA, in a drafting note, recommends MAs promptly amend the document during the term of engagement to reflect any material changes or additions.

The final document the dealer group is providing is a municipal advisory client worksheet that is intended to give generalized guidance on the types of information and considerations that may be relevant for municipal advisors to meet their obligations under the rule. SIFMA makes clear in its note on the document that the examples should not be treated as a best practice and should be appropriately tailored to individual firms' written supervisory procedures, practices and circumstances.

Under Rule G-42's core standards of conduct, MAs owe a fiduciary "duty of loyalty" to their municipal issuer clients and are required "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

The rule also contains a "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

G-42 originally contained an outright ban on a municipal advisor acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. However, after feedback from SIFMA and other groups, the MSRB decided to file an amendment to its proposal that provided a limited exception to the ban and instituted certain

necessary conditions and documentation requirements to use it.

The Bond Buyer

By Jack Casey

May 22, 2016

NABL: Economic Calendar Coming to EMMA

The Municipal Securities Rulemaking Board announced that beginning in June 2016, users of the Electronic Municipal Market Access (EMMA) website will have free access to an economic calendar that will include key macroeconomic developments that could affect trading and issuances in the municipal market.

The calendar will also highlight: key federal data releases, events and other indicators of the health of the overall economy, such as labor statistics and interest rate decisions.

EMMA's economic calendar will be provided by Econoday, and will be available here.

BDA Submits Comment Letter to MSRB on Proposed Amendment to Rule G-15(f).

Today, BDA submitted a comment letter to the MSRB on proposed amendments to Rule G-15(f) on minimum denominations. You can view a copy of the letter here.

The MSRB's proposed rule amends MSRB Rule G-15(f) to provide exceptions related to prohibitions which restrict municipal securities dealers from effecting transactions with customers below the minimum denominations specified in bond documents.

More specifically, the letter addresses:

- BDA's general support for improving liquidity with certain securities below the minimum denomination
- Request for the MSRB to permit sales to customers of any amount below minimum denomination if the customer already owns a position at, or above, the minimum
- Request for the MSRB to permit the rescinding of inadvertent sales of below minimum-denomination positions as a safe harbor
- Request for the MSRB to consider permitting incremental additions to below minimum positions in certain situations

Additional information:

You can view the MSRB's regulatory notice here.

We hope this information is helpful.

Jessica Giroux at jgiroux@bdamerica.org

John Vahey at jvahey@bdamerica.org
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SIFMA AMG Submits Comments to the MSRB on Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans.

SIFMA AMG provides comment to the Municipal Securities Rulemaking Board (MSRB) on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans. The proposal is to require municipal advisors to disclose information regarding the direct purchases and bank loans of their municipal entity clients.

Read the Comment Letter.

May 27, 2016

SIFMA Submits Comments to the MSRB in Response to Request for Comment on Clarifying Exceptions to Minimum Denomination Rule.

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) regarding draft amendments to MSRB Rule G-15(f) on minimum denominations.

Read the Comment Letter.

May 25, 2016

MSRB: Roles and Responsibilities of the Deal Team.

A key part of issuing new debt is assembling a team of professionals to work for the state or local government. Educational resources and tools are available for issuers to help them understand what they should expect from their deal team, which may include a municipal advisor, underwriter, trustee and various other professionals. Read more about the roles and responsibilities of the financing team in both negotiated and competitive deals, and access additional information on working with regulated financial professionals in the MSRB Education Center.

FINRA Files Complaint Charging Lawson Financial Corporation, CEO With Fraudulent Municipal Bond Sales, and Charging CEO With Misuse of Customer's Charitable Trust Funds.

WASHINGTON — The Financial Industry Regulatory Authority (FINRA) announced today that it has filed a complaint against Phoenix-based firm, Lawson Financial Corporation, Inc. (LFC), and Robert Lawson, the firm's President and Chief Executive Officer, charging them with securities fraud in connection with the sale of millions of dollars of municipal revenue bonds to customers. The

complaint further charges Robert Lawson and Pamela Lawson, LFC's Chief Operating Officer, with self-dealing by abusing their positions as co-trustees of a charitable remainder trust and improperly using the trust funds to indirectly prop up the struggling offerings. Based on the transfers of millions of dollars from the charitable remainder trust account, the complaint also charges Robert Lawson with misuse of customer funds.

The municipal revenue bonds at issue in the complaint include: (1) a $10.5 million bond offering in October 2014 for bonds relating to an Arizona charter school as underwritten by LFC and sold to LFC customers, as well as subsequent sales of these bonds to LFC customers in the secondary market; (2) secondary market bond sales to LFC customers in 2015 of earlier-issued municipal revenue bonds relating to the corporate predecessor of the same Arizona charter school; and (3) secondary market sales to LFC customers between January 2013 and July 2015 of earlier-issued municipal revenue bonds concerning two different assisted living facilities in Alabama.

The complaint alleges that Robert Lawson and LFC were aware of financial difficulties faced by the municipal revenue bond conduit borrowers (the charter school in Arizona and the two assisted living facilities in Alabama) and fraudulently hid from LFC customers who purchased the bonds the material facts that the charter school and the two assisted living facilities were under financial stress. The complaint alleges that Robert Lawson and LFC carried out their fraudulent scheme by transferring millions of dollars from a deceased customer's charitable trust account to parties associated with the conduit borrowers to hide the financial condition of the bond borrowers and the risks posed to the municipal revenue bonds. In particular, the complaint alleges that LFC and Robert Lawson hid from LFC customers who purchased the bonds the material fact that Robert Lawson – in his role as co-trustee of the charitable trust account, and with the knowledge of his wife Pamela Lawson – was improperly transferring millions of dollars of funds from the charitable remainder trust account to various parties associated with the bond borrowers when the borrowers were not able to pay their operating expenses and, for certain of the bonds, were not able to make the required interest payments on the bonds.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Under FINRA rules, a firm or individual named in a complaint can file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations and payment of restitution.

Investors can obtain more information about, and the disciplinary record of, any FINRA-registered broker or brokerage firm by using FINRA's BrokerCheck. FINRA makes BrokerCheck available at no charge. In 2015, members of the public used this service to conduct 71 million reviews of broker or firm records.

Investors can access BrokerCheck at www.finra.org/brokercheck or by calling (800) 289-9999. Investors may find copies of this disciplinary action as well as other disciplinary documents in FINRA's Disciplinary Actions Online database. Investors can also call FINRA's Securities Helpline for Seniors at (844) 57-HELPS for assistance or to raise concerns about issues they have with their brokerage accounts and investments.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules,

enforcing those rules and the federal securities laws, and informing and educating the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

For Release:
Thursday, May 19, 2016

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The Hidden Risks of a Growing Way to Pay for Infrastructure.

More and more, governments are turning to bank loans rather than bonds. But too often the terms of the loans — and who is first in line to collect — are secret.

A perilous new financial risk may be hiding in the fine print of loan agreements in state capitals, county seats and city halls across the country. The cost could be high for millions of individuals whose investment dollars help finance the public schools, water systems, bridges and roads that we all rely on and which in many cases are in desperate need of repair.

Investment in the nation's infrastructure has long been a partnership between state and local governments and retail investors. State and local governments prioritize public projects, investment bankers provide products to help spread costs over the life of the project, investors buy in to earn reliable, often tax-free interest income, and then taxpayer dollars repay the bonds. Today, more and more communities are opting for alternatives to this traditional municipal-bond model in the form of direct loans from banks. Estimates are that the bank financing of public projects has ballooned to more than $155 billion with another $25-$30 billion being added each year.

Borrowing funds from a bank to build a bridge is not inherently problematic. The problems arise when the extent of the borrowing — and the precise terms of the loans — are a secret. For municipal-bond financings, states and communities have obligations under federal law to publicly disclose material information to investors at the outset. But no such disclosure requirements exist at the time they receive loans from banks. Investors who hold a city's outstanding bonds may have no idea that the city has taken on more debt or that the bank making the loan has made sure it will be first in line to collect if the city runs into financial troubles.

That's just what happened in Lawrence, Wis. The small town borrowed heavily from local banks, and it agreed to put the banks before the bondholders in the event it someday couldn't cover all of its financial obligations. When a major ratings agency learned of the unfavorable terms for bondholders, it quickly downgraded Lawrence's bonds to junk status. Bondholders who thought they were holding investment-grade paper are now left with a far riskier asset.

No one knows how many other Lawrences are out there. A few states, counties and cities voluntarily make information about their bank loans publicly available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website (EMMA), the official public archive for financial documents and other information for municipal bondholders. But the vast majority of bank-financed public projects remain a mystery to municipal bond investors, taxpayers and securities regulators.

As the national regulator charged with protecting municipal bond investors, the MSRB is advocating for expanded disclosure of the amounts and material terms of these alternative financings by state and local governments. Since 2012, the MSRB has encouraged states and communities to take advantage of EMMA to make bank loan information available to the public, something several industry groups support.

This year, the MSRB is escalating its call for improved bank loan disclosure. We are now collecting public input on how the MSRB might exercise its regulatory authority over the financial professionals who work with state and local governments to require more transparency around these loans. Because state and local governments have legal protections against federal oversight, the MSRB cannot simply mandate bank-loan disclosure on their part. Any future action by the MSRB must also take into consideration the fact that bank-loan documents may contain proprietary information that would need to be redacted prior to public dissemination.

Despite these constraints, the MSRB believes it is imperative to address the risks that undisclosed bank loans pose to bondholders and the broader financial health of communities nationwide. Until the amount and terms of these loans are understood, there's no way to assess the likelihood of a crisis in the making, one that could result in thousands of bank-leveraged bridges and millions of burned bondholders.

GOVERNING.COM

BY LYNNETTE KELLY | MAY 13, 2016

GFOA Alert: Bank Loan Disclosure

Over the past five years, the municipal securities market has witnessed a dramatic increase in the use of bank loans by municipal issuers as a tool to finance capital improvements as well as refund outstanding debt. Bank loans, which may be structured with fixed or variable interest rates and with defined maturities or flexible payment provisions, may offer a number of potential advantages over a public offering of municipal securities. The increasing use of bank loans has recently begun to attract the attention of regulators, such as the Municipal Securities Rulemaking Board (MSRB) and Securities and Exchange Commission (SEC), as well as the credit rating agencies, which are growing increasingly concerned about bank loan disclosure practices among municipal issuers.

Typically, the process for executing a bank loan is more streamlined than a traditional bond issue that is publicly marketed, with fewer costs of issuance and ongoing compliance requirements. In particular, banks loans often do not require an offering document or credit ratings. Additionally, bank loans are often structured in a more flexible manner than a traditional municipal bond issue, to conform to a specific project schedule or particular cash flow considerations. However, because bank loans are not typically executed in an environment that is as transparent as the municipal securities market, an issuer may have limited ability to assess information about whether the proposed interest rate, fees, and terms of a particular loan are consistent with bank loan market practices.

For these reasons, GFOA urges state and local governments that are considering bank loans to:

- Provide voluntary public disclosure of the bank loan;
- Develop specific policies and procedures that address the applicable legal and financial requirements of using bank loans for their jurisdiction; and

- Seek guidance from outside professionals including municipal advisors and bond counsel in reviewing the legal and financial terms of the bank loan.

Bank Loan Disclosure Considerations

In order to enhance market transparency and public communication to its citizens and other stakeholders who are interested in understanding a government's total debt profile, GFOA recommends that governments should voluntarily disclose information about bank loans. Disclosure of a bank loan would be relevant to bondholders if the bank loan is secured by any or all of the same revenues as the outstanding bonds, and is large enough to be material to the creditworthiness of the government. Additionally, if a government executes numerous bank loans, entities investing in the government's bonds may need to know about the combination of those loans in the aggregate. Lastly, certain terms and conditions of the bank loan (e.g., liquidity covenants, events of default, and acceleration provisions) may be important information for credit analysts and bond holders. While disclosure of bank loans is not currently required under MSRB or SEC rules, issuers are advised that increased regulatory scrutiny may result in mandatory disclosure of bank loans in the future, subject to similar standards of materiality and timeliness as apply to municipal securities.

Voluntary disclosure of bank loans may be accomplished in a variety of ways, either by posting the loan agreement itself or a summary of material terms on the MSRB's Electronic Municipal Market Access (EMMA), incorporating bank loan information in the government's comprehensive annual financial report, or releasing a summary of the material terms of the bank loan on the government's website. When using EMMA to disclose bank loan information, governments should be aware that the bank loan will not have a CUSIP reference number, and the information will need to be uploaded as "other Information" connected with a bond issue already established in EMMA. The government, in consultation with its municipal advisor, disclosure counsel, and bond counsel, should determine both the extent of information it provides and the manner in which it is disseminated.

GFOA also encourages governments to keep abreast of the current regulatory environment surrounding bank loan disclosure. For example, the MSRB recently requested public comment on a regulatory approach that would require municipal advisors to disclose information about the bank loans and direct purchases of their government clients on EMMA. GFOA will submit comments to the MSRB on this proposal and invites GFOA members to do the same. GFOA has significant concerns with this proposal, including the fact that municipal advisors are the only party in a municipal debt transaction that have a fiduciary responsibility to issuers, as outlined in the SEC's 2013 MA Rule. The MSRB's proposed approach to pass along responsibility of issuer disclosure of bank loans and private placements breaches that fiduciary duty, making municipal advisors also beholden to the investor community. Such a requirement would change the nature of issuers' relationships with municipal advisors in a way that is beneficial to neither issuers nor municipal advisors.

Comment letters are due May 27, 2016, and can be transmitted to the MSRB through this link. GFOA members can access full text of the short regulatory proposal here.

Resources

- GFOA Best Practice – Understanding Bank Loans (2013)
- MSRB Bank Loan Disclosure Market Advisory (2015)
- Moody's Investor Service – Growth in Bank Loans and Private Financing Creating Information Gaps in US Municipal Market (2012)
- Standard & Poor's Rating Services – Not All Loans are Equal: Some Terms and Conditions That Make Disclosure Critical in Evaluating Credit Risk (2014)

- National Federal of Municipal Analysts – Considerations Regarding Voluntary Secondary Market Disclosures About Bank Loans (2013)

Thursday, May 12, 2016

MSRB Seeks SEC Approval of Proposal to Update Close-Out Procedures.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission amendments to its proposal to update MSRB requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer fail transactions. Proposed amendments to MSRB Rule G-12 would require that open transactions be closed out no later than 20 calendar days after settlement date, and make other changes designed to accelerate and modernize the close-out process. The changes seek to reduce dealer and systemic risk, and the likelihood and duration that dealers are required to pay "substitute interest" to customers.

View the filing.

Seven Accused of Selling Fake Bonds.

Federal prosecutors charged a former campaign adviser to Secretary of State John Kerry and a second man once dubbed by the media "porn's new king" along with five others in an alleged scheme involving a Native American Tribal bond offering.

Devon Archer, an adviser to Mr. Kerry's presidential campaign in 2004, and Jason Galanis, a former investor in the adult-entertainment business, allegedly duped clients into investing more than $43 million in sham bonds issued in 2014 and 2015 by an affiliate of the Oglala Sioux Nation in South Dakota.

Messrs Archer, Galanis and the five other defendants, including Mr. Galanis's father, then allegedly diverted tens of millions of the bond investments to accounts they controlled and used them to purchase luxury goods and support an initial public offering for a technology company, authorities said.

Lawyers for Mr. Archer and for Mr. Galanis and his father didn't immediately respond to requests for comment.

All seven defendants were arrested Wednesday, and the Manhattan U.S. attorney's office charged them with securities fraud. The Securities and Exchange Commission filed related civil charges.

Along with Jason Galanis, 45 years old, those arrested were his father, John Galanis; Devon Archer; Bevan Cooney; Hugh Dunkerley; Gary Hirst and Michelle Morton.

Susan Brune, a lawyer representing Mr. Dunkerley, said her client "looks forward to addressing the charges." A lawyer representing Mr. Cooney denied the allegations.

A lawyer for Mr. Hirst didn't immediately respond to a request for comment. And a lawyer for Ms. Morton, couldn't be immediately identified.

The younger Galanis was charged in Manhattan federal court in September for activities related to an alleged pump-and-dump scheme. He was accused by prosecutors of secretly taking control of reinsurance firm Gerova Financial Group Ltd. and then dumping its stock, reaping nearly $20 million in illegal profits. Mr. Galanis' father is also charged in that case. They have pleaded not guilty in the Gerova case.

Mr. Archer was the college roommate of the secretary of state's stepson, H.J. Heinz Co. ketchup heir Christopher Heinz, and has business ties to Vice President Joe Biden's son, Hunter.

Mr. Archer, 39, and Hunter Biden, 44, have worked for Rosemont Seneca Partners, a U.S. investment company. It is affiliated with Rosemont Capital, a private-equity firm Mr. Archer co-founded with Mr. Heinz.

Messrs. Archer and Biden also recently joined the board of directors of Burisma Holdings Ltd, a Ukrainian gas producer controlled by a former top security and energy official for deposed President Viktor Yanukovych, as previously reported by The Wall Street Journal.

That move has attracted attention, given the Obama administration's recent support for pro-Western demonstrators who toppled Mr. Yanukovych's Kremlin-backed government in February.

Rosemont Seneca, now a part of New York-based Burnham Asset Management, according to Rosemont's website, declined to comment. Burnham didn't respond immediately to a request for comment.

Jason Galanis has previously run afoul of the SEC. To settle another SEC case, he agreed to a five-year ban from serving as an officer or director of a publicly traded company in 2007. The agency alleged he had filed false accounting information for Penthouse International Inc., an adult magazine publisher in which Jason Galanis owned a significant stake, that SEC complaint said.

Jason and John Galanis were also accused on Wednesday of diverting funds to pay for legal costs in their ongoing pump-and-dump case. Seven individuals have been charged in the alleged Gerova fraud, including Mr. Hirst, who was Gerova's chairman and chief investment officer. In the separate Gerova case, six of that case's seven defendants are scheduled to go to trial in September and have pleaded not guilty.

THE WALL STREET JOURNAL

By CHRISTOPHER M. MATTHEWS

Updated May 11, 2016 8:08 p.m. ET

—Ezequiel Minaya contributed to this article.

Write to Christopher M. Matthews at christopher.matthews@wsj.com

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How The MSRB Wants To Change Dealer Closeout Procedures.

WASHINGTON – The Municipal Securities Rulemaking Board has filed revised amendments with the Securities and Exchange Commission that would require municipal securities transactions to be closed out within 20 days rather than 30 days of settlement.

The MSRB's current rules for closeout procedures are included in a years-old portion of MSRB Rule G-12 on uniform disclosure. There is no mandate for a closeout, only a recommendation that a dealer who fails to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date. The changes would lessen the effect of interdealer transaction failures on the market.

"The MSRB believes that a more timely resolution of inter-dealer fails would ultimately benefit customers by providing greater certainty that their fully paid-for securities are in fact owned in their account, not allocated to a firm short, and would benefit dealers by reducing the risk and costs associated with interdealer fails," the MSRB said in its filing.

Dealers would have a 90-calendar day grace period after the rule is approved to resolve all outstanding dealer failures, which the MSRB estimated is about 170, according to the filing.

The self-regulator had originally planned to revise the rule to put a 30-day limit on closeouts, but the Securities Industry and Financial Markets Association made clear in a comment letter it thought the timeline could be shortened to 15 days with an option for a 15-day extension if both sides in a transaction agree more time is needed.

Ultimately, the MSRB chose 20 days because it was concerned small dealers would be overburdened by a shorter timeline and because it wanted to give all dealers the same fixed time frame.

The changes would also allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business day window. Additionally, the proposal would change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after telephonic notice.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The Bond Buyer

By Jack Casey

May 12, 2016

MSRB Publishes Educational Resources on Municipal Advisor Conduct Rule.

To assist municipal advisors preparing to comply with core standards of conduct that become effective June 23, 2016, the Municipal Securities Rulemaking Board (MSRB) recently published a brief overview of the duties and obligations under new MSRB Rule G-42. A companion document for underwriters addresses implications of the rule for underwriters and provides an overview of the rule itself to assist dealers acting as underwriters in understanding the regulatory framework that applies to municipal advisors.

Rule G-42 establishes requirements for many aspects of the relationship between a municipal advisor and its client by addressing the disclosure of conflicts of interest, documentation of the relationship, recommendations and conduct that is specifically prohibited.

MSRB Rule G-42 Resources

- Municipal Advisors: Understanding Standards of Conduct
- Underwriters: Understanding Duties of Municipal Advisors
- On-Demand Webinar on MSRB Rule G-42

Lessons from Ramapo: Squire Patton Boggs

The federal government has brought the first ever criminal securities fraud charges in connection with a municipal bond financing, following an investigation by U.S. Attorney for the Southern District of New York Preet Bharara, according to recent news reports.

So what lessons are there to be learned from this?

For those who have not followed the story, the charges were brought against Christopher St. Lawrence and N. Aaron Troodler. Lawrence was the elected supervisor of the Town of Ramapo, New York ("Town"), and Troodler was the executive director of the Ramapo Local Development Corporation ("RLDC").

The Ramapo indictment is another high-profile indictment by Bharara, who has brought many high-profile charges for financial fraud and public corruption, which are summarized here and here. The charges in the Ramapo case include securities fraud, wire fraud, and conspiracy. A copy of the indictment is available here.

According to the indictment, RLDC built a minor league baseball stadium. A resolution for the Town to guarantee $16.5 million of bonds for the stadium was rejected by approximately 70% of the voters. Lawrence stated that the stadium would be built with private funds. Half of the $58 million amount came from the Town. The town had guaranteed the RLDC's bonds. The charges stemmed from fabricating receivables, mischaracterizing others, transferring funds between accounts of the Town and RLDC in violation of state law, and purporting to make payments from current operating funds when in fact assets were sold or when lines of credit were used to make the payments. These are of course only indictments, and so we have not yet heard the full story of what happened.

Nonetheless, at least two lessons can be learned from this indictment.

First, we can expect municipal bond issuances to be subject to more scrutiny than in the past. Although this appears to be the first time that criminal charges have been brought, it is safe to assume that it will not be the last. Prosecutors may also feel emboldened to pursue more civil actions.

Second, everyone, whether working for an issuer, underwriter, borrower, or professional service provider should be alert for potential signs of problems in every financing that they work upon. For instance, one should verify statements and track down the cause of any inaccuracies or inconsistencies. Almost always, there will be an innocent explanation behind mistakes. And in the extremely unlikely event that there isn't, you will be glad that you asked.

Squire Patton Boggs

by Alexios S. Hadji

USA April 29 2016

MSRB: Trades Up; Disclosure Documents Down in 1Q 2016.

WASHINGTON – The par amount and number of municipal securities trades rose in the first quarter of this year, compared to both the previous and same quarters last year, according to Municipal Securities Rulemaking Board statistics posted Thursday.

But the number of continuing disclosure documents received by the board dropped to 46,623 in the first quarter of this year from 47,934 during the same period last year, the board said.

The par amount traded was $634.7 billion, slightly higher than the $618.5 billion traded in the first quarter of last year and a lot higher than the $507.3 billion traded in the fourth quarter.

The total number of trades was 2.27 million, up about 1% from the first quarter of last year and 6.5% from the fourth quarter, the MSRB said.

The most frequently traded muni was a 30-year fixed-rate revenue bond that the Parish of St. John the Baptist in Louisiana sold for Marathon Oil Corp. in June 2007 to help finance the expansion of an existing oil refinery and related facilities located in the parish. The issuance amount was $1 billion, with a coupon of 5.13%, and the bonds were not subject to the alternative minimum tax. The MSRB data showed a par amount of $776.3 million of the bonds with 5,792 trades – more than twice the next highest amount of 2,093 trades of the South Carolina Public Service Authority's Series A 2016 tax-exempt refunding bonds.

The most actively traded, in terms of par amount, was an almost $2.8 billion 16-year general obligation refunding bond with a 4.00% interest rate sold in March 2007 by Unified School district No. 230 in Johnson/Miami County, Kansas. The bonds were insured.

Customer purchases of munis increased slightly to an average daily par amount of $5.10 billion in the first quarter, compared to $4.98 billion in the same period as last year. The average daily number of customer purchases totaled 15,187 in the first quarter, which was higher than 15,006 of similar trades during the same period in 2015.

Only about $407.8 million or 8% of customer purchases per day was of $100,000 of less of munis, nearly the same as $396.1 million or 8% for the same quarter last year.

Both variable rate demand obligation and auction rate securities resets declined in the first quarter from the same period in 2015. VRDO resets were 120,950, compared to 133,873 while ARS resets were 2,214, compared to 2,284.

The Bond Buyer

By Lynn Hume

May 5, 2016

MCDC's Appropriateness, Effect on Market Disclosure Debated.

CHICAGO – A regulatory official and market participants sparred over the merits of the Securities and Exchange Commission's voluntary continuing disclosure enforcement initiative during a panel here on Wednesday while acknowledging the need to improve municipal disclosure.

The industry roundtable at the National Federation of Municipal Analysts' annual conference was designed to address a variety of disclosure issues across the municipal market, such as the recent lack of bank loan disclosure, but quickly narrowed to a discussion of the changes in disclosure that have occurred as a result of the SEC's Municipalities Continuing Disclosure Cooperation initiative.

The MCDC initiative promised underwriters and issuers lenient settlements if they self-reported instances where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements. Altogether, 72 underwriters representing 96% of the underwriting market by volume, paid $18 million to settle violations with the SEC under the initiative. The SEC has already started reaching out to issuers about settlements and has said it intends to pursue actions against those who didn't report under the program after it finishes settling with those who did.

Ben Watkins, Florida's director of bond finance who represented the Government Finance Officers Association on the panel, advocated for voluntary efforts among industry participants to solve disclosure challenges instead of a regulatory or enforcement solution like the one chosen by the SEC. The Securities Industry and Financial Markets Association has taken the lead in holding meetings for such discussions, which have also included market groups like GFOA, the NFMA, and the National Association of Bond Lawyers.

"My own personal point of view is [MCDC] was the most misguided, coercive, punitive approach to improving continuing disclosure that I have ever seen," Watkins said. "It was a monumental waste of resources."

Michael Decker, a managing director and co-head of municipal securities for SIFMA, said he couldn't think of "very much good to say about MCDC," going on to call it "a very frustrating experience from the industry's perspective."

"Maybe the most frustrating aspect of it was the enforcement people were addressing an issue where nobody lost money," he said. "Nobody lost a penny and still it cost issuers and underwriters many hundreds of millions of dollars."

Watkins said a study GFOA had conducted found that MCDC led to an average out-of-pocket cost for issuers of between $7,000 and $10,000.

But others on the panel, led by SEC Office of Municipal Securities head Jessica Kane, saw MCDC in a more positive light.

"From my perspective, the MCDC program was very successful. There was robust participation," Kane said. "It especially heightened the focus of the market on continuing disclosure obligations."

She added that the mandatory portions of the settlements that required underwriters to hire and retain independent compliance consultants are a "really great benefit." She also emphasized that the initiative was a voluntary way to address past securities law violations and did not require anyone to participate.

Watkins said skeptically that Kane was calling it “voluntary and cooperative when the [SEC] says ‘if you don’t do it we’re going to come find you and throw you in jail.'”

All the participants, however skeptical, acknowledged that the industry is more focused on disclosure now than it was before MCDC.

Lisa Washburn, the NFMA’s chair and the panel moderator, said she and other analysts saw “a bunch of filings” come into the EMMA system after the initiative was announced. She also noted that MCDC helped spur SIFMA to organize the other industry groups to talk more about disclosure.

Decker said SIFMA has been pursuing changes both by itself and with the group since the industry groups first met in October. Most recently, SIFMA sent a white paper to the SEC outlining various changes it believes should be made to SEC Rule 15c2-12 on disclosure. Among other things, the paper asks the SEC to extend due diligence requirements to MAs that have worked with issuers on official statements, especially in competitive transactions, and improve the timeliness of issuers’ annual disclosures after the end of their fiscal years.

“We thought for five minutes about seeking statutory changes and asking Congress to give the SEC more authority to regulate issuer disclosure more directly, but that didn’t really seem politically feasible and I think the issuer community historically has been opposed to that for some pretty good reasons,” Decker said. “We did look at areas where short of regulation we think there could be some improvement.”

Others said the main problem with disclosure lies with an issuer’s staff, resources, and educational capabilities. Watkins said getting everyone educated about proper disclosure practices is “a monumental task” and added that while larger issuers usually have “robust” disclosure, many smaller issuers have trouble. One example cited by panelists was when an official for a small issuer may have multiple responsibilities beyond overseeing the issuer’s finances.

Bill Daly, NABL’s director of governmental affairs, agreed with Watkins and mentioned how he had recently heard about a client in a “plains state” that is both the finance director for a school district and the district’s bus driver.

The panelists offered several solutions to such problems, including having states take more responsibility for checking in with issuers about their continuing disclosure obligations. Louisiana already requires that auditors ask about compliance when they evaluate issuers. Most panelists also urged issuers to create and follow written policies and procedures to both keep consistency and prevent disclosure from deteriorating if an especially knowledgeable person leaves.

Washburn raised the issue of timeliness in disclosures, saying analysts have seen some issuers amend their continuing disclosure agreements to allow for more time to file after the end of the fiscal year. Watkins recommended the SEC try to address timeliness by creating a safe harbor for issuers to disclose unaudited interim information.

He said it is important to understand that governments are risk averse and if they violate securities laws after they pushed information out without waiting for an audit, they are not going to do it again and will take their time and delay disclosure to make sure everything is correct.

“Suffice it to say we don’t love that,” Washburn said.

The Bond Buyer

By Jack Casey

May 5, 2016

New York City Speaker Seeks SEC Probe of OppenheimerFunds on Puerto Rico.

New York City Council Speaker Melissa Mark-Viverito has asked the Securities and Exchange Commission to investigate OppenheimerFunds Inc., saying the asset-management company has played a role in worsening Puerto Rico's fiscal crisis by increasing its investments in the island's debt.

"I urge you and your agency to investigate whether Oppenheimer has fully complied with all securities laws and regulations in the manner in which it has handled its multi-billion dollar investments in Puerto Rican bonds," Mark-Viverito wrote in a letter sent Thursday to SEC Chair Mary Jo White.

Mark-Viverito, 47, a Democrat who was born in San Juan, has blamed the island's financial crisis on hedge funds, banks and other investors in Puerto Rican general-obligation bonds and utility debt. She has described the companies as "vultures" feeding off the instruments' high yields and claimed they have lobbied against legislation that would reduce its payments to bondholders. Some investors have pushed back, saying they represent the island's best hope to improve its economy and stabilize its finances.

"In spite of this crisis and overwhelming evidence that the debt is unsustainable Oppenheimer has voiced its staunch opposition in Congress, in the courts and in the media to providing Puerto Rico with access to Chapter 9 of the bankruptcy code," Mark-Viverito wrote. "Its aggressive opposition to meaningful debt relief will further exacerbate the humanitarian crisis."

Debt Holdings

Kimberly Weinrick, an OppenheimerFunds spokeswoman, issued an e-mailed statement asserting that the company has helped its investors for more than two decades while helping Puerto Rico finance its infrastructure. She didn't address Mark-Viverito's criticisms.

"We continue to work constructively with all parties involved in an effort to try to reach an equitable agreement," she stated in the e-mail. "Throughout Puerto Rico's recent economic difficulties we have also been fully transparent with our investors."

Although Mark-Viverito asserts that OppenheimerFunds has added $500 million to its investments in Puerto Rican debt in the past eight months, the firm's 20 municipal mutual funds over the period have shed about $1 billion, or 4.5 percent of its assets, data compiled by Bloomberg show. That would curb managers' ability to buy new securities.

To meet those investor redemptions, OppenheimerFunds has frequently sold non-Puerto Rico bonds, which would have the effect of increasing the percent allocation to the commonwealth — the trend that caused Mark-Viverito alarm. Its Limited Term Municipal Fund, which saw the most outflows for a total of $463 million, sold just two Puerto Rico bonds in the quarter ended March 31, the data show.

According to Morningstar Inc., OppenheimerFunds' total exposure to Puerto Rico in its mutual funds has decreased since 2014. The firm at the end of 2015 held about $3.8 billion of commonwealth

securities in its mutual funds, or about 16 percent of total investments. That's down from $4.8 billion of Puerto Rico securities held, for an allocation of about 18 percent, in March 2014.

Judith Burns, an SEC spokeswoman in Washington, declined to comment about the letter, which was reported earlier by Politico.

OppenheimerFunds in December agreed, along with other mutual funds and hedge funds, to take a 15 percent loss on Puerto Rico Electric Power Authority debt that it holds. The firm is also negotiating with the commonwealth on other potential debt restructurings that may require a loss of principal.

Puerto Rico and its agencies, which are $70 billion in debt, owe $2 billion on July 1, which Governor Alejandro Garcia Padilla has said the island cannot pay unless creditors agree to restructuring deals. The commonwealth's Government Development Bank defaulted on nearly $400 million of debt May 2, the largest such payment failure for the island.

Bloomberg Business

by Henry Goldman and Michelle Kaske

May 5, 2016 — 12:42 PM PDT Updated on May 5, 2016 — 2:07 PM PDT

BDA Submits Comment Letter to the SEC: FINRA Rule 4210 "TBA" Margin Amendments.

On May 2nd, BDA submitted a comment letter to the SEC in response to FINRA's filing of Amendment #2 on its Rule 4210 "TBA" margin amendments.

The SEC solicited public comment on Amendment #2 and designated a longer period for Commission action for assessing the proposed rule. The Commission has until June 16, 2016, the maximum allowable timeframe for the Commission to approve or disapprove the rule under the proceedings process.

BDA Comment Letter Summary

BDA's letter urges the Commission to disapprove the rule and focuses on the following issues:

- The legal and compliance cost burdens for middle-market dealers to implement and continue to maintain the requirements of this proposed rule
- The fact that the proposed margin amendments will not have a fair and equitable impact on mortgage market participants and, therefore, the amendments violate Exchange Act Section 15A(b)(6)
- BDA argues that FINRA does not have the statutory authority to adopt a margin rule for the exempt securities defined as 'covered agency securities' by FINRA in the proposed rule

Additional Information

In February, BDA submitted a comment letter in response to the SEC's request for comment on FINRA's Rule 4210 filing with the SEC. The SEC's order instituting proceedings can be read here.

The original Rule 4210 margin amendments that FINRA filed with the SEC in October 2015 can be read here.

BDA submitted a comment letter to the SEC in November 2015.

BDA met with the SEC, FINRA, and key Congressional committees in January.

05-02-2016

MSRB Expands Access To Data Offerings Through Research Platform.

WASHINGTON – The Municipal Securities Rulemaking Board is making its trade data available through a research platform to individuals associated with more than 400 institutions around the world, but without the controversial anonymous dealer identifiers in a proposed new product still under development.

The subscription-based research platform where the data is now available, Wharton Research Data Services (WRDS), gives about 40,000 corporate, academic, and government users located in more than 30 countries access to data in areas like accounting, banking, economics, finance, marketing and statistics. The platform is associated with the University of Pennsylvania's Wharton School of Business and will offer all of the data already available for paid MSRB subscribers.

The MSRB, in a release about the available information on the new platform, said it will allow researchers to study statistical trends and patterns in the data to inform public policy and municipal finance using information from the 40,000 trades that are executed daily in the municipal market.

"The MSRB is excited to be working with WRDS to make this data available to universities and other institutions in a way that fosters academic research," said MSRB executive director Lynnette Kelly. "We support and encourage independent research that advances understanding of the municipal market and informs policymakers."

Robert Zarazowski, managing director of WRDS, said "advancing knowledge and helping clients quickly and easily obtain the data they need to perform ground-breaking research is what we do."

Despite the positive outlook from the MSRB and WRDS, at least one data analyst said it will take time for the MSRB data to really be useful to some researchers.

"I think it is going to take a while for many academics to figure out how to use this data," said Marc Joffe of the Center for Municipal Finance. "Because any given issuer has a lot of CUSIPs, it will be challenging to figure out what this CUSIP-level data can tell us about cities, counties, [and] school districts."

For example, he said, if a researcher wants to study the interest rates a county is paying in a given month, the researcher may have to look at 40 bonds the county has outstanding. Some of those bonds will trade once, some multiple times, and some not at all.

"You'd have to implement some procedure for determining which trades to include and then how to aggregate them," he said.

Meanwhile, the MSRB is still wrestling with whether to include anonymous dealer identifiers in data

offerings to academics, despite protests from dealer groups that this could lead to the uncovering of proprietary information. Academics, however, want the anonymous dealer identifiers, saying this is key to certain research.

The anonymous identifiers were part of a July 2015 proposal for a new data product that has not moved forward after one round of comments. The MSRB already makes public some post-trade information that dealers are required to report, but the data does not identify dealers or customers.

The proposed trade product, besides including anonymous dealer identifiers, would: require academics to agree not to engage in reverse engineering; prohibit redistribution of data; mandate users disclose their specific intentions for requesting the information; and only be available to academics with institutions of higher education. Information would also have to be more than two years old to be eligible for release.

Bond Dealers of America and the Securities Industry and Financial Markets Association both said in comment letters on the proposed product that they were concerned this would open their members up to the possibility of having their identities, trading strategies, and inventories discovered through reverse engineering.

But academics who wrote letters argued the market would see more liquidity if they were allowed to access the proposed new data. They also wanted to see a shorter delay in release, with the majority suggesting one year instead of two and one saying six months would be best.

The Bond Buyer

By Jack Casey

April 25, 2016

MSRB Reminds Municipal Advisors and Dealers of the May 6, 2016 Effective Date of Amendments to Gifts Rule.

The Municipal Securities Rulemaking Board (MSRB) reminds brokers, dealers, municipal securities dealers and municipal advisors that amendments to MSRB Rule G-20 on gifts, gratuities and non-cash compensation and related amendments to MSRB Rule G-8 on recordkeeping become effective on May 6, 2016.

The amendments, among other things, extend the restrictions regarding gift giving and the related recordkeeping requirements currently applicable to brokers, dealers and municipal securities dealers to municipal advisors. The changes also include a new provision to prohibit expressly the seeking or obtaining of reimbursement by a dealer or municipal advisor of certain entertainment expenses from the proceeds of an offering of municipal securities.

View the regulatory notice.

View the approval order.

Watch an on-demand webinar on the amendments to Rule G-20.

MSRB Investor Notice: The Importance of Monitoring Municipal Bonds.

Read the MSRB Notice.

SEC Approves MSRB Rule Changes For Two-Day Settlements.

WASHINGTON – The Securities and Exchange Commission on Friday approved Municipal Securities Rulemaking Board amendments to facilitate moving to a two- instead of three-day settlement cycle for municipal securities.

The amendments modify MSRB Rule G-12 on uniform practice, Rule G-15 on confirmation, clearance, settlement, and other requirements so that dealer transactions with customers can be settled within two days of execution instead of three.

The changes are tied to the SEC shifting to a T+2 cycle under its Rule 15c6-1, which governs settlement for corporate bond and equity markets, and are part of an industry migration to the new cycle by the third quarter of 2017.

The MSRB has not set a compliance date for the proposed rule change but has said it will publish a notice on its website to align the compliance date to that of the rest of the markets. The MSRB's amendments received generally positive feedback from industry groups during the approval process. SEC commissioners Michael Piwowar and Kara Stein, as well as SEC chair Mary Jo White, have also applauded the idea for an industry shift to a T+2 timeline and said they would like to see it accomplished as soon as possible.

Bond Dealers of America, in a comment letter to the SEC, had expressed concern that the rule changes might impact retail investors who purchase securities using written checks. But the SEC said in its approval notice that the MSRB addressed the issue by arguing in its filing that the large majority of firms have access to technology that would allow their clients to deliver funds in a timely manner that matches with the T+2 timeline. The MSRB also suggested firms encourage their customers to use electronic funds payment to streamline processing.

Both BDA and the Securities Industry and Financial Markets Association said the changes could affect MSRB Rule G-32 on disclosures in connection with primary offerings. BDA asked that the MSRB leave Rule G-32 unchanged while SIFMA said the changes for T+2 provided "an opportune time" to revise customer disclosure requirements under the rule. The MSRB, in its filing with the SEC, said it may consider suggested clarifications to the rule at a later date.

The Bond Buyer

By Jack Casey

April 29, 2016

MSRB to Accept Additional Board Applications for Specific Category.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.7 trillion municipal securities market, announced today that it is accepting additional applications for its Board of Directors from banks and broker-dealers with specific municipal market expertise. The application window will be open from May 3 – 10, 2016.

The MSRB will accept applications from individuals with sales and trading desk experience—including the pricing and trading of municipal securities, determinations of prevailing market price and mark-up policies—and an understanding of syndicate practices. The Board has identified the need for this expertise in light of the MSRB's strategic plan and ongoing initiatives, which include a new best execution rule, development of prevailing market price guidance and mark-up disclosure requirements, and an analysis of pre-trade data with the potential to make some of it publicly available on the MSRB's Electronic Municipal Market Access (EMMA®) website. The MSRB's goal is to ensure the necessary skill-sets are present on the Board to support advancement of the organization's agenda and to further inform market structure and transparency initiatives.

The MSRB recently solicited Board applicants for terms that begin October 1, 2016 and continues to evaluate candidates that are representative of the public and regulated entities.

The Board sets the strategic direction of the MSRB, makes policy decisions, authorizes rulemaking and market transparency initiatives, and oversees MSRB operations. It consists of 11 members that are representative of the public, including investors, municipal entities and other non-MSRB regulated individuals. The Board also has 10 members that represent MSRB-regulated entities, including broker-dealers, bank dealers and municipal advisors.

To be considered for a position on the MSRB Board of Directors, please submit an application through the MSRB Board of Directors Application Portal, which will be available May 3 – 10, 2016. Questions can be directed to Sara Majroh, Senior Manager, Corporate Governance and Compliance, at 202-838-1359 or at smajroh@msrb.org.

Date: May 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Stage Set for Shortened Trade Settlement Cycle for Municipal Securities.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to move toward a shortened settlement cycle for municipal securities. The MSRB was the first regulator to advance a rule change proposal in support of an industry-wide initiative to reduce the time between trade execution and settlement of the transaction by one business day.

"The MSRB fully supports the industry's efforts to expedite the settlement process and enhance market efficiency," said MSRB Executive Director Lynnette Kelly. "We are pleased to be among the first regulators to prepare for this important initiative. The benefits of moving to T+2 will enhance the overall efficiency of the securities markets, promote financial stability and better align the U.S. securities markets with global markets."

Provisions related to settlement cycles in MSRB Rules G-12, on uniform practice, and G-15, on

confirmation, clearance, settlement, have been unchanged since 1995. The SEC's approval sets the stage for the MSRB to coordinate with fellow regulators and the industry in order to transition to a shortened settlement cycle.

Date: May 2, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Supreme Court Reinforces Free-Speech Protections for Public Employees.

WASHINGTON—The Supreme Court reinforced free-speech protections for public employees Tuesday, ruling that a Paterson, N.J., police officer can sue after being demoted when city officials learned he carried a campaign sign for the mayor's political opponent.

The twist in the case was that the officer, Jeffrey Heffernan, said he hadn't actually supported Larry Spagnola, a former police chief who was running against Paterson Mayor Joey Torres. Instead, he had picked up the sign on behalf of his bedridden mother, who asked him to get a replacement after a Spagnola lawn sign vanished ahead of the 2006 municipal election.

The Supreme Court previously has held that public employees can generally sue when a government agency punishes them for political activity undertaken on their own time. But a federal appeals court in Philadelphia dismissed Mr. Heffernan's case, reasoning that since he delivered the sign as a favor to his mother rather than to express an opinion, no constitutional rights were violated by his demotion.

The Supreme Court by a 6-2 vote saw the case differently.

"The government's reason for demoting Heffernan is what counts here," Justice Stephen Breyer wrote for the court. "When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity that the First Amendment protects, the employee is entitled to challenge that unlawful action… even if, as here, the employer makes a factual mistake about the employee's behavior."

Justice Breyer cited a 1994 ruling that said a nurse could sue a public hospital in Macomb, Ill. The hospital fired her for badmouthing the obstetrics department. The nurse maintained that rather than merely griping, she was raising policy questions about hospital practices, a matter of public concern protected by the First Amendment. In that case, "the employer reasonably but mistakenly thought that the employee hadn't engaged in protected speech. Here, the employer mistakenly thought the employee had engaged in protected speech," Justice Breyer wrote.

The opinion continued a pattern evident since the February death of Justice Antonin Scalia left the eight-member court wary of deadlock on ideological lines. Since then, its output has been characterized by a conservative-liberal majority issuing relatively short opinions avoiding sweeping conclusions. Tuesday's decision, numbering eight pages, was joined by Chief Justice John Roberts and Justices Anthony Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan.

Conservative Justices Clarence Thomas and Samuel Alito have tended to dissent, as they did Tuesday.

“Demoting a dutiful son who aids his elderly bedridden mother may be callous, but it is not unconstitutional,” Justice Thomas wrote, joined by Justice Alito.

Mr. Heffernan’s attorney, Mark Frost, said the case created new protections for “perceived association.”

“It instructs supervisors that if you are going to act with ill motives to suppress somebody’s rights, you’re still going to be held responsible,” he said.

Mr. Torres, a Democrat who has been Paterson’s mayor since 2002 except for the 2010-2014 term, didn’t return a call seeking comment. An attorney for the city said he had been directed not to comment on the decision.

THE WALL STREET JOURNAL

By JESS BRAVIN

April 26, 2016 7:39 p.m. ET

Write to Jess Bravin at jess.bravin@wsj.com

MCDC Has Improved Disclosure But Issues Remain.

NEW ORLEANS – Municipal securities disclosure has improved in the two years since the announcement of the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative, but there are still questions and concerns as it continues to evolve, market participants said here.

They made their remarks during a panel on disclosure after MCDC at The Bond Buyer and Bond Dealers of America 2016 National Municipal Bond Summit.

The MCDC initiative promised underwriters and issuers lenient settlements if they self-reported instances where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

To date, the initiative has resulted in settlements with 72 underwriters, which represent 96% of the municipal underwriting market by dollar volume. Underwriters who settled received a fine of up to $500,000 and were required to take steps to improve disclosure, including retaining an independent compliance consultant.

The SEC is currently negotiating settlements with issuers, after which the commission is expected to pursue actions against underwriters and issuers with violations who chose not self-report them under MCDC.

Lisa Washburn, chair of the National Federation of Municipal Analysts, cited statistics from a not-yet-released NFMA survey on disclosure that polled more than 200 members, saying there is agreement among analysts that disclosure has improved dramatically as those settlements have unfolded. But only 25% of respondents said they were satisfied with current disclosure.

Most of the lingering concern had to do with timeliness, she said, exhibited by annual financial statements that may only become available 270 days after the end of the fiscal year. Fewer than 20%

of those polled said they were satisfied with that aspect of disclosure, according to Washburn, a managing director at Municipal Market Analytics.

Aside from market participants' increased awareness of their disclosure obligations after MCDC, Washburn said a large amount of the improvement is attributable to the Municipal Securities Rulemaking Board's EMMA making available disclosure information in one place.

However, she added many respondents still believe EMMA can be improved to ensure issuers are filing data in the right place, a hurdle each of the panelists mentioned as an ongoing problem. There also is room to modernize EMMA's technology to make it more usable, efficient, and able to be leveraged, Washburn said.

These and other issues have been discussion points during several collaborative gatherings of municipal market groups, including NFMA, to respond to the need for more improvements in disclosure.

Rebecca Lawrence, public finance legal counsel for Piper Jaffray & Co., said one of the things that astonishes her the most about current disclosure is the varied responses she has seen around the country as MCDC has unfolded.

"For me the disparity and inconsistency in the marketplace is one of the biggest frustrations," she said. Some issuers already have thorough policies and procedures in place and are in compliance while others, usually those that are smaller, still do not have a good understanding of their responsibilities and the SEC's Rule 15c2-12 on disclosure, Lawrence added.

Washburn said she has seen other problems with issuers, with some feeling they should be compensated for good disclosure in their offerings or treating 15c2-12 "as a ceiling instead of a floor."

"Good disclosure is a gateway issue for issuing in any public market," Washburn said. "It may not be direct in [the] initial sale, but when you're looking at the functioning of the municipal market, good disclosure will facilitate good market function."

In addition to these concerns, other panelists brought up much-discussed ideas related to MCDC, such as the SEC giving issuers and market participants a better sense of what they consider to be material and necessary for disclosure.

Jacob Lesser, director of Promontory Financial Group who has served as an independent compliance consultant for firms submitting under MCDC, said that from the small sample size he has seen, "the industry has made great improvements in what they are doing through due diligence under 15c2-12." But determining whether something is material to an investor can still be difficult given the unique aspects of the muni market, he added. Lesser agreed with other panelists when they said it seemed the SEC provided good examples in the underwriter settlements for firms to follow in the future.

The Bond Buyer

By Jack Casey

April 22, 2016

Half-Hearted Relief for Munis: The Fed Adopts a Final Rule to Include Certain Municipal Securities as HQLAs Under the LCR Rule.

On March 31, 2016, the Board of Governors of the Federal Reserve System (the "Federal Reserve") adopted a final rule (the "Final Rule") to amend the Federal Reserve's Liquidity Coverage Ratio Rule and Modified Liquidity Coverage Ratio (together, the "LCR Rule") to now encompass specific types of U.S. municipal securities as high-quality liquid assets ("HQLAs").1 Specifically, companies subject to the LCR Rule will now be able to treat certain U.S. municipal securities as Level 2B liquid assets for purposes of calculating the company's total HQLAs under the LCR Rule, subject to a number of limitations unique to municipal securities. The Federal Reserve originally proposed a rule to treat certain U.S. municipal securities as Level 2B liquid assets on May 18, 2015 (the "Proposed Rule"). The Final Rule goes into effect on July 1, 2016.

The adoption of the Final Rule comes one month after the U.S. House of Representatives passed H.R. 2209, authored by U.S. Representatives Luke Messer and Carolyn B. Maloney, which amends the Federal Deposit Insurance Act for purposes of "requir[ing] the appropriate Federal banking agencies to treat certain municipal obligations as level 2A liquid assets" under the LCR Rule.2 While there is some overlap among the provisions contained in the Final Rule, the Proposed Rule and H.R. 2209, there are certain notable differences as discussed in greater detail below.3

Continue reading.

Last Updated: April 14 2016

Article by Oliver I. Ireland and Jared D. Kaplan

Morrison & Foerster LLP

SEC Muni Enforcement To Increase Coordination with Justice, FBI.

WASHINGTON – The Securities and Exchange Commission's municipal enforcement unit may bring more cases in conjunction with the Justice Department as it plans to increase its coordination with the department and the Federal Bureau of Investigation.

LeeAnn Gaunt, chief of the SEC's public finance abuse unit, said during a municipal securities regulatory panel here last week that the SEC will specifically be coordinating on cases involving public corruption and instances of pay-to-play.

The panel was part of a journalists' forum on municipal health organized by the Lincoln Institute of Land Policy, a think-tank based in Cambridge, Mass.

"What we find is if you see public corruption in building contracts or hiring, we want to take a look at it as to municipal securities offerings and the investment of public pensions and assets," Gaunt said. "I am convinced that there is a lot of ground for us there and we're increasing our focus on that substantially."

The increased coordination may yield cases with similar ramifications to one released on April 14, where Justice and the SEC brought criminal and civil charges against two officials of Ramapo, N.Y.

for fraudulently inflating the town's finances and thus misleading investors in connection with bonds, some of which were related to a contentious minor league baseball stadium project. The SEC also brought civil charges against the town, the organization empowered to issue bonds, and two other officials.

Gaunt said her unit is also seeing a number of cases resulting from "municipal state and local officials getting overexcited about public projects."

"[The officials] are coming from a good place, they want to do good things for their town, city or state," she said. "They get really overheated, really excited and they tend to put on rose colored glasses so when they go out to market and they have the offering statement … the offering statement does not often contain the warts. It doesn't disclose the risks fully."

She said recent cases involving Allen Park, Mich. and 38 Studios, a now defunct video game company, were good examples of enforcement actions in this category.

The SEC took enforcement action against Allen Park, Mich., its former mayor, and its former city administrator in connection with $31 million of munis sold in 2009 and 2010 to finance a movie studio project in the city. The commission found that the offering documents contained false and misleading statements about the scope and the viability of the project as well as Allen Park's overall financial condition and its ability to pay debt service.

In the 38 Studios case, the SEC charged a Rhode Island agency, its underwriter, and three individuals associated with $75 million of 2010 bonds for 38 Studios with defrauding investors by not revealing the complete financial status of the company or the extent of the compensation arrangement with the underwriter.

There was prior knowledge that the funds from the bonds would not be enough for the video game company to finish its project but that information was not disclosed to investors. The company went bankrupt when it could not find an alternate funding source to supplement the bond revenue.

The SEC has also brought a number of cases recently involving issuers masking their financial strain in securities offerings.

In addition to the Ramapo case, Gaunt said her unit's case involving Westlands Water District serves as a good example.

In that case, the SEC charged California's largest agricultural water district and two of its officials with misleading investors about its financial condition when it issued $77 million of bonds in 2012. The water district had a rate covenant in its bond documents guaranteeing it would maintain net revenues equal to 125% of the debt service it had to pay each fiscal year, but because of draught conditions, it was unable to maintain those revenues and its officials resorted to fabricating the district's financial information.

The Bond Buyer

By Jack Casey

April 18, 2016

MSRB to File Revised Closeout Proposal With SEC, Review Reserve Funds.

WASHINGTON – The Municipal Securities Rulemaking Board will move forward with a revised proposal that would mandate municipal securities transactions be closed out within 20 instead of 30 days of settlement, Lynnette Kelly, the MSRB's executive director said on Monday.

The board decided to file the revised proposal with the Securities and Exchange Commission within a few weeks during a meeting held here on April 13 and 14.

Kelly said the board also met with SEC chair Mary Jo White for the quarterly meeting where White was "very complimentary of the MSRB's activities," particularly the board's efforts to work with the Financial Industry Regulatory Authority on a proposal setting up a process to determine markups on munis.

The new closeout procedures would change a years-old portion of MSRB Rule G-12 on uniform practices and, according to its regulatory notice, would lessen the effect of interdealer transaction failures on the market. G-12 currently recommends that a dealer who fails to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

The board's move from its originally proposed shorter timeframe of 30 days to 20 days appears to be in response to the Securities Industry and Financial Markets Association's comments that the board cut the time period down to within 15 days of settlement. SIFMA suggested there be a caveat that if both sides in a transaction agree more time is needed, they can extend the timeline another 15 days on a case by case basis.

Kelly said the MSRB didn't go along with SIFMA's proposal because it would effectively keep the limit at 30 days anyway. There was "no magic" to the 20-day limit, she added, and industry participants will have a chance to comment when the SEC asks for input after the MSRB filing.

The 21-member MSRB board also discussed comments, most of which were complaints, on a proposal for dealers to look at a "waterfall" of factors to determine prevailing market prices and markups.

That proposal would change MSRB Rule G-30 on prices and commissions, incorporating an already established FINRA process for corporate debt.

Most comments from dealer groups, like SIFMA and the Bond Dealers of America, argued the FINRA-based approach does not fit the municipal market and should instead give dealers the flexibility to adopt firm-specific policies and procedures within parameters the MSRB establishes.

Ben Watkins, the director of bond finance for Florida, said the "stringent definitions and interpretations of rules" found in the MSRB proposal would "only burden the market."

But the SEC's Investor Advocate supported the proposal and asked it to be tightened.

Kelly said the board "spent a very long time really digging into those comments" and said there will be further board discussion on the proposal during its July meeting if not earlier.

The board also tackled other issues associated with more long-term MSRB duties and board governance.

It is now working under a new governance policy designed to address its reserve fund level when it

falls above or below certain target levels. The MSRB policy sets a reserve target of approximately 12 months of operating expenses less depreciation expense plus three times annual capital needs. The board's reserves currently exceed that target and Kelly said there will be ongoing conversations to determine what to do given the excess funds.

The board plans to reach a decision on the reserve funds during its July meeting.

In addition to governance concerns, the board discussed methods to fulfill its Dodd-Frank Act mandate to establish continuing education standards for newly regulated municipal advisors. The self-regulator plans to issue a request for comment in the fall about how best to set those standards, after MAs have taken the board's permanent qualification exam.

Advisors who took the MSRB's pilot exam, which took place between January 15 and February 15, are expected to hear whether they passed in early June, after an MSRB committee meets to go over the questions with an expert to determine a pass rate, Kelly said.

The Bond Buyer

By Jack Casey

April 18, 2016

MSRB to Provide Municipal Market Trading Data to Academics Through Wharton Research Service.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced that it is making trading data on the $3.7 trillion U.S. municipal bond market freely available to academic institutions through Wharton Research Data Services (WRDS), a research platform that provides financial and economic data to more than 400 institutions around the world. The partnership with WRDS supports the MSRB's goal of advancing academic research in the municipal market.

"The MSRB is excited to be working with WRDS to make this data available to universities and other institutions in a way that fosters academic research," said MSRB Executive Director Lynnette Kelly. "We support and encourage independent research that advances understanding of the municipal market and informs policymakers."

Robert Zarazowski, Managing Director of WRDS, said, "Advancing knowledge and helping clients quickly and easily obtain the data they need to perform ground-breaking research is what we do. We are pleased that the MSRB's database of municipal trade data has joined the WRDS data sets."

The MSRB is the regulator of the municipal securities market and the official source of data and information about municipal bonds. The MSRB makes market information publicly available through its Electronic Municipal Market Access (EMMA®) website and subscription-based data feeds. WRDS will deliver MSRB trade data in a format designed specifically for researchers.

The addition of MSRB trade data to WRDS allows researchers to easily access and analyze the more than 40,000 trades executed daily in the municipal bond market. Researchers will be able to study statistical trends and patterns in the data to inform public policy and municipal finance.

Date: April 25, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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New Chair John Fechter to Help BDA with Full Plate of Issues.

WASHINGTON – Bond Dealers of America will be working on a full plate of issues this year as it helps its members navigate recent and ongoing regulatory developments while maintaining its educational and Capitol Hill-centered work, said BDA's new board chair John Fechter.

Fechter, managing director and head of taxable trading at Wells Fargo Advisors in St. Louis, Mo., became chair on March 1. He spoke about the group's agenda and priorities for the upcoming year during an interview with The Bond Buyer.

"We need to be a value-added resource to our 59 member firms, whether we do that through advocacy in DC, host[ing] roundtables and webinars on topics such as legal and compliance … or simply providing interpretation and guidance on proposed regulatory rule changes," Fechter said about the trade group for middle market fixed income dealers.

His background in taxable fixed income, unique compared to the muni-dominated past of former chairs, is something he said he hopes will bring a different perspective with a chance to move away from the "same old way of looking at things."

The change in perspective has already brought noticeable results, he said, exhibited by better dialogue in the organization's board meetings so far this year.

He also hopes to leverage his familiarity with both taxable and tax-exempt trading to help the organization guide its members through future developments in the market, many of which are already prevalent in the taxable space.

"I think [munis] are going to run into some of the same issues we have experienced on the taxable side from liquidity to the advent of more electronic trading in the market," Fechter said about the municipal market over the next five years. "As those types of things become more adopted by the marketplace, I think it will become better but there are growing pains with that."

Some of those growing pains will likely come from implementing new regulation as the market adjusts, something BDA and its members are already focused on. The Municipal Securities Rulemaking Board is expected to be the main source of that regulation.

"Probably the most significant issue or one of the more significant issues we will face in the industry this year will be the retail confirm[ation] markup proposal," Fechter said. "If the rule is ultimately to bring more efficiency and transparencies to the retail investors, then the BDA will continue to advocate for a less complex and less costly rule."

The MSRB's proposed rule changes would require dealers acting as principals to disclose to retail customers the markups and markdowns on muni trades. Dealer groups, including BDA, have asked the self-regulator to harmonize its rule with one from the Financial Industry Regulatory Authority.

Since receiving initial comments, the MSRB has proposed revisions that would require dealers to go through a "waterfall" process to determine the prevailing market price, which would serve as the

basis for calculating such markups.

“I think that we will see a final rule announced here in calendar 2016,” Fechter said, adding firms will need a long time for implementation. “For firms such as ours, a lot of our technology priorities are built out for 2016. When you throw something on top of that, it either pushes those other ones to the side, which are very important, or it is going to give us the need to have a longer time for implementation.”

Taxable Background Helps

Another major regulatory development for the muni market, and one where Fechter’s taxable background could help, is the adjustment to the MSRB’s best execution rule for muni dealers which took effect on March 21. MSRB Rule G-18 on best execution requires dealers, whether acting as agents or principals, to use “reasonable diligence” to determine the best market for a security and to then buy or sell the security in that market so the price for the customer is as favorable as possible under prevailing market conditions.

Helping member firms adjust their policies and procedures to make sure they are in compliance will be a “priority item” for BDA this year, Fechter said.

“For me, coming from a taxable [background] looking at it since we’ve had best-ex rules for as long as I can remember, here at our firm, we didn’t feel like it was that big of an adjustment for our municipal desk to adhere to this best ex standard, we felt we were already doing that,” he said.

However, he acknowledged that implementation could be challenging for firms without taxable experience to fall back on.

“You’ve got all these rules coming down … if you don’t have the experience and you haven’t dealt with this in the past, it can be overwhelming,” Fechter said. “You want to make sure you are checking all of the boxes and doing all the right things to comply with the rule.”

In addition to markup disclosure and best execution, BDA is also involved in market group discussions about improving continuing disclosure in the wake of the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative. MCDC promised underwriters and issuers lenient settlements if they self-reported instances where the issuers inaccurately said in offering documents that they were in compliance with their continuing disclosure agreements.

The muni market will also be focused on implementation of three core MSRB rules that extend the MSRB’s regulatory framework to municipal advisors. The MSRB made changes for non-dealers in its Rules G-42, G-20, and G-37 on core duties, gifts and gratuities, and political contributions, respectively.

Jessica Giroux, general counsel and managing director of federal regulatory policy for BDA who joined the interview, said that BDA’s members are generally pleased that there is going to be a formerly unregulated component of the market now brought under a regulatory regime.

But the large number of implementation dates to juggle has created problems for dealers.

Regulatory Fatigue

“There’s definitely some regulatory fatigue amongst our member firms,” Fechter said. “We’re trying to implement a lot of things simultaneously and whether its systems, whether its policies and

procedures, compliance, legal, we spend a lot of time on comment letters, a lot of time on just implementation. We want to be very thoughtful about how we set up our processes."

"I would have thought that it would have slowed down by now," he continued. "With that said, I don't necessarily see things slowing down either."

John Vahey, BDA's director of federal policy who also participated in the interview, characterize BDA's and its members' task this year as facing a lot of regulations "all at once" and asking "how are all the firms going to figure it out."

But Fechter said he and BDA realize the regulators are also trying to do their best in the market.

"The time that we spend with the regulators, you certainly express your concerns, but on the other side of the coin, you have to look at it from their perspective and when they have something that they want to enact, they want to do it as soon as possible," he said. "There's a balancing act. I think both sides for the most part are respectful of the others, it just takes a lot of time and money."

BDA's list of topics to tackle goes on from there, including maintaining the tax-exempt status of munis, Treasury Department and Internal Revenue Service proposed rules on political subdivisions, bank regulations that do and do not treat munis as high quality liquid assets, and Treasury and IRS issue price rules. But Fechter said prioritization is going to be a necessity.

"We need to digest what we have in front of us before taking on a lot of other items," he said. "One of the things we talked about at the last board meeting was actually taking things off our list instead of adding more things."

Fechter also wants the BDA to continue representing members' interests to both regulators like the MSRB, FINRA, and SEC, as well as policymakers on Capitol Hill.

Giroux said BDA regularly asks regulators to explain trends they see with dealers when doing their periodic firm examinations.

"If a regulator can share [insights] with our members as they go through the examination process, it does help our members make more robust their policies and procedures so they are really in line with the understanding of what the regulator would like to see," she said.

The group also schedules member "fly-ins" periodically throughout the year where member firm representatives travel here to hold meetings with members of Congress and their staff.

Fechter said the fly-ins are something he wants to continue because they give small groups of members the opportunity to talk with lawmakers about issues concerning both individual respective firms and the industry in general.

"I think those tend to have a lot of impact because BDA has a lot more main street members than Wall Street members," Fechter said. "[Fly-ins] are a way to keep the BDA in front of those different contingencies."

Giroux added that fly-ins and BDA staff meetings on Capitol Hill help the group continue to educate members of Congress and their staffs.

"We try to give them a better understanding of who our members are so when they are thinking muni bonds, when they're thinking taxable bonds, when they think about coming to the market, improvements in infrastructure, any number of those things, we want the staff on the Hill to be able

to call [BDA members] as a resource," she said.

The BDA is also focusing on maintaining its own strong internal operations. The group regularly holds seminars, conference calls, and roundtables about important topics affecting dealers in the market. The meetings and calls can center on anything from recent developments in regulation compliance and enforcement to challenges and solutions regarding trading and order management systems and other technological considerations. The internal discussions are an opportunity for BDA and its members to share insights and firm-specific developments that may be beneficial to the membership as a whole.

Fechter, who hails from the "show me" state and was born and raised in St. Louis, has worked in the same office in that city since 1988. He jumped into the fixed income market right after graduating from Benedictine College in Kansas with a BA in marketing. While he didn't know much about the municipal business, he was connected through a few of his friends' fathers who worked in it.

He joined Centerre Bank in 1985 trading repo funds and commercial paper before moving to A.G. Edwards & Sons in 1988 and trading governments, agencies, and mortgage-backed securities. He has stayed with the company, while working his way up to his current position, as the company was acquired by Wachovia Securities in 2007 and subsequently brought under Wells Fargo Advisors when that company acquired Wachovia in 2008. He has a wide array of experience both trading and managing groups during his time with the companies.

The Bond Buyer

By Jack Casey

April 18, 2016

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting April 13-14, 2016 where it continued work on an initiative to help municipal securities investors better understand the cost of their transactions, held an annual policy meeting with the chair of the Securities and Exchange Commission (SEC) and conducted other business.

The Board conducted a preliminary discussion of comments received on draft amendments to MSRB Rule G-30 to provide guidance on how dealers calculate their mark-ups. The guidance is related to the MSRB's broader initiative to require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of principal transactions. The Board directed staff to conduct further analysis of the comments received on the prevailing market price guidance as it proceeds to finalize its mark-up disclosure proposal.

"Developing a workable mark-up rule that provides investors with increased price transparency is a top priority for the MSRB," said MSRB Chair Nat Singer. "The Board had productive discussion on the direction of the prevailing market price approach, and we look forward to completing work on this together with the overall disclosure proposal." The MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on a mark-up disclosure initiative for transactions in corporate bonds.

As part of its meeting last week, the Board met with SEC Chair Mary Jo White and staff from the SEC Office of Municipal Securities to discuss top issues facing the municipal securities market. These conversations between leadership of the MSRB and the SEC support regulatory coordination and informed policymaking in areas of mutual interest.

In other dealer rulemaking work, the Board discussed comments received on its proposal to update MSRB requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer transactions. The Board commended the industry's commitment to resolving these transactions and plans to acknowledge the industry's desire to shorten the timeframe required to resolve inter-dealer failed transactions even further than the 30 days suggested in the original proposal.

As part of its ongoing financial oversight, the Board voted to amend existing policies to address organizational reserves if they rise above or fall below established levels. The Board plans to finalize its decision about current organizational reserves at its July meeting.

The Board also discussed the statutory requirements of a continuing education program for municipal advisors as outlined by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act gave the MSRB the responsibility to develop both continuing education and professional qualification requirements for municipal advisors. At the meeting, the Board agreed to publish a request for comment in the fall on a proposed approach to establishing continuing education requirements for municipal advisors. The Board believes the fall timeframe is appropriate since that is when municipal advisors will likely begin to take the Municipal Advisor Representative Qualification Exam (Series 50), which evaluates baseline qualifications.

Date: April 18, 2016

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SIFMA Asks SEC To Update 15c2-12, Create Parallel Rule for MAs.

WASHINGTON — The Securities Industry and Financial Markets Association is pressing the Securities and Exchange Commission to update and modernize its municipal securities disclosure rule as well as develop a parallel rule that gives municipal advisors continuing disclosure responsibilities.

SIFMA made its request on Tuesday in a white paper on SEC Rule 15c2-12 on disclosure. That rule was adopted for primary market disclosure in 1989 and then amended in 1994 to cover secondary market disclosure. The rule was amended again in May 2010, mostly regarding event notices.

The SIFMA white paper notes that 15c2-12 dates back 26 years and that enormous changes have occurred since then in technology, electronic communications, regulations and market practices.

Rule 15c2-12 goes through dealers, which the SEC regulates, to get to issuer's disclosure practices because the SEC can't regulate issuers.

Under the 1994 amendments on continuing disclosure, for example, dealers cannot underwrite bonds unless they have reasonably determined that the issuer has contractually agreed to disclose

annual financial and operating data as well as event notices when certain events happen.

Underwriters also must review the issuer's official statement for municipal securities and have a reasonable basis for believing that the representations in it are true and accurate.

Leslie Norwood, associate general counsel and co-head of munis for SIFMA who authored the letter, said that while the white paper calls for muni advisors to take on some continuing disclosure responsibilities, it is not trying to shift dealer's duties onto them.

"We're not here to eliminate underwriter's responsibilities. We're here to add responsibilities [to MAs] where it is appropriate," she said.

The group's recommendations for updating and modernizing the rule are meant to make it less confusing and more helpful, she added.

"There's no reason to play hide the ball with any of this stuff," Norwood said, referring to some confusing aspects of 15c2-12.

The new MA rule would relate to a footnote in the SEC's 1988 proposed Rule 15c2-12 that dealt with the role of financial advisors in an issuer's preparation of a financial statement. The footnote said that issuers will generally employ an FA to help on a competitive offering and the FA will ordinarily perform many of the functions normally undertaken by the underwriters in corporate and muni negotiated offerings.

"Thus … [FAs] will have a comparable obligation under the antifraud provisions [of federal securities laws] to inquire into the completeness and accuracy of disclosure presented during the bidding process," the footnote read.

SIFMA said 15c2-12 should be revisited with regard to municipal advisors now that they are federally regulated and subject to Municipal Securities Rulemaking Board regulations, as mandated by the Dodd-Frank Act.

Norwood used competitive deals to explain why an MA rule would be beneficial. In competitive deals, underwriters have much less time to conduct due diligence and review the offering statements, Norwood said. They bid on the bonds, but don't become involved with them unless they win the bid.

"It begs the question of who else has the responsibility," she said. "It seems like a natural fit if newly regulated parties, municipal advisors, who are there all along helping the issuer put together their offering document, have the responsibility."

The white paper recommends that when municipal advisors help prepare official statements, they share with underwriters the due diligence responsibilities for reviewing those documents to ensure the information is true and accurate.

"Just having similar duties for the municipal advisors would be helpful to the industry overall," Norwood said.

But Susan Gaffney, executive director of the National Association of Municipal Advisors, said SIFMA's paper "appears to be much ado about nothing" and that NAMA "strongly opposes suggestions to shift onto MAs, broker-dealer responsibilities for documents provided to their investor customers."

“NAMA members are well aware of their long standing responsibilities under the anti-fraud provisions of the federal securities laws,” Gaffney said. “The suggestions for changes to 15c2-12 appear to unnecessarily complicate the rule in a way that does not appear workable.”

SIFMA would also like to see the SEC upgrade and modernize provisions of 15c2-12. It wants the commission to eliminate the requirement that issuers file event notices for rating changes since those changes are all posted on the MSRB’s EMMA system, Norwood said.

The requirement “is a lot of redundant work for not a lot of additional benefit,” she explained.

SIFMA is also asking the SEC to clarify several portions of 15c2-12 rule and to incorporate into it past guidance and recent guidance, such as from the commission’s Municipalities Continuing Disclosure Cooperation (MCDC) initiative MCDC offered favorable settlement terms to municipal bond underwriters and issuers that self-reported continuing disclosure violations.

The SEC said in interpretive guidance on underwriter responsibilities in 15c2-12’s primary disclosure requirements in 1989 that “the primary responsibility for disclosure rests with the issuer.” SIFMA wants that repeated in the continuing disclosure amendments to 15c2-12.

The group also is asking that the SEC affirm the position it took in its initial proposing release for 15c2-12 that given the structure of a competitive deal, “the task of assuring the accuracy and completeness of the disclosure [in competitive deals] is in the hands of the issuer.”

Past guidance on disclosure has also generally focused on underwriter responsibilities without giving much detail on issuer and obligated persons, Norwood said.

Additionally, SIFMA wants the SEC to codify in 15c2-12 the staff guidance from 1991 to help underwriters distinguish between primary and secondary offerings, as well as the 1995 guidance it provided to questions from the National Association of Bond Lawyers. Muni market participants should not have to go back and forth between 15c2-12 to these documents, Norwood said. Instead the guidance should all be in one place, she said.

SIFMA is seeking some changes to the timing and availability of disclosure information under 15c2-12.

The group of dealers wants to eliminate current complex language in 15c2-12 that dictates when participating underwriters are expected to send customers copies of final OS’. Instead the rule should require underwriters to provide final official statements to customers from when they are posted on EMMA until the offerings close.

The white paper also asks the SEC to change 15c2-12 to require that the “primary offering disclosure period” lasts for 25 days after the closing date to align the rule with the MSRB’s Rule G-32.

SIFMA recommends 15c2-12 require issuers to set an actual date as the due date for their disclosures of annual financial and operating information. Currently issuers typically say the information will be disclosed within so many days after the close of the fiscal years, leaving underwriters to “burn brain cells” and count days, Norwood said. It would be so much easier if the issuer said the information will be posted on June 1 of any other specific date, she said.

Another recommendation is for the provision of 15c2-12 that exempts from disclosure requirements primary offerings with institutional investors to be expanded to explicitly include primary offerings with sophisticated municipal market professionals, qualified institutional buyers, and accredited

investors.

An SMMP designation usually applies to banks, savings and loan associations, registered investment advisors, and any person or entity with total assets of at least $50 million. QIBS are defined by the SEC and must own and invest, on a discretionary basis, at least $100 million in securities or, if they are broker-dealers, must meet a threshold of $10 million. Accredited investors can be any individual who consistently earns $200,000 per year, has a net worth exceeding $1 million, or has a leadership role with the issuer of the security being offered.

The Bond Buyer

By Jack Casey

April 12, 2016

MSRB Issues Interpretative Guidance for ABLE Programs.

The Municipal Securities Rulemaking Board (MSRB) is issuing interpretative guidance under MSRB Rule D-12, on the definition of "municipal fund security." The interpretive guidance provides that interests in accounts created under the Achieving a Better Life Experience Act of 2014 (ABLE Act) may be municipal fund securities and that a broker, dealer or municipal securities dealer that effects transactions in ABLE programs may be subject to MSRB rules.

The ABLE Act permits states to create tax-advantaged savings programs, similar to 529 college savings plans, to help support individuals with disabilities in maintaining health, independence and quality of life.

View the regulatory notice.

View the interpretive guidance.

MSRB Reminds Municipal Advisors of the April 23, 2016 Effective Date of Amendments to MSRB Rule G-44(d) on Annual Certification Requirements.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that amendments to MSRB Rule G-44(d) regarding annual certification requirements related to compliance policies and supervisory procedures become effective on April 23, 2016.

Under this provision, municipal advisors are required to have their chief executive officer or equivalent officer annually certify that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules. The annual certification should be maintained with the municipal advisor's records.

Read the regulatory notice.

View considerations for developing a municipal advisory supervisory system and compliance program.

Wall Street Lobbyist Wants Advisers to Vet Bond Disclosures.

Municipal advisers hired by states and local governments to prepare offering statements for competitively-bid bond issues should be required to ensure their accuracy, not the underwriters who later resell the debt to investors, the security industry's lobbying group said.

The recommendation by the Securities Industry and Financial Markets Association was included among proposals for improving disclosure in the $3.7 trillion municipal-bond market. The U.S. Securities and Exchange Commission is considering updating the disclosure rules, which are imposed largely through its power over banks that underwrite debt offerings.

In a competitive offering, banks bid to underwrite a municipality's bonds and they aren't involved in preparing the documents provided to prospective buyers. That work is often done by financial advisers. That differs from negotiated sales, in which banks are hired in advance and assist local officials in compiling the offering statement.

"Underwriters's due diligence responsibilities on competitive transactions are reduced, since underwriters are not involved in producing official statements and generally have less time to perform due diligence," Sifma said in a statement Tuesday. "In order to ensure official statements are accurate and investors are appropriately protected, a MA should have primary responsibility."

Sifma's recommendation comes after bond dealers paid $18 million in fines to settle SEC allegations that they issued bonds for municipalities that inaccurately assured investors that they were providing timely updates on their finances. Securities dealers who voluntarily reported the violations to the SEC were offered leniency under an initiative known as MCDC.

SIFMA members said that "a disproportionate number" of potential violations they reported to the SEC involved competitive deals, said Michael Decker, Sifma's managing director and co-head of municipal securities.

"We think there would have been fewer of these kinds of MCDC-type violations on competitive transactions if during the period the MCDC covers, municipal advisers would have had this kind of due diligence responsibility at the time," Decker said in an interview.

Since the enactment of the Dodd-Frank law, financial advisers to municipalities have been subject to regulation by the SEC and Municipal Securities Rulemaking Board.

"If the SEC or the MSRB impose this kind of requirement on municipal advisers it would help ensure that OSs are more accurate and therefore provide a greater degree of investor protection for buyers of the bonds," Decker said.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said the group opposed attempts by securities dealers to shift their duties to investors to advisers.

"They are to provide information to the investor," she said. "It's an investor document."

Bloomberg Business

by Martin Z Braun

April 12, 2016 — 10:22 AM PDT Updated on April 12, 2016 — 11:16 AM PDT

Stadium Financing Deal in N.Y. Town Ends in Fraud Charges.

Two officials intent on building a new baseball park in their town northwest of New York City were charged in what the U.S. called the first ever municipal bond-related criminal securities fraud over the financing.

The charges, accompanied by a U.S. Securities and Exchange Commission lawsuit, are meant to send a message that public officials must remain honest in the $3.7 trillion municipal bond market that finances hospitals, highways and sports stadiums, Manhattan U.S. Attorney Preet Bharara said.

The two officials in Ramapo, about 40 miles (60 kilometers) from Manhattan, “kicked truth and transparency to the curb, selling over $150 million of municipal bonds on fabricated financials,” Bharara said. “Whether you run a corporation or you lead a town, you’re not allowed to cook the books.”

Ramapo Town Supervisor Christopher St. Lawrence, 65, its highest-ranking elected official, and Aaron Troodler, 42, the former executive director of Ramapo Local Development Corp., lied about municipal finances for years, partly to hide the extent of losses incurred from financing the construction of the $58 million ball park, the U.S. said.

St. Lawrence and Troodler pleaded not guilty Thursday in federal court in White Plains, New York. Each was released on a $500,000 bond.

Rockland Boulders

Provident Bank Park, home to the Rockland Boulders of the independent Can-Am Association, was built even after more than 70 percent of the voters in Ramapo rejected a 2010 proposal to borrow $16.5 million to fund the stadium and despite St. Lawrence’s claims that no public funds would be used for its construction.

The two men are also accused of lying about the state of the town’s finances to help sell bonds, whose price depended in part on the risks they posed. In fiscal year 2014, the town seemed to have a surplus of $2 million, when the actual general fund had a deficit of $16 million, according to the SEC.

St. Lawrence repeatedly inflated the town’s general fund with millions of dollars in fake receivables to conceal dwindling finances, Bharara said. For example, in 2010, the officials made it seem that Ramapo Local Development Corporation paid more than $3 million to the town for a housing development. St. Lawrence continued to claim the town had earned the $3 million even though the sale fell through after it was discovered the land was a natural habitat for rattlesnakes, Bharara said.

Ambulance Transfer

St. Lawrence also inflated the town’s general fund balance by transferring more than $12 million out of Ramapo’s Ambulance Fund from 2009 to 2014, according to the indictment.

After misleading a credit rating agency about the town’s general fund balance before its bonds were rated, St. Lawrence told Ramapo officials on a January 2013 conference call to refinance short-term debt quickly, “because we’re going to have to all be magicians to get some of those numbers.”

Provident Bank Park opened in the municipality of 127,000 people in 2011. It included amenities that became common during minor-league stadium construction boom from 1993 to 2003, such as club suites, wider seats and field-side taverns to replicate the major-league experience. The stadium has a capacity of more than 4,500.

St. Lawrence and Troodler are charged with eight counts of securities fraud and could face as long as 20 years in prison on each count.

In a parallel suit, regulators sued St. Lawrence, Troodler, the town's attorney, Ramapo and a deputy finance director for lying on 16 separate bond offerings. In addition to financial penalties, the SEC seeks a court order appointing an independent consultant for the town and its development corporation, a monitor to oversee its finances for five years and an order prohibiting town officials from participating in future municipal bond offers, according to Andrew Ceresney, SEC's enforcement division director.

Thursday's charges are also a first for the SEC, said George Greer, a partner in the Seattle office of Orrick, Herrington & Sutcliffe LLP. Orrick represented an underwriter on at least one of the Ramapo bond deals.

"There is a new message here," said Greer. "No matter how small an issuer you are, if anyone violates securities laws they will come after you."

Prosecutors have previously brought charges in other cases alleging municipal-bond bid rigging by bankers. Bank of America Corp., JPMorgan Chase & Co., UBS AG, Wells Fargo & Co. and General Electric Co. paid $743 million in restitution and penalties after acknowledging that former employees engaged in illegal activity tied to running sham auctions.

Ramapo's fraud came to light following a whistle-blower's complaint, Bharara said at a news conference Thursday.

Melissa Reimer, Ramapo's director of fiscal services, sued the town and its officials, claiming she was defamed for reporting inappropriate financial activities.

The criminal case is: U.S. v. Christopher St. Lawrence, the SEC case is SEC v. Town of Ramapo, 16-cv-2779; the civil suit is Melissa Reimer v. The Town of Ramapo, 14-cv-7044, U.S. District Court, Southern District of New York (White Plains).

Bloomberg Business

by Patricia Hurtado and Darrell Preston

April 14, 2016 — 6:40 AM PDT Updated on April 15, 2016 — 7:04 AM PDT

NABL: SEC Chair White Testifies in Support of Increased SEC Budget, Praises MCDC.

On April 12, U.S. Securities and Exchange Commission (SEC) Chair Mary Jo White testified before the Senate Appropriations Subcommittee on Financial Services and General Government in support of an increased budget for the SEC. Chair White made the case to the Senate Appropriations Subcommittee for President Obama's budget proposal to increase the SEC's Fiscal Year (FY) 2017

budget to $1.781 billion, in part to bolster enforcement resources for violations of Federal securities laws. In particular, the SEC has requested an additional 52 positions in the Enforcement Division to aggressively address misconduct. When questioned by Senator Coons (D-DE) on the SEC's enforcement actions, Chair White highlighted the Enforcement Division's work with the Municipalities Continuing Disclosure Initiative in protecting individual investors.

Chair White's testimony is available here.

A video of the hearing is available here.

New York Suburb, Officials Charged in Landmark Bond Fraud Case.

NEW YORK — An elected official of a New York City suburb was charged on Thursday with defrauding investors who helped finance a controversial minor league baseball stadium, in what authorities called the first criminal securities fraud prosecution involving municipal bonds.

Christopher St. Lawrence, the elected supervisor of Ramapo, New York, was charged in an indictment with securities fraud, wire fraud and conspiracy, as was N. Aaron Troodler, a former executive director of the non-profit Ramapo Local Development Corp.

In addition, the U.S. Securities and Exchange Commission sued Ramapo, the RLDC, St. Lawrence and Troodler, along with Town Attorney Michael Klein and Deputy Finance Director Nathan Oberman.

The case, filed in federal court in White Plains, New York, follows U.S. regulators' push in recent years to bring civil actions against misconduct in the $3.7 trillion U.S. municipal bond market.

At a news conference in Manhattan, U.S. Attorney Preet Bharara called the Ramapo case a "landmark" first to result in criminal securities fraud charges, adding: "I suspect it will not be the last."

St. Lawrence, 65, and Troodler, 42, pleaded not guilty during a court hearing on Thursday. Both were released on a $500,000 bond.

Authorities said bond investors lost millions of dollars because the defendants concealed Ramapo's deteriorating finances, caused in part by the $58 million cost of building the ballpark, which is home to the Rockland Boulders.

The costs to build what is now called Provident Bank Park came even though voters refused by a 70 percent margin to approve guaranteeing bonds to pay for its construction and St. Lawrence said later that private funds would be used, prosecutors said.

St. Lawrence and Troodler "kicked truth and transparency to the curb," Bharara said.

John Phelan, a lawyer for Ramapo and the RLDC, declined to comment. A lawyer for St. Lawrence did not respond to requests for comment, while Troodler's lawyer, Joseph Poluka, declined to comment beyond details of his client's plea.

Authorities said the fraud began in 2010, the same year voters overwhelmingly rejected a $16.5 million plan to build the ballpark, and lasted through 2015.

The SEC said Ramapo raised more than $300 million during that period, including $85 million of "new money," because the defendants hid financial strains that were also caused by the town's declining sales and property tax revenue.

Authorities said St. Lawrence once told colleagues to refinance some debt fast because "we're going to have to all be magicians" to meet the promises he made to an agency that was about to rate Ramapo bonds.

Bharara said the probe of the finances of Ramapo, which is 28 miles northwest of New York City and had a population of 126,595 as of the 2010 census, began with a whistleblower complaint.

The Federal Bureau of Investigation searched Ramapo's municipal offices in May 2013 after an audit by New York's state comptroller criticized the funding of the stadium and the cost to taxpayers.

In its lawsuit, the SEC is seeking, among other things, a court-appointed monitor for Ramapo and RLDC and an order restricting them from issuing bonds for five years unless they hire lawyers to review the accuracy of their offering documents.

By REUTERS

APRIL 14, 2016, 1:27 P.M. E.D.T.

(Reporting by Nate Raymond in New York; Editing by Lisa Von Ahn and Alan Crosby)

MSRB To Weigh Complaints on Proposal to Determine Markups.

WASHINGTON – The Municipal Securities Rulemaking Board plans to weigh complaints it recently received on a proposal for determining markups, as well as comments on close-out procedures for dealers, during its meeting here next week.

At the meeting, scheduled for April 13 and 14, the board will also consider continuing education requirements for municipal advisors and possible enhancements to the MSRB's EMMA system to improve market transparency.

The board's proposed changes to its Rule G-30 on prices and commissions for determining markups mesh with an already established Financial Industry Regulatory Authority process that requires dealers to consider a "waterfall" of factors in determining the prevailing market price and markups or markdowns.

The board must decide whether to file the proposal with the Securities and Exchange Commission for approval.

Issuers and dealers criticized the MSRB's proposal with the harshest critique coming from Ben Watkins, director of bond finance for Florida. He said the "stringent definitions and interpretations of rules" found in the MSRB proposal would "only burden the market."

The Government Finance Officers Association did not submit a comment letter, but Dustin McDonald, director of the group's federal liaison center, said Watkins' comments reflects' GFOA's stance on the issue.

Both Bond Dealers of America and the Securities Industry and Financial Markets Association also

complained about the administrative burden dealers would face. They argued the FINRA-based proposal does not fit the municipal market and should instead allow dealers the flexibility to adopt firm-specific policies and procedures within parameters the MSRB establishes.

However, SEC Investor Advocate Rick Fleming told the MSRB that his office supports the goal of the proposal and urged that it be tightened. He raised concerns about possible loopholes for non-arm's length affiliate transactions, where two dealers doing business with one another are part of the same company.

The discussion on close-out procedures will focus on SIFMA and BDA comments to an MSRB proposal released in January that would mandate municipal securities transactions be closed out within a 30-day period.

This would change a more than 30-year-old portion of Rule G-12 on uniform practices that the board believes would lessen the effect of interdealer transaction failures on the market. The MSRB currently recommends that dealers who fail to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

SIFMA responded to the proposal by recommending the MSRB cut the allowable period of time for close-outs to within 15 days of settlement, with the caveat that if both sides in a transaction agree more time is needed, they can extend the timeline another 15 days on a case by case basis.

BDA had concerns about the MSRB keeping the interdealer options for remedying a failed transaction the same through the transition, warning some dealers may not be able to utilize them or could run into prohibitive costs.

The options would allow the purchasing dealer to either: choose a "buy-in" and go to the open market to purchase the securities; choose to accept securities from the selling dealer that are similar to the originally purchased securities; or allow the purchasing dealer to require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

The MSRB discussion of continuing education requirements for MAs follows a Dodd-Frank Act mandate that the board establish such requirements. The MSRB already administered a pilot professional qualification exam for MAs in January and February and plans to have a formal exam later this year.

THE BOND BUYER

APR 6, 2016 12:48pm ET

Municipal Bond Market Faces New Pressure.

Selling government bonds could become more difficult during the next credit crunch, thanks to a new federal rule outlining the kind of liquid assets that banks must hold in case of an emergency.

The rule, issued Friday, greatly limits the kinds of municipal bonds that qualify in a big bank's investment portfolio as "highly liquid" — in other words, assets that can be sold quickly for cash. The new regulation was issued by the U.S. Federal Reserve, and is a modification of its previous proposal with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

There’s no immediate negative effect for government issuers. But if and when the next credit crunch hits, it could become more expensive for states and localities to issue debt. That’s because if fewer bonds qualify as highly liquid, there would be less market demand for them. And lower demand would mean higher interest rates for governments.

“As long as munis continue to have a good risk-adjusted return for banks, they’ll continue to invest,” said Chris Mauro, who leads RBC Capital Markets’ municipal strategy team. “It’s really when you’re entering a liquidity crisis and banks are running up against their limit: Unfortunately they may liquidate some of their municipal [bonds] as a result. And they’ll use those proceeds to buy highly liquid assets.”

Such assets are designated as “high-quality liquid assets,” or HQLA. Easily sellable securities like Treasuries or highly rated corporate bonds were included in the rule when the draft was first released in 2013. Bonds issued by state and local governments were not.

Ever since then, public finance officials and other stakeholders in the municipal market have been lobbying hard to make the case for municipal bonds. They seemed to make some headway in February, when the U.S. House of Representatives passed a bill that would have forced banking regulators to classify investment-grade municipal bonds as highly liquid assets. But the Senate has not introduced its own version of the bill. Now that the final rule is out and will go into effect in July, it’s unclear whether the Senate’s companion bill would mirror the House or be more in line with the Fed.

Under the new rule, to earn the HQLA designation, a municipal security has to meet several requirements. It must be a General Obligation bond (backed by the full faith and credit of a state or municipality), be investment grade and have been issued by an entity “whose obligations have a proven track record as a reliable source of liquidity during periods of significant stress.”

The wording is vague, said Mauro. So it will be up to banks to flesh out which municipal assets they believe qualify as highly liquid. Reason suggests, he added, that large governments that issue debt regularly would likely be easily marketable in a credit crunch because investors are familiar with them.

Still, it’s a bit of a guessing game. Much like in a housing crisis, one would assume that the nicest homes in the best neighborhoods would still sell quickly while the more average homes sit on the market for months. But a homeowner is never sure until that time comes.

“At this point, no one really knows how [banks] are supposed to prove if there is a ready and liquid market for these securities,” said Mauro. “It’s a gray area.”

Groups that advocate for the municipal market are speaking out in frustration at the final rule’s limitations. In particular, some were upset that revenue bonds — which are paid back via a dedicated government revenue stream — were not included as an HQLA.

Additionally, banks can’t allocate more than 5 percent of their HQLA portfolio to municipal securities. That’s far off from the 40 percent allocation in the bill passed by the U.S. House.

Groups have said they will continue to work with lawmakers on Capitol Hill to loosen up the designation.

GOVERNING.COM

BY LIZ FARMER | APRIL 5, 2016

Chapman and Cutler: MSRB Proposes Additional Exceptions for Trading Municipal Bonds Below Stated Minimum Denominations.

Municipal Securities Rulemaking Board ("MSRB") Rule G-15(f) prohibits a broker, dealer or municipal securities dealer ("dealers") from effecting a customer transaction in municipal securities in an amount lower than the minimum denomination of the issue stated in offering documents, subject to two current exceptions. The MSRB recently proposed adding two additional exceptions that would allow dealers to sell below stated minimums in limited cases. Both new exceptions would allow below-minimum sales to customers where the transactions would not add to the net below-minimum positions within the market. While Rule G-15(f) has historically not been a point of significant focus, that has changed in recent years. For example, in late 2014, the Securities and Exchange Commission (the "SEC") sanctioned 13 dealers in amounts ranging from $54,000–$130,000 for selling municipal bonds below the minimum denomination stated in the bonds' official statements. Earlier this year, the Financial Industry Regulatory Authority, Inc. ("FINRA") also announced sanctions of seven dealers for similar violations in amounts ranging from $25,000–$200,000. (See the related SEC press release and FINRA disciplinary action report here and here.) For additional information on the MSRB proposal, see the related MSRB notice here.

Current Rule G-15(f)

Rule G-15(f) provides that a dealer may not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue. Municipal issuers may impose high minimum denominations to qualify for certain disclosure exemptions from Rule 15c2-12 under the Securities Exchange Act of 1934 or due to a security being below investment grade or for other reasons that might make the securities inappropriate for retail investors likely to purchase securities in relatively small amounts. Where an issuer states a higher minimum denomination for a bond issue, the higher minimum is often $100,000 while a normal minimum is often $5,000.

Current Rule G-15(f) provides two exceptions to the prohibition in order to help preserve liquidity for customers' below-minimum denomination positions. Investors may have below-minimum positions for various reasons, such as a result of a death or divorce, call provisions that allows calls in amounts less than the minimum denomination, investment advisers splitting positions among several clients, or knowingly or unknowingly purchasing an amount below the minimum denomination. The first existing exception permits a dealer to purchase a below-minimum position from a customer if the dealer determines that the customer is selling its entire position. The second existing exception permits a dealer to sell a below-minimum position to a customer if the dealer determines that the position being sold is the result of another customer liquidating an entire position below the minimum denomination. In this case, the dealer must provide written disclosure to the purchasing customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination.

The Proposed New Exceptions

The MSRB believes that certain other transactions that are not currently contemplated under the rule would be consistent with the intent of the current second exception. The MSRB is seeking comment on two additional exceptions.

The first new exception would permit a dealer to sell a below-minimum position to one or more

customers that currently own the issue if the dealer determines that the below-minimum position being sold is the result of a customer liquidating an entire position below the minimum denomination as long as the increment(s) being sold to the customer(s) is consistent with any restrictions in the issuer's authorizing documents, even if the transaction does not result in any purchasing customer increasing its position to an amount at or above the minimum denomination. Under this exception, a dealer would also be permitted to sell a portion of the below-minimum position to a maximum of one customer that currently does not own a position in the issue. The MSRB's theory for allowing one additional purchaser that does not own any of an issue to buy a below-minimum position in the issue appears to be that it would not result in a net increase in below-minimum positions within the market.

The second new exception would permit a dealer to sell a below-minimum position to a customer that currently owns a below-minimum position in the same issue as long as the transaction results in the customer owning a position at or above the minimum denomination amount. In addition, this exception would allow the dealer to also then sell any remaining below-minimum position to one or more customers that currently own the issue even if the transaction left the customer(s) with a below-minimum position so long as the increments sold were consistent with any restrictions in the issuer's authorizing documents regarding incremental amounts. This situation would appear to bring at least one customer up to a minimum position and not increase the overall number of below-minimum positions within the market.

Consistent with the current rule, a dealer would be able to rely upon customer account records in its possession or upon a written statement provided by the customer to whom the securities are purchased or sold that the customer owns a position in the issue in an amount at or below the minimum denomination. Similar to the existing sale exception in the current rule, under both proposed exceptions a dealer would be required to provide all purchasing customers a statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. A dealer would be required to provide this disclosure at or before the completion of any sale in an amount below the minimum denomination.

Best Ex, Suitability and Time of Trade Disclosure Obligations Still Apply

While proposing additional exceptions to the minimum denomination requirement, the MSRB reminds dealers that obligations arising under Rule G-18, on best execution; Rule G-19, on suitability of recommendations and transactions; and Rule G-47, on time of trade disclosure, continue to apply to impose regulatory requirements on dealers regarding customer transactions that supplement the protections afforded by Rule G-15(f) with respect to minimum denominations. As a result, notwithstanding the exceptions, a dealer would have an obligation to have a reasonable basis to believe that a recommended transaction or investment strategy involving a below-minimum municipal bond position is suitable for the customer, bearing in mind that, among other things, the issue has a minimum denomination and the customer's liquidity needs and risk tolerance. In addition, dealers have an obligation under Rule G-47 to disclose to a customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market, including the fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination.

For More Information

To discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group.

April 8, 2016

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MSRB Proposes Clarifying Minimum Denomination Rule Exceptions.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing two clarifying exceptions to its rule preventing dealers from buying or selling bonds below their stated minimum denominations.

The MSRB has asked for comments to be submitted by May 25 on the proposed changes to MSRB Rule G-15 on customer transactions. The rule was amended in 2002 to place the minimum denomination trading restrictions on most dealer transactions.

The minimum denomination for a bond is the lowest amount of the bond that can be bought or sold, as determined by the issuer in its official bond documents. Issuers sometimes set minimum denominations on bonds that are risky to discourage retail investors from buying them. In addition to a minimum denomination, issuers can also set a trading "increment" for their bonds. An increment of $10,000 for example would mean a dealer could sell a customer $110,000 of bonds but not $105,000.

Although dealers are required to adhere to any minimum denominations set in transactions, some investors can be left with amounts below the stated minimums if they have received a share of someone else's holdings, such as from a settlement after a divorce or an inheritance after a death. The MSRB exceptions allow those customers to avoid simply being stuck with these holdings.

Under the current rule, dealers can buy from a customer below the minimum denomination if the dealer determines, based on customer account information or a written statement from the customer, that the customer is selling its entire position in the issue. The dealer can also sell to a customer at an amount below the minimum denomination if it is a result of another customer liquidating his or her entire position in an issue. This exception requires the selling dealer to provide the customer written disclosure explaining that the quantity sold is below the minimum denomination and could adversely affect the customer's liquidity position.

The new proposals would clarify the types of customers a dealer could sell to at amounts less than the stated minimum. The goal of the rulemaking is to make sure that no additional customers with holdings below the denomination are created as a result of the exceptions.

"The MSRB understands that both firms and enforcement agencies could benefit from greater clarity about circumstances in which sales below the minimum denomination could be permissible," said MSRB executive director Lynnette Kelly. "The proposed additional exceptions to the rule would facilitate regulatory efficiency and enhance liquidity for investors that currently hold positions below the minimum denomination while preserving the spirit of the rule."

The first new exception would pick up on the current language and allow a dealer that has bought a customer's liquidated position less than the minimum denomination to sell these bonds, in amounts below the minimum, to one customer with no prior holdings in the bonds and to any customers who

already have positions in the bonds.

For example, if a dealer buys a customer's $75,000 liquidated position in a bond that has a minimum denomination of $100,000 and an increment of $5,000, the dealer could sell $25,000 to a customer with no prior position in the bond, $35,000 to a customer that owns an existing $10,000 position and $15,000 to a customer with an existing $85,000 position.

The transactions would ideally get the customers with prior holdings closer to the minimum denomination, if they have not already reached them.

The second proposed exception applies to dealers that have holdings below, at, or above the minimum denomination. It would allow a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to or past the minimum denomination. The dealer could then sell the remaining below-minimum position to any number of customers that already hold the bonds, so long as the sale is consistent with the issuer's stated increment. However, the exception would not allow a dealer to sell below the minimum denomination to a customer that does not currently have a position in the issue.

All dealers using the exceptions would still have to provide the written statements at or before the completion of the transaction informing the customers of the below-minimum amount and the associated liquidity risks.

The MSRB is also reminding dealers that although the proposal would allow for more exceptions to the rule, dealers would still be bound by MSRB Rules G-18 on best execution, G-19 on suitability of recommendations, and G-47 on time of trade disclosure.

The Bond Buyer

By Jack Casey

April 7, 2016

FINRA Regulatory Notice: Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market.

Regulatory Notice 16-10

The Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) are providing guidance to remind firms of their obligations in connection with privately placing municipal securities directly with a single purchaser and of the use of bank loans in the municipal securities market.

Questions concerning this Notice should be directed to:

- Cynthia Friedlander, Director, Fixed Income Regulation, Regulatory Operations, at (202) 728-8133; or
- Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104.

View the Notice

Purchasers of ABLE Accounts May Now Be Protected by MSRB Investor Protection Rules.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that it has received interpretive guidance from the staff of the Securities and Exchange Commission (SEC) relating to the status under the federal securities laws of interests in accounts established by states to implement programs under the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act). As a result of the MSRB's receipt of that guidance, purchasers in ABLE accounts may be protected by the MSRB's investor protection rules that help ensure that they are treated fairly.

ABLE accounts that are sold by MSRB-regulated dealers, which underwrite other municipal fund securities such as 529 plans, are now required to comply with investor protection rules when acting as underwriters with respect to the sale of ABLE accounts.

"The new ABLE Act savings programs are an important vehicle for helping to support individuals with disabilities in maintaining health, independence and quality of life," said MSRB Executive Director Lynnette Kelly. "The application of the MSRB's investor protection rules will help ensure that ABLE account purchasers are treated fairly and afforded the same protections as other investors in municipal fund securities."

The SEC staff guidance allows the MSRB to regulate dealers involved in the primary offering of ABLE accounts because ABLE programs established by states under Section 529A of the Internal Revenue Code of 1986 may, in some cases, be considered municipal securities that are sold by municipal securities dealers.

The SEC staff guidance means that these dealers are subject to the jurisdiction of the MSRB and its investor protection rules. For example, MSRB rules require that a dealer's recommendation to purchase interests in an ABLE account be suitable for the purchaser based on the purchaser's financial situation and investment objectives and that advertisements cannot be materially false or misleading.

The MSRB will be issuing interpretive guidance under its rules for dealers relating to the sale of interests in ABLE accounts.

Date: April 5, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

NABL: MSRB Seeks Comment on Direct Purchase Disclosure.

The Municipal Securities Rulemaking Board (MSRB) issued a request for comment on a concept proposal (Regulatory Notice 2016-11) to require municipal advisors to file with the MSRB information on direct purchases and bank loans of their municipal entity clients. The MSRB has encouraged issuers to voluntarily provide information on direct purchases and bank loans but, according to the MSRB, few issuers have done so.

The request lists 17 questions that the MSRB is seeking comment on. The questions include whether requiring disclosure would protect investors, what information should be disclosed, whether a municipal advisor should be required to disclose information on all outstanding “alternative financings” or just the financing the advisor was engaged for, and whether there is additional information an investor would need to have a complete picture of an issuer’s overall financial condition. The MSRB did not ask for views on whether it had the authority to require such disclosures, either in general or in the specific case of loans.

The MSRB request for comments is available here.

Comments are due May 27, 2016.

MSRB Seeks Comment on Clarifying Exceptions to Minimum Denomination Rule.

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on draft rule amendments to support the practical implementation of its rule that generally prohibits dealers from selling bonds below a stated minimum denomination. The amendments seek to clarify exceptions that are consistent with the rule’s original intent to protect investors.

Comments should be submitted no later than May 25, 2016.

Read the MSRB RFC.

Fed Rule Treating More Munis as HQLA Seen As Too Restrictive.

WASHINGTON – The Federal Reserve on Friday released final rule changes to treat more municipal securities as high-quality liquid assets under liquidity requirements for large financial institutions, but critics complain they do not go far enough and could hurt the muni market.

The rule changes will take effect on July 1, 2016, but other banking regulators still exclude munis as HQLA.

“Unfortunately, [the rule changes] will continue to discourage investment in our local communities. And, it will do little, if anything, to help cash-strapped school districts and municipalities finance critical infrastructure projects,” said Rep. Luke Messer, R-Ind., sponsor of a bill approved by the House in November that would go further than the Fed.

The final rule changes are slightly more lenient than those proposed last May after municipal market participants protested the liquidity rules adopted by the Fed, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp. in September 2014 that excluded munis as HQLA because of concerns they were not liquid or readily marketable and could not be converted to cash during periods of financial stress.

The final rule changes treat as level 2B liquid assets municipal general obligation bonds that are backed by the full faith and credit of a U.S. state or municipality, are investment grade, and have been issued by an entity whose obligations have a proven track record as a reliable source of

liquidity during periods of significant stress.

Munis would still have to meet the liquid and readily marketable standard outlined in the rule to be considered level 2B assets. There are three classifications of liquidity in the rule, level 1, level 2A and level 2B. Level 2B, which includes some corporate debt, is the lowest liquidity classification in the rule. Only 40% of an institution's aggregate HQLA can be made up of level 2A and 2B assets, with only 15% of the total HQLA coming from level 2B assets.

One big change from the Fed's first proposed changes is that the final rule allows insured munis to qualify as level 2B securities if the underlying security would otherwise qualify as HQLA without the insurance.

Another change is that the final rule eliminates the proposed requirement that institutions have no more than 25% of munis with the same CUSIP number.

However, the Fed still maintains a 5% limit on the amount of munis that a regulated institution can include as HQLA but does not limit the number of munis an institution could hold other than for complying with the Fed's liquidity rule.

The final rule does not include revenue bonds as HQLA, but the Fed said it will continue to monitor the liquidity characteristics of revenue bonds and consider whether to include them as HQLA in the future.

Dustin McDonald, director of the federal liaison center for the Government Finance Officers Association, said GFOA applauds the Fed's effort to include munis but believes the regulator ignored the group's broad input on the liquidity benefits munis could provide.

"The amendment does not sufficiently correct the 2014 rule and GFOA and our state and local government association partners will continue efforts to secure enactment of legislation to truly address the short-sightedness of the rule," McDonald said.

He was referring to Messer's bill, which would treat munis that are investment grade and readily marketable as Level 2A assets — the same level as some sovereign debt and government-sponsored debt of Fannie Mae and Freddie Mac. Munis could also account for up to 40% of a bank's HQLA under the bill.

Rep. Carolyn Maloney, a Democrat from New York who co-sponsored Messer's bill, said, "The OCC should follow the Fed's lead and offer similar relief in order to protect the municipal bond market, and cities and states across the country."

Sen. Mike Rounds, R-S.D., who has been mentioned as a candidate to offer an HQLA bill in the Senate, said the Fed proposal "is a step in the right direction" but that he plans to keep working in the Senate to give fair treatment to munis.

Dealer groups, like the lawmakers, welcomed the Fed's efforts, but criticized the limited nature of the changes.

John Vahey, director of federal policy at Bond Dealers of America, said it is "unfortunate that the Fed has chosen to continue to restrict and limit the use of general obligation bonds and completely exclude high-quality revenue bonds from the banking liquidity rule."

Michael Decker, managing director and co-head of the Securities Industry and Financial Markets Association municipal securities group, said the eventual effect of the rule will be to reduce demand

for munis and potentially create higher borrowing costs for state and local governments.

Mike Stanton, head of strategy and communications at Build America Mutual, said BAM appreciates the Fed's willingness to make insured munis eligible for treatment as Level 2B liquid assets provided they meet the board's other criteria.

The Fed's liquidity rule applies to institutions that have at least $250 billion in total consolidated assets or at least $10 billion in on-balance sheet foreign exposure.

It also applies to state member banks that have at least $10 billion in total consolidated assets and are consolidated subsidiaries of covered bank holding companies as well as nonbank financial companies that the Fed has supervisor over as designated by the Financial Stability Oversight Council.

Bank holding companies and certain savings and loan holding companies with at least $50 billion in total consolidated assets who don't meet any other thresholds are also covered under the rule.

The Bond Buyer

By Jack Casey

April 1, 2016

Ellis Straddles the Line Between Politics, Municipal Finance and Public Policy.

AUSTIN – Over the past 26 years, state Sen. Rodney Ellis, D-Houston, has voted to confirm gubernatorial appointments to the Lower Colorado River Authority, a powerful electric utility in Central Texas. During the same time, financial firms he either owned, worked for, or owned stock in have profited handsomely by helping underwrite $3.7 billion in bonds sold by the authority.

Ellis, who is seeking the Democratic Party's endorsement for a seat on the Harris County Commissioners Court, has an impressive legislative record well-known to voters – 676 bills he has authored or served as the lead Senate sponsor have become law, including major reforms to Texas' criminal justice system, schools and community colleges.

But because of Texas' lax ethics law, much less is known about Ellis' equally impressive career in the lucrative government bond business, which repeatedly has placed him in a position to exercise authority over local governments and public agencies whose bond proceeds were being used to pay Ellis' firms. His dual role as lawmaker and bond underwriter has left him straddling the line between politics, municipal finance and public policy, raising questions about potential or actual conflicts of interest, or the appearance of conflicts.

Since first being elected to the Texas Senate in 1990, Ellis has been involved directly or indirectly in municipal bond deals totaling at least $50 billion in Texas, an analysis by the Houston Chronicle has found. Nearly all of those deals have involved several firms doing "underwriting" – when firms are chosen or bid to buy bonds from a government agency and then sell them to investors.

The cost of issuing government bonds is about 1 percent of the bond's principal amount, or $1 million for every $100 million in bonds sold. About half that issuance cost, or $500,000, would go

to underwriters' fees, according to Public Sector Credit Solutions, a California-based research firm that has examined 800 bond deals nationwide since 2012.

'Proud' of varied roles

Ellis, in recent interviews via email, said he has not violated any ethics laws and has not done anything unethical in his votes as a legislator.

"There is no connection between my votes in the Senate and any bond underwriting," he said. "I'm a businessman, lawyer, and African-American involved in public finance. I'm proud of the fact that I'm one of the first to combine those four experiences and also have a successful legislative career at the same time."

Asked how his involvement with firms underwriting government debt would affect his work as a Harris County commissioner, Ellis told the Chronicle that if elected, he would "sever all ties with public finance companies."

That has not been the case during his legislative career.

In many respects, Ellis has benefited from a system in which Texas legislators set their own rules and many Texans appear reconciled with so-called "citizen legislators" who hold regular sessions every other year and often blur the line between public service and private interests. Ellis himself has said in floor debate that in "a part-time citizen legislature … there are going to be some inherent conflicts in how people derive income."

The list of government agencies whose bonds Ellis' firms have helped underwrite is a long one, including the city of Houston, Harris County and the Houston Independent School District. Others are far removed from his power base, like the Lower Colorado River Authority in Austin and the North Texas Tollway Authority in suburban Dallas.

In 1993, Ellis was chairman of a Senate committee that handled legislation affecting how local governments operate. While he wielded the gavel, the firm he co-founded was doing bond work for at least 26 local governments in Texas and collecting at least $375,000 in fees.

Ellis' firm in 2010 was among seven that bought and sold $256 million in bonds issued by the Port of Houston Authority for the port's expansion. Two years later, Ellis opposed a proposal that would have enabled the governor to appoint all members of the port commission, saying the authority should not be singled out despite major questions about its leadership.

Ellis was a member of the Senate Transportation Committee in 2014 when his firm helped underwrite $130.6 million in bonds for the Metropolitan Transit Authority of Harris County and $379.6 million in bonds sold by the Dallas Area Rapid Transit Authority, and in 2012 when $134.6 million in bonds were issued by the North Texas Tollway Authority.

State law does not require Ellis to categorize in his ethics statements that the firms he has owned, worked for, or owned stock in specialize in government bond deals.

Texas lawmakers have to disclose clients only if they are lobbyists or if they work for public agencies or companies that employ lobbyists.

In his personal financial statements from 1991 through 1994, Ellis listed 56 fees that his firm received from local governments and public agencies, such as river authorities, that wield power across several counties. He was not required to reveal what the fees were paid for, but the Chronicle

confirmed that Ellis' firm worked on bond sales by Harris County, the city of Houston, Bexar County, the city of Austin, the Trinity River Authority and Dallas-Fort Worth International Airport, among several others. He did not have to disclose the fee amounts – only within ranges. Of the 56 fees listed, 42 were $25,000 or more.

Ellis has not disclosed any government bond fees after filing his personal financial statement covering 1994. Ellis' financial services firm and the New York City company that bought it in 1998 and kept Ellis on board as a managing director have done bond deals with many of the same local governments, which have continued to employ lobbyists.

"From 1991 to 1994, I thought the disclosures I made were required," Ellis said in an email to the Chronicle. "I was advised in 1995 that the disclosures were not required."

Other states have more expansive requirements for legislators to disclose clients.

In California, legislators must identify those who pay them more than $10,000 per year. Florida's law triggers disclosure if legislators receives more than 10 percent of their gross income from a client and the total is more than $1,500. New York lawmakers must list clients if they or their employer received more than $10,000 in connection with work on state legislation, a contract or a grant.

A U.S. senator or House member is barred from working as a government bond underwriter, said John Wonderlich, policy director of the Sunlight Foundation, a nonprofit organization in Washington, D.C., which advocates for transparency in government.

Tom "Smitty" Smith, director of the Texas office of Public Citizen, a nonprofit watchdog group, has watched Ellis in action from the start of his legislative career. During that time, Ellis has taken the lead on ethics issues, from requiring more disclosure to overhauling how judicial campaigns are financed, Smith said.

"There's the good Rodney and the bad Rodney. The good Rodney knows what needs to be done, but he also has made a lot of money off of connections, knowing who to talk to, and selling bonds," Smith said.

On several occasions, Ellis has defended his work in public finance by noting that legislators receive only $7,200 a year in salary. Ellis said in 2013 that he wouldn't run for Congress because he couldn't take a pay cut. Congressmen are paid $174,000 a year.

Controversial work

Ellis was a Houston city councilman in 1987 when he and two others opened a public finance firm, Apex Securities Inc., in a field that Ellis referred to as "overwhelmingly white."

"There was a growing recognition in the public sector for leaders to insist that minorities and women be allowed to break into" the public finance profession, Ellis said.

But the firm's work generated controversy.

In 1993, state Rep. Ron Wilson, D-Houston, criticized Ellis for doing bond work for the city of Houston while trying to make sure city officials got legislative approval for a $500 million bond sale.

Ellis removed his firm from a city contract that had been awarded to help sell $119 million in certificates of obligation. The city was borrowing the money as it waited for the Legislature to pass a

law enabling the bond sale to go forward.

In 1998, a New York City financial services firm, Rice Financial Products, purchased Apex Securities. The terms were not disclosed. After the sale, Ellis became a managing director of Rice Financial.

When Ellis was first elected to the Senate in 1990, he listed owning stock in three companies, according to his personal financial statement filed with the Texas Ethics Commission. By 2003, five years after he sold Apex Securities to Rice Financial, he owned stock in 181 companies, including shares of Coca-Cola, Walt Disney Co., Morgan Stanley and Rolls Royce Group.

Ellis has not been required under Texas law to disclose much about his activities with Rice Financial.

Since 1999, he has reported the firm as a "source of occupational income," listed managing director as his title most years, and characterized his occupation as "investment banker." An exception was in his ethics statements covering 2012 and 2013 when he did not receive income from Rice Financial. For 2014 and 2015, he listed the firm again as a source of occupational income.

Ellis was required to disclose his ownership of stock in Rice Financial, a privately held firm, in ranges. That ownership increased in 2008 from "less than 100" shares to between 1,000 and 4,999 shares since then. He is not required to disclose how much those shares are worth.

Legislators and other public officials who are required to file annual ethics statements don't have to disclose their income, either as a precise amount or within an approximate range.

Ellis sidestepped several questions about his work at Rice Financial, other than to say it involved "providing strategic advice" about the bond market.

"I absolutely brought respect and earned clients' trust across the country, and in doing so," he said, "I brought income to the property."

Richard Ramirez, who co-founded Apex Securities with Ellis in 1987 and has remained in touch with him, said: "Rodney is just about work – politics and work, all the time. He hits it hard all the time."

True to form

Ellis played true to form during last year's legislative session when Gov. Greg Abbott took aim at lawyer-legislators in an ethics reform bill he put forth as one of his top priorities.

The Texas Constitution requires legislators to disclose if they have a "personal or private interest in any measure or bill, proposed, or pending, before the legislature" and they are barred from voting.

They have interpreted that provision, according to Abbott, "to mean they do not have a conflict of interest if they vote on legislation that affects an entire industry and not just their own specific business."

In his legislation, Abbott wanted to require legislators and statewide elected officials to disclose more about their sources of income – specifically government contracts or other deals in which they or their spouses get paid by public agencies. In addition to requiring greater disclosure by lawyer-legislators, Abbott proposed banning lawmakers from serving as bond counsel for government debt. The bill carrying Abbott's ethics reforms included a provision to ban lawmakers from working as lobbyists.

Ellis – who noted during the debate that he is an "investment banker" and not a bond counsel – attacked the bill from several angles in committee and on the Senate floor. Commenting on the proposed ban on public officials working as lobbyists, Ellis lectured the bill's sponsor, Sen. Van Taylor, R-Plano, that the founding fathers of Texas "wanted us to go out to work. So what you would do is prohibit someone from being able to work, in terms of doing lobbying work."

In the end, Ellis voted for the bill.

"I support increasing all disclosures – tax returns, inherited wealth, and anything else the legislature chooses to require – but I do not support requiring them only of members in selected professions," Ellis said in a recent email.

The bill died after the House and Senate Republicans could not reach agreement on a compromise version.

'I don't work on deals'

Four months after last year's legislative session ended, a New York City investment firm, Bonwick Capital Partners, hired Ellis away from Rice Financial to expand into the competitive field of public finance. In announcing Ellis' hiring, the firm noted that Ellis had a quarter of a century of experience in both municipal finance and the Texas Legislature.

When asked if Bonwick hired him to tap the Texas government bond market, Ellis said: "I don't work on deals; I'm simply a strategic counsel to Bonwick employees."

It appears that Ellis, if he gets the nomination from Democratic precinct committee members in June and is elected in November as a member of Harris County Commissioners Court, would have to abstain from voting if Bonwick Capital competes for Harris County bond work. He has said he would resign from Bonwick and not work for any other public finance firm if elected.

If he steps down, it would be the first time in three decades that Ellis has not worked at the intersection of politics, municipal finance and public policy.

The Houston Chronicle

By James Drew

April 2, 2016 Updated: April 2, 2016 9:44pm

NABL: MSRB, FINRA Notice on "Loan" and "Security"

Today, the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) issued to firms they regulate a joint regulatory notice, reminding those firms of their obligation to conduct adequate due diligence to determine whether certain alternative financial instruments, including direct purchases, may in fact be municipal securities.

The notice emphasizes that even when the financing is described as a "bank loan," firms still must consider the applicability of MSRB and FINRA rules and other federal securities laws with respect to their activities.

The notice sets out factors to be considered in determining whether a transaction is a loan or a

security and provides an overview of applicable MSRB and FINRA rules.

The joint regulatory notice is available here.

MSRB Asks About Requiring MAs to Disclose Bank Loan Info From Issuers.

WASHINGTON – The Municipal Securities Rulemaking Board has issued a concept release on whether it should require municipal advisors to disclose information about the bank loans or privately placed municipal securities of their issuer clients.

The nine-page release, which contains 17 specific questions related to the proposal, asks for public comments to be submitted no later than May 27.

The board said it is proposing requiring these disclosures because issuers have only responded on a limited basis to its requests for voluntary disclosures of bank loans on EMMA. These disclosures are important so that investors can better gauge the credit or liquidity profiles of issuers, according to the MSRB.

The board suggested in a notice issued in April 2012 that bank loans be disclosed in the voluntary continuing disclosure category of "Financial/Operating Data – Investment/Debt/Financial Policy for submission. The issuer was asked to indicate in the "Consisting of" free-text field that the documentation consists of "bank loan" disclosures. The board urged issuers to provide documents related to bank loan financings such as the loan or financing agreement or, as an alternative, a summary of some or all the features of the loans. These would include lender, borrower, purpose, security for repayment, third party guarantees, interest rates, tax status of interest and other features, the board said.

However, as of March 28, a search of EMMA for the term "bank loan" resulted in only 143 hits, the MSRB said. Of these, 79 included the words "bank loan" in the issue description and were filed as suggested by the MSRB. Another 23 hits included the words "bank loan" in the issue description, but the documents were reported in other subcategories than the one suggested by the MSRB. The remaining 41 hits, while including the words "bank loan" in a document, did not include any documents under the subcategory suggested by the MSRB.

The board said that generally information about bank loans and private placements is only available in an issuer's financial statements and do not include the key terms of the financings such as provisions that would affect the seniority of bondholders in the event of the issuer's default.

"The MSRB is concerned that the lack of disclosure hinders an investor's ability to truly understand the risks of an investment, thus frustrating the transparency, integrity, fairness and efficiency of the municipal securities market," the MSRB said.

"The MSRB is seeking comment on ways in which more information or more timely information about such financings could be made available to investors, including whether and how to require municipal advisors to disclose information about a municipal entity client's outstanding indebtedness."

The board noted that Section 15B(d)(1) of the Securities Exchange Act of 1934 prohibits the Securities and Exchange Commission and the MSRB from requiring issuers directly, or indirectly through a broker-dealer, to submit the equivalent of a registration statement or similar documents

before the sale of municipal securities.

Section 15B(d)(2), commonly known as the Tower Amendment, prohibits the MSRB from requiring muni issuers directly, or indirectly through a dealer of municipal advisor, certain information relating to them (the issuers) to the MSRB or to purchasers or prospective purchasers of muni bonds.

However, the board said, its existing Rules G-32 on primary offering disclosures, and G-34 on Cusips, new issue, and market information requirements already require dealers to make certain disclosures with respect to sales of munis.

Therefore, "it may be possible to require disclosures by municipal advisors of information about direct purchases and bank loans of their municipal entity clients within the limitations of the Tower Amendment," the board said in the notice. "The MSRB has broad rulemaking authority under the Exchange Act, as amended by the Dodd-Frank Act, over municipal advisors and municipal advisory activities."

"The MSRB believes that the availability or timely disclosure of information about an issuer's direct purchases and bank loans is beneficial to fostering transparency and ensuring a fair and efficient market."

Industry participants have also asked for these kinds of disclosures, the board said.

The MSRB asked for comments on, among other things, what activity should trigger the disclosure requirement – advising on a bank loan or advising on any kind of transaction?

The board also asked how expansive should such disclosures be?

Should such a disclosure obligation apply to dealers? the board asked.

It also wanted to know if there are alternative methods the MSRB should consider for obtaining and publicly disseminating material information related to an issuer's direct purchases and bank loans.

The MSRB asked what types of debt financings, in addition to direct purchases and bank loans, do muni issuers use as alternatives to the direct issuance of muni bonds for which disclosures would be useful to investors.

The board also asked for any historical data, studies or other information relating to the number, value and terms of outstanding bank loans or direct purchases by muni issuers.

The Bond Buyer

By Lynn Hume

March 28, 2016

Lawyers Call For Challenges to SEC Administrative Proceedings.

WASHINGTON – The Supreme Court's refusal to take up a case on the Securities and Exchange Commission's use of administrative proceedings to impose penalties in enforcement cases prompted a law firm to recommend those subject to administrative proceedings to challenge their

constitutionality.

The alert issued by Orrick, Herrington & Sutcliffe on Thursday comes as the SEC has faced increasing criticism for using administrative law judges instead of the courts to try enforcement cases.

Most SEC muni enforcement actions are brought through administrative proceedings. However, the commission also files complaints against alleged violators of anti-fraud statutes in district courts.

“The consequences of being subject to an SEC administrative review process are significant,” wrote Jason Halper, the co-chair of Orrick’s financial institutions litigation practice who authored the alert with two other lawyers from the firm. “In federal court, a defendant is entitled to full civil discovery, complete application of the federal rules of procedure and evidence, in most cases, a jury trial, and adjudication by a neutral arbiter, while a respondent in a SEC proceeding is entitled to none of these protections.”

The Orrick lawyers said the “results of that incongruity speak for themselves,” citing media reports that found the SEC was successful in 90% of administrative proceedings over a five-year period compared to only 69% of federal court cases during the same time period.

The case on which the alert is based is Bebo v. Securities and Exchange Commisson. It involves Laurie Bebo, the former chief executive officer of Wisconsin-based Assisted Living Concepts Inc., who challenged the constitutionality of the penalties imposed in administrative proceedings. The SEC had charged that Assisted Living Concepts and Bebo had released false or misleading financial and disclosure documents.

The proceedings were ongoing when Bebo filed her constitutional challenge in the District Court of the Eastern District of Wisconsin. The district court dismissed Bebo’s case citing a lack of jurisdiction over the issue because she had not concluded with the administrative proceedings at the time she filed. The Seventh Circuit Court of Appeals in Chicago later affirmed the decision.

Although the Supreme Court decided last week not to review and reconsider the appeals court ruling, the Orrick lawyers said there are more cases making their way through the federal system and that the Supreme Court might decide to address the issue if a split in opinion develops in the circuit courts.

“The SEC has chosen a forum that allows it to investigate, prosecute, adjudicate, and if successful in supporting the charges before an administrative law judge, provide appellate review of a case for which the very same commissioners approved the filing of charges in the first place,” Bebo’s lawyers said in the district court complaint.

Mark Cuban, the celebrity entrepreneur, filed a friend-of-the-court brief as Bebo’s case was being appealed calling the administrative proceedings a “farce” and unconstitutional.

In the case, Bebo argued that the SEC administrative law judges who impose enforcement penalties violate the Appointments Clause of the Constitution because the judges are hired by the SEC and not appointed by the president or SEC commissioners. The SEC administrative law judges were first allowed to issue enforcement penalties after the Dodd-Frank Act of 2010 was passed, according to the Orrick lawyers.

Representatives from the Department of Justice who responded to the complaint on behalf of the SEC, said the administrative law judges “possess the limited adjudicatory authority that the commission has delegated to them, play a part in a process over which the commission retains

ultimate control, enjoy ordinary tenure protection, and have a long history of use."

Andrew Ceresney, director of the SEC's enforcement division, said in a speech to the New York City Bar last year that the commission's "overriding goal is to achieve strong and effective enforcement of the federal securities laws in a fair and efficient manner."

"We try to recommend the forum that will best utilize the commission's limited resources to carry out its mission," he said. The SEC analyzes a host of factors when deciding between administrative proceedings and a district court, but administrative proceedings are almost always wrapped up more quickly and can be much more efficient, Ceresney added.

The Bond Buyer

By Jack Casey

March 31, 2016

Fed Rule Allows Banks to Use Munis as Part of Crisis Buffer.

U.S. cities and states won a partial victory Friday as the Federal Reserve gave final approval to a rule that will let banks include some municipal bonds in stockpiles of easy-to-sell assets meant to serve as a buffer against a financial crisis.

The decision to allow certain investment-grade bonds to be used in meeting liquidity requirements expands the Fed's version of a multiagency rule adopted in 2014, which calls for the biggest banks to hold enough high-quality liquid assets to survive a 30-day period of financial stress. The central bank revisited the idea of including munis after local governments waged a lobbying campaign for the change.

Bank regulators adopted the minimum-liquidity demand as a response to deficiencies highlighted during the 2008 credit crisis, when financial firms were stuck with assets they couldn't sell. The Fed, which announced completion of its revised rule in a statement, said it relied on an analysis that suggested certain munis should qualify because they have liquidity characteristics similar to assets such as corporate debt securities.

Other Regulators

What makes the victory only a partial one for issuers is the fact that a substantial portion of muni activity occurs in the bank units overseen by the Office of the Comptroller of the Currency. So far, neither the OCC nor the Federal Deposit Insurance Corp. has matched the Fed's confidence in the liquidity of the muni market.

"Fundamentally, the rule now makes sense," said Philip Fischer, who heads muni research for Bank of America Corp.'s Merrill Lynch unit. He said the muni market is "extremely high-quality" and that he expects the Fed's action to spur the other regulators to reconsider their positions.

Bryan Hubbard, an OCC spokesman, and Barbara Hagenbaugh, an FDIC spokeswoman, declined to comment.

The Fed's change, which takes effect July 1, applies to Fed-supervised lenders subject to the liquidity

coverage ratio requirement. Those bank holding companies will be able to include a limited slice of munis among the Treasuries, highly-rated corporate bonds and foreign-government debt they already count against their liquidity demands.

‘Proven Record’

The Fed will allow munis that “have a proven record as a reliable source of liquidity in repurchase or sales markets during a period of significant stress,” according to the text of the rule. Such munis can be part of a second tier of liquid assets, which can total no more than 40 percent of the overall liquidity buffer.

The city and state lobbying also targeted lawmakers, and legislation to allow munis in the liquidity rule made some progress through a House committee in 2015.

Dustin McDonald, director of the Government Finance Officers Association, said the Fed’s allowance isn’t wide enough, and that “local government association partners will continue efforts to secure enactment of legislation to truly address the short-sightedness of the rule.”

The phase-in period for the liquidity rule started in 2015 and it is set to go into full effect on Jan. 1. It’s also expected to be joined this year by a separate but related liquidity demand — known as the net stable funding ratio — that considers a longer stress horizon.

Even under the pressure of rules and warnings from municipal lobbyists, banks have increased their muni holdings, which rose to almost $500 billion by the end of 2015, more than twice the levels the industry held at the end of the financial crisis.

Bloomberg Business

by Jesse Hamilton

April 1, 2016 — 7:00 AM PDT Updated on April 1, 2016 — 10:25 AM PDT

Federal Reserve Issues Final Rule on Banks’ Municipal Bond Holdings.

In a showdown over who should decide how safe, or sellable, municipal bonds would be in a crisis, the Federal Reserve tilted its position in response to critics, but still left them unsatisfied.

Federal regulators opened the door for banks to count municipal bonds as liquid assets, including those from smaller municipalities.

The Fed adopted a framework that partly responded to industry concerns about a postcrisis rule that could have made it harder for local governments to raise money. But the Fed’s action Friday didn’t give critics what they wanted most: a definition deeming the bonds safer than corporate debt.

Lawmakers said they welcomed the changes but would continue to pursue legislation that would address the discrepancy. “The Federal Reserve’s new rule is a step in the right direction,” Sen. Mike Rounds (R., S.D.), a member of the Banking Committee, said in a statement.

The issue had led to an unusual showdown, with Wall Street, Congress and municipal officials challenging bank regulators’ skepticism toward municipal debt.

The dispute stems from a 2014 rule aimed at ensuring banks can raise enough cash during a financial-market meltdown to fund their operations for 30 days. The requirements mean banks have to hold more cash or securities that are easily salable. The Fed and two other bank regulators had originally decided debt issued by states and localities didn't make the cut. In 2015, the Fed proposed amendments to allow some municipal bonds to qualify, but it met with some criticism for not going far enough.

Under Friday's final rule, banks can count investment-grade state and municipal securities as "high-quality liquid assets" up to certain levels if the securities meet the same criteria as corporate bonds.

The Fed made several changes from last year's proposal. For example, it said bonds that are insured can also qualify as long as they meet criteria that apply to municipal bonds without insurance. The earlier proposal had rejected all insured bonds.

Around 6.7% of the $379 billion in municipal bonds issued in 2015 were insured, according to municipal bond insurer Build America Mutual. That number rises to 15% when looking at the number of transactions, since many small and midsize issuers tend to use insurance more frequently, said spokesman Michael Stanton, who called the final rule a "fair and reasonable outcome."

In another shift, banks can now hold larger portions of certain small issuances.

The ultimate impact of the rule is likely to be somewhat limited because the two other regulators involved—the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp.—haven't made any changes themselves and don't allow the institutions they regulate to count municipal bonds toward their liquidity buffers. The Fed regulates bank holding companies, while the banks themselves are overseen by either the OCC or the FDIC depending on whether they have national or state charters.

When adopting the final rule in 2014, FDIC Chairman Martin Gruenberg said his agency believed banks generally held municipal securities as longer-term investments, and not for liquidity purposes.

A bipartisan group of lawmakers has advanced legislation to mandate that all three regulators include municipal securities into a safer category that includes debt sold by government-sponsored enterprises like Fannie Mae. Several lawmakers said Friday that they would continue to pursue the legislation.

"While I'm glad to see the Federal Reserve making some progress on this issue, the proposal does not go far enough. Unfortunately, it will continue to discourage investment in our local communities," said Rep. Luke Messer (R., Ind.).

The Securities Industry and Financial Markets Association trade group representing banks, broker-dealers and asset managers warned the rule, even with the changes, would likely raise borrowing costs for state and local governments. That is because they think banks will still buy fewer bonds, leading states and localities to pay higher interest rates to attract investors.

But Justin Hoogendoorn, head of fixed-income strategy and analytics at broker-dealer Piper Jaffray, said the decision to count more municipal bonds as liquid assets underscores the importance of the municipal-bond market.

"The main point is that the regulators are viewing these securities as an important and acceptable component of the balance sheet," he said.

THE WALL STREET JOURNAL

By ARUNA VISWANATHA and HEATHER GILLERS

Updated April 1, 2016 5:49 p.m. ET

Write to Aruna Viswanatha at Aruna.Viswanatha@wsj.com

MSRB Provides Resources on Puerto Rico Issuers.

The MSRB's Electronic Municipal Market Access (EMMA®) website provides information for investors and others concerned about bonds issued by the Commonwealth of Puerto Rico and issuers within the Commonwealth. To assist those seeking information, the MSRB has compiled the following resources:

- See a list of Puerto Rico bond issuers, trading, outstanding debt information and links to other information on EMMA.
- View additional resources from organizations that provide demographic, economic or geographic data and fact sets about Puerto Rico.
- Learn how to use the EMMA website to actively monitor an issuer's financial health and the secondary market trading of municipal bonds, and how to stay informed in the event of an issuer's fiscal distress.
- Read about the jurisdiction of the MSRB and its role in making disclosure information related to municipal securities freely available to the public through its EMMA website.

MSRB Seeks Comment on Potential Rulemaking to Improve Transparency of Direct Purchases and Bank Loans.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a potential approach to enhance investor and public access to information about the direct purchase and bank loan transactions of municipal securities issuers. In concept, the MSRB is considering whether to require municipal advisors to disclose information about the bank loans and direct purchases of their municipal entity clients to the MSRB's Electronic Municipal Market Access (EMMA®) website.

Direct purchases and bank loan agreements may contain key terms that impair the rights of existing bondholders. For example, in some instances, these financings may have provisions that make creditors senior to bondholders or that provide creditors with more favorable remedies than bondholders in the event of default. Bondholders may not learn of the existence and amounts of these types of financings until the release of the issuer's audited financial statements, and the key terms typically would not appear in such financial statements.

"The lack of transparency around the full picture of an issuer's indebtedness has long concerned the MSRB," said MSRB Executive Director Lynnette Kelly. "For a number of years, the MSRB has been encouraging state and local governments to voluntarily disclose bank loan financings and other similar obligations on EMMA, yet only a small number have done so. We are now considering whether rulemaking is necessary to ensure investors have the information they need with respect to

these financings to make informed investment decisions."

The MSRB's concept proposal is intended to gather input on ways to improve the availability and timeliness of information about direct purchases and bank loan financings for the benefit of investors and the public generally. Specifically, the MSRB seeks comment on the benefits, costs and potential alternatives to requiring municipal advisors to disclose this information to the EMMA website.

Comments should be submitted no later than May 27, 2016.

Date: March 28, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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Finra Arbitration Panel Orders UBS to Pay for Damages Over Puerto Rico Bond Losses.

UBS Group AG's wealth management business for the Americas must pay more than $470,000 to three investors who claimed damages because their accounts were over-concentrated in Puerto Rico bonds that plunged in value, according to the Financial Industry Regulation Authority Inc.

Obdulio Melendez Ramos, Ramon Velez Garcia and Carlos L. Merced had been seeking as much as $570,243 for damages, alleging fraud and negligent supervision, according to the Finra arbitration award document dated March 24. Their claims were filed in October 2014.

"Although the arbitrators awarded less than the full damages the claimants requested, UBS is disappointed with the decision to award any damages, with which we respectfully disagree," Gregg Rosenberg, a spokesman for UBS, said in an emailed statement.

"The decision in this case was based on the facts and circumstances particular to these particular claimants, and is not indicative of how other panels may rule with regard to other customers who invested in similar products," he said.

Damages tied to Puerto Rico's distressed debt were among the litigation matters outlined in the Swiss bank's financial supplement for its fourth-quarter earnings results released in early February. The supplement showed that since August 2013, declines in the price of Puerto Rico municipal bonds and related funds managed and distributed by UBS have led to regulatory inquiries, customer complaints and arbitrations, with claimed damages totaling $1.5 billion.

About $284 million of claims were resolved through settlements or arbitration, according to the supplement.

The oil bust could leave a similarly long wake of arbitration awards in the brokerage industry, as a wave of claims are expected to be filed this year with Finra. Investors have begun seeking damages based on allegations that their brokers put too much of their money in energy investments, which cratered following crude's plunge in the second half of 2014.

Investment News

By Christine Idzelis

Mar 25, 2016 @ 11:25 am

Scalia, Alito Court Absences Shape Puerto Rico Debt-Relief Bid.

Two empty chairs at the U.S. Supreme Court could be full of significance as the remaining justices consider whether Puerto Rico can ease its fiscal crisis with a law that would let the island's public utilities restructure more than $20 billion in debt.

The U.S. territory will make its case Tuesday to what probably will be a seven-member court, a rarity caused by the unexpected death of Justice Antonin Scalia in February and a financial conflict that may force Justice Samuel Alito to recuse himself.

The case, part of a multi-fronted battle over Puerto Rico's financial future, directly affects more than $20 billion owed by the commonwealth's utilities, including $9 billion owed by the Puerto Rico Electric Power Authority, known as Prepa. A decision upholding Puerto Rico's restructuring measure may give the island leverage to reach deals with creditors over other parts of its $70 billion in debt.

The law "gives Puerto Rico more weapons to threaten creditors to get a better settlement than they would otherwise," said Matt Fabian, a partner at Municipal Markets Analytics, a research firm based in Concord, Massachusetts.

Lawmakers in Congress have been negotiating for months over legislation to help Puerto Rico, though Republicans are reluctant to grant the kind of restructuring authority the U.S. Treasury Department and the island's leaders want.

The high court case could affect a tentative agreement between Prepa and most of its creditors. A decision upholding the Puerto Rico law might give Prepa a chance to try to pay them less than the 85 cents on the dollar promised by the accord.

Tuesday's case involves creditors that reached settlements over more than $2 billion in Prepa bonds, including BlueMountain Capital Management LLC and funds managed by Franklin Advisers Inc. and OppenheimerFunds Inc.

Under U.S. law, states can authorize federal bankruptcy filings by their municipalities, including public utilities, but Puerto Rico and the District of Columbia can't. Puerto Rico sought to skirt that provision in 2014 by passing a measure known as the Recovery Act to let utilities restructure their debts under local law.

A U.S. appeals court ruled unanimously that federal bankruptcy law bars the Puerto Rico measure. The three-judge panel said Congress reserved for itself the power to decide how Puerto Rican debt should be restructured.

Alito didn't participate when the agreed to hear Puerto Rico's appeal in December. The justice's most recent financial disclosure report indicates that either he or his wife own shares in a Franklin fund that holds Puerto Rican municipal bonds. Barring a last-minute sale of those holdings, Alito presumably won't take part Tuesday either.

Seven-Justice Court

Scalia's Feb. 13 death added a new dynamic by creating a seven-justice court for the case. Puerto Rico now needs to persuade only four justices, not five, and the court's four Democratic appointees will outnumber their three Republican-selected colleagues.

Losing Scalia may deprive the bondholders of one of their most likely allies, said John Pottow, a bankruptcy law professor at the University of Michigan Law School. Scalia was a stickler for adhering to statutory text, even when it was ambiguous, rather than looking beyond the words to the broader purpose lawmakers might have had.

"If you were a strict textualist, I think you would find the arguments against Puerto Rico's position more attractive," Pottow said.

The high court case turns on the impact of a 1984 amendment to the federal bankruptcy law. The amendment for the first time explicitly said that Puerto Rico and the District of Columbia were to be considered states for bankruptcy purposes. An exception to the amendment said Puerto Rico and the district can't authorize their utilities to file under Chapter 9 of the bankruptcy code, the federal provision for reorganizing municipalities.

The bondholders say a separate, longstanding provision also bars states and Puerto Rico from using their own laws to authorize non-consensual restructurings.

'No Man's Land'

Puerto Rico counters that Congress didn't intend to leave the commonwealth in a "no man's land" with its utilities unable to seek debt relief under either federal or local law.

The island's financial problems are also an issue in Congress, where House Republicans are drafting a bill to help Puerto Rico with its debt problems.

The measure is expected to include a financial control oversight board that has powers to negotiate with the island's creditors. It's not expected to make the island eligible for federal bankruptcy protection, which Democrats and President Barack Obama have pushed. If enacted, the legislation could trump whatever the high court decides.

The Supreme Court case "is probably being overshadowed a bit by the potential for something coming out of Congress," said Lyle Fitterer, head of tax-exempt debt at Wells Capital Management, which oversees $39 billion of municipal securities.

The cases are Puerto Rico v. Franklin California Tax-Free Trust, 15-233, and Acosta-Febo v. Franklin California Tax-Free Trust, 15-255.

Bloomberg Business

by Greg Stohr and Micheele Kaske

March 21, 2016 — 2:00 AM PDT

Puerto Rico Gets Mixed Reception at U.S. Supreme Court.

Puerto Rico got a mixed reception at the U.S. Supreme Court as the justices debated a local law that would let the island's debt-ridden public utilities restructure their obligations.

Puerto Rico is aiming to revive the law, which directly affects more than $20 billion in utility debt and would give the commonwealth leverage in handling the rest of the $70 billion it owes. A federal appeals court said a U.S. bankruptcy law bars Puerto Rico from setting up its own debt-restructuring system.

The hour-long hearing Tuesday in Washington made clear that at least some of the justices were still formulating their views, and the case ultimately may divide the court. Justice Sonia Sotomayor, whose parents moved to New York from Puerto Rico, emerged as the island's strongest supporter.

Justice Ruth Bader Ginsburg also hinted she might back the commonwealth. She voiced doubt that Congress would have left Puerto Rico's utilities unable to use either the federal bankruptcy system or a local restructuring law.

"Why would Congress put Puerto Rico in this never-never land?" Ginsburg asked.

Under federal law, states can authorize bankruptcy filings by their municipalities, including public utilities, but Puerto Rico and the District of Columbia can't. Puerto Rico sought to get around that provision in 2014 by passing a local law that offers an option similar to bankruptcy.

Appeals Court

A U.S. appeals court ruled in July that Congress had reserved for itself the power to decide how Puerto Rican debt should be restructured.

"Congress has for a long time micromanaged Puerto Rico's debt," Matthew McGill, the lawyer representing funds that hold Puerto Rican municipal bonds and are challenging the Recovery Act, told the justices.

McGill drew his strongest support from Chief Justice John Roberts. Two other justices, Elena Kagan and Stephen Breyer, asked questions of both sides, while Justices Anthony Kennedy and Clarence Thomas said nothing.

The Supreme Court is considering the case two justices short of its usual complement of nine. Justice Antonin Scalia died last month, and Justice Samuel Alito has a financial conflict.

'Nonsensical' Argument

Puerto Rico's lawyer, Christopher Landau, told the justices it was "nonsensical" to think Congress meant to leave the island without access to either federal or local restructuring law.

Roberts questioned that assertion, saying Congress has a different relationship with Puerto Rico than it has with the states.

"Why would it be irrational for Congress to say, 'All right, this is the system we're going to apply to all the states, but when it comes to Puerto Rico, if they want changes, we want them to come to us?'" Roberts asked.

That drew a sharp response from Sotomayor, who didn't even give Landau a chance to answer Roberts's question.

"Why not treat it like every other territory?" Sotomayor asked. "If you're going to treat it differently, wouldn't you expect them to say that?"

Sotomayor Alone

The case turns on the impact of a 1984 amendment to the federal bankruptcy code. The amendment said that Puerto Rico and the District of Columbia were to be considered states for bankruptcy purposes. An exception to the amendment said that, unlike states, Puerto Rico and D.C. can't authorize their utilities to file for bankruptcy under federal law.

Puerto Rico says that amendment implicitly freed the island to pass its own restructuring law, known as the Recovery Act. The bondholders say the Recovery Act is barred under an older, separate provision that prohibits states and Puerto Rico from enacting local bankruptcy laws.

Early in the argument, Sotomayor looked as though she might be alone in backing Puerto Rico. Two other Democratic appointees, Breyer and Kagan, both suggested that they couldn't square Puerto Rico's contentions with the language of the U.S. bankruptcy code.

"I can't say that an airplane means a horse," Breyer said.

Evolving Kagan

Kagan questioned whether Congress would have made the "major change" of allowing Puerto Rico to enact a local restructuring law in such a "cryptic, odd way."

Later, however, Kagan said her thinking had evolved as she better understood Puerto Rico's argument about the statute's language. She asked McGill why Landau's interpretation of the statute isn't "just as good, if not better, than yours."

"I didn't come in here thinking that, but now I kind of am thinking that," Kagan said.

The dispute is part of a multi-front battle over Puerto Rico's financial future. Lawmakers in Congress have been negotiating for months over legislation to help Puerto Rico, though Republicans are reluctant to grant the kind of restructuring authority the U.S. Treasury Department and the island's leaders want.

Governor Alejandro Garcia Padilla has warned the island will default May 1 on a $422 million debt payment unless the commonwealth reaches an agreement with its creditors. Puerto Rico and its agencies face another $2 billion payment due July 1.

The high court case could affect a tentative agreement between Puerto Rico Electric Power Authority, known as Prepa, and most of its creditors. A decision upholding the Puerto Rico law might give Prepa a chance to try to pay them less than the 85 cents on the dollar promised by the accord.

The high court case involves creditors that reached settlements over more than $2 billion in Prepa bonds, including BlueMountain Capital Management LLC and funds managed by Franklin Advisers Inc. and OppenheimerFunds Inc.

The cases are Puerto Rico v. Franklin California Tax-Free Trust, 15-233, and Melba Acosta-Febo v. Franklin California Tax-Free Trust, 15-255.

Bloomberg Business

by Greg Stohr and Michelle Kaske

March 22, 2016 — 9:19 AM PDT Updated on March 22, 2016 — 11:47 AM PDT

Sotomayor Helps Puerto Rico Argue Its Bankruptcy Case.

Before Tuesday, I'd have said that Puerto Rico had no chance to win its legal fight to let its municipalities and utilities declare bankruptcy. That's how the island hopes to resolve its overwhelming debt problems, but the federal bankruptcy code says that it can't.

That's what the U.S. Court of Appeals for the First Circuit held last summer, unanimously. The statute seemed so clear that even Judge Juan Torruella, the appellate court's only Puerto Rican member, concurred in an outraged separate opinion criticizing the federal law.

Then Sonia Sotomayor stepped in. Oral arguments before the Supreme Court rarely change the outcome of a case, yet Tuesday's session may turn out to be the exception. In a fascinating and unusual argument, Justice Sotomayor, who is herself of Puerto Rican descent, spoke by my count an astonishing 45 times. Sotomayor left no doubt that she was speaking as an advocate.

The interpretation of the law she favored would make the system fairer to Puerto Rico, allowing the commonwealth to create its own emergency bankruptcy measures outside federal law. But it depends on a highly doubtful reading of the statute, one that stretches credulity when read into the text. Ideally, Congress will hear what happened at the oral argument and pass one of the reform proposals it's currently considering that would spare the court from having to decide the case.

First, Sotomayor walked Puerto Rico's attorney, Christopher Landau, through his own argument with a precision that exceeded his own. She answered other justices' hostile questions for him, better than he did. Then she dominated Matthew McGill, the lawyer for the creditors of Puerto Rico's electrical utility, who are fighting the bankruptcy bid. In the second half of the argument, the other justices mostly stood by and let her go at him.

Sotomayor's position, borrowed from Landau's creative brief, was that the federal bankruptcy law doesn't mean what the appeals court considered obvious. The law says that Puerto Rico is to be considered a state for purposes of the bankruptcy code, except that, unlike a state, it may not authorize its municipalities (and by extension, its utilities) to resolve debts under Chapter 9 of the code.

According to the interpretation favored by Sotomayor, this provision does indeed mean that Puerto Rico can't use federal bankruptcy law to let its electrical utility go into default. But at the same time, she clearly believes, the same law should be interpreted to allow Puerto Rico to create its own bankruptcy laws, under which it might be able to do just that.

The appeal of this interpretation is that it spares Puerto Rico the indignity of the First Circuit's interpretation. According to that court, Puerto Rico is prohibited from having its own bankruptcy laws, just as the 50 states are prohibited. But uniquely (along with Washington, D.C.), Puerto Rico can't enable municipalities or utilities to enter Chapter 9 bankruptcy.

The drawback of this reading is that by implication it gives Puerto Rico a power that no state has had for many decades – the power to create its own bankruptcy code. It seems extraordinarily unlikely that Congress really meant to give it that power, and no one has thought it did until now.

What was even more remarkable than Sotomayor's dominance of the argument was the effect it seemed to have on her liberal colleagues. Justice Elena Kagan did something that's rare in an oral argument: She announced that Landau (speaking under Sotomayor's tutelage) had clarified her view. "I think I get what you're saying now, which I didn't when I started," Kagan told Landau.

Initially, Kagan had seemed skeptical that Puerto Rico's argument could be made to fit the statutory text. Now she was claiming to see the light.

Later Kagan made the point more explicit. "I came in here thinking your best argument is straight on the text," she told McGill. "But now I have a better understanding of Mr. Landau's interpretation of the text."

Justice Stephen Breyer, who had seemed skeptical of Landau's position, also appeared to change sides, or at least to be considering doing so.

The case, Puerto Rico v. Franklin California Tax-Free Trust, will be decided by seven justices, since the late Justice Antonin Scalia hasn't been replaced and Justice Samuel Alito is recused. That means Sotomayor would need four votes to win. Chief Justice John Roberts spoke briefly, expressing skepticism about Puerto Rico's position. Justice Clarence Thomas was silent. So was Justice Anthony Kennedy.

That leaves Justice Ruth Bader Ginsburg, who could conceivably provide a fourth liberal vote in favor of Puerto Rico. She spoke sparingly, but pointedly. When Landau first stood up, she asked him if Puerto Rico would be allowed to let its electrical utility default on its debt, or whether that would violate the provision of the Constitution that says states may not impair the obligation of contracts.

Technically, not all of the Constitution applies to Puerto Rico, and Landau declined to say that Puerto Rico would be barred from a default that abrogated the utility's contractual obligations in its debt contracts. In practice, however, there's little doubt that the contracts clause of the Constitution would indeed apply to Puerto Rico. Ginsburg knows that perfectly well.

That's important. She almost certainly asked her question to signal that allowing Puerto Rico to engage in some sort of emergency default wouldn't actually sink the creditors' real-world claims. This is as close as Ginsburg gets to hinting that she might be prepared to hold for the commonwealth.

The silent participant in this entire unusual argument is Congress, which is considering legislation that would give Puerto Rico some way to restructure its utilities' debts. The liberal justices are telling Congress that if it doesn't help Puerto Rico bail itself out, they may do it themselves.

I'm sure all four liberals hope that Congress was listening. A holding like the one Sotomayor was pushing would be good policy, but would push the envelope of statutory interpretation. Congress should resolve this issue soon, before June, so that a hard case doesn't make questionable law.

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

Bloomberg View

By Noah Feldman

MARCH 23, 2016 10:42 AM EST

Puerto Rico Fights for Chapter 9 Bankruptcy in Supreme Court.

WASHINGTON — Debt-laden Puerto Rico went toe to toe with its creditors at the Supreme Court on Tuesday, arguing that it has been wrongly locked out of the bankruptcy courts, the only place it can reasonably expect to restructure its crushing debt.

“We’ve talked a lot about legal principles,” said the lawyer Christopher Landau, summing up his arguments on behalf of the commonwealth. “But this is also a flesh-and-blood situation in Puerto Rico.”

Hanging on the outcome, he said, were questions like “whether people in a village in Puerto Rico will be able to get clean water.”

Puerto Rico is struggling with $72 billion in debt and has been saying for more than a year that it needs to restructure at least some of it under Chapter 9, the part of the bankruptcy code for insolvent local governments. But Puerto Rico cannot do so, because Chapter 9 specifically excludes it, although it is unclear why.

In 2014, the island tried to get around that exclusion by enacting its own version of a bankruptcy law, designed for its big public utilities, which account for about $26 billion of the total debt. But that attempt ran afoul of yet another provision of the code, which says that only Congress can enact bankruptcy laws.

“Congress has shut the door,” said Mr. Landau. “There is no door for Puerto Rico, and no key for Puerto Rico.”

Many of the justices’ questions, and the parties’ responses, involved possible rationales for tying Puerto Rico’s hands, as Congress went out of its way to do in 1984. Its amendment that year also barred the District of Columbia, without leaving any legislative history or indication of intent.

“Why would Congress preclude Puerto Rico from Chapter 9?” asked Chief Justice John G. Roberts Jr.

“Why would Congress put Puerto Rico in this never-never land?” asked Justice Ruth Bader Ginsburg. “Why in the world? What explains Congress wanting to put Puerto Rico in this anomalous position of not being able to restructure its debt?”

“It’s the question that everyone asks when they pick up this case,” said Mr. Landau.

He and the lawyer representing Puerto Rico’s creditors, Matthew D. McGill, agreed that no one knew for sure, but both offered theories.

Mr. McGill said the 1984 amendment was not all that mysterious if you considered that Congress had a long history of micromanaging Puerto Rico’s indebtedness. He cited a 1917 federal law that specifically limited the amount of debt that Puerto Rico could take on, which remained in force until Puerto Rico ratified its own constitution in 1952. Even then, he said, Congress agreed to lift its own debt restriction only because Puerto Rico had included a similar restriction in its new constitution.

He also said that Congress had tacitly encouraged the widespread purchasing of Puerto Rican debt, by permitting Puerto Rico to market its bonds as triple-tax-exempt in all American states and cities. As a result, Puerto Rican debt is exceptionally widely held across the United States mainland, and Congress may have wanted to protect investors by making it hard for Puerto Rico to renege.

Plan to Rescue Puerto Rico Advances, Led by House RepublicansMARCH 25, 2016
“The third reason is that by 1984, Puerto Rico and D.C. were the two most indebted territories, by a lot,” he said. Under those circumstances, Congress was unlikely to have wanted to “allow the

District of Columbia and Puerto Rico to write their own municipal bankruptcy laws, that may or may not treat their nationwide creditors fairly."

Mr. Landau offered an entirely different theory as to why Congress had enacted the laws at issue. He said the legal provisions were being misread, and that Congress had not really intended to shut Puerto Rico out of bankruptcy.

While lawyers, judges and policy makers have grappled with these issues, Puerto Rico's finances have gone from bad to worse. The island has already defaulted on about $221 million of debt, prompting lawsuits by some of the affected creditors. And bigger, far more contentious defaults appear imminent.

On May 1 the island's all-important Government Development Bank must make debt payments of $422 million, which it does not seem to have. Two months later, about $2 billion is due from the central government and a number of big public enterprises: the electric power authority, the water and sewer authority and the highway authority, among others. Puerto Rico's constitution effectively guarantees at least some of those payments, but the money to make them appears to have dried up.

Gov. Alejandro García Padilla has said that he will not make debt payments if it means depriving the Puerto Rican people of essential services. But skipping the big payments due in May and July would probably mean many more creditor lawsuits.

And a default by the Government Development Bank, which oversees the island's finances, could set off a far-reaching chain reaction. The bank has guaranteed the debts of numerous other agencies and private companies, and insured hundreds of personal mortgages. Those guarantees and insurance would presumably lose value in a default, hurting the balance sheets of any number of institutions.

Analysts have warned that it could take years to sort out the resulting mess, and in the meantime, Puerto Rico would be a pariah, less and less able to protect the safety and well-being of its more than three million residents.

When it first enacted its own version of bankruptcy in 2014, Puerto Rico had hoped to restructure only a few large government enterprises.

But two big mutual fund companies, Franklin Advisers and OppenheimerFunds, filed suit on the same day the law was enacted. They argued that no matter how much Puerto Rico might want to take shelter from creditors, the bankruptcy code clearly said it could not file for Chapter 9 protection, nor could it enact its own bankruptcy law. The United States District Court in San Juan and the Court of Appeals for the First Circuit agreed.

As the case inched along through the courts, it became increasingly clear that restructuring the public enterprises alone would not be nearly enough to solve Puerto Rico's problems.

Last year, certain congressional committees began working with the Treasury Department on legislation that would give Puerto Rico a legal framework for restructuring all of its debts under the Territorial Clause of the United States Constitution. That approach would help Puerto Rico cope without running into the special exclusion that has been keeping the island out of Chapter 9.

"Isn't there also legislation to put Puerto Rico back in Chapter 9?" Justice Ginsburg asked on Tuesday.

"Yes there is," said Mr. McGill. "Congress is considering a range of options for Puerto Rico,

including Chapter 9, just as Congress considered a range of options for the District of Columbia during its own financial crisis in the 1990s, which resulted in a financial control board rather than Chapter 9."

A House bill is expected to be introduced by the end of March, in keeping with instructions issued by the speaker, Paul D. Ryan. A Senate bill is likely to follow. They are expected to provide some framework for restructuring other than Chapter 9. Congressional action is likely to come well before any court ruling.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

MARCH 22, 2016

House Introduces Public Employee Pension Transparency Act Bill.

On March 22, Devin Nunes (CA-22) introduced the Public Employee Pension Transparency Act (PEPTA), HR 4822. This legislation is identical to previously proposed and ultimately unsuccessful versions of PEPTA introduced in the last two sessions of Congress. The act would require sponsors of state and local defined benefit plans to report plan liabilities to the Secretary of the Treasury annually in order to retain their federal tax-exempt bond status. It would also require supplementary reports restating these liabilities, using a so-called "risk-free" assumed rate of return. The data would then be entered into a federal database that would be accessible to the public. Finally, the bill makes it explicitly clear that public pension obligations are the responsibility of state and local governments and that the federal government will not provide a bailout. GFOA opposes this measure and any imposition of federally mandated disclosure and reporting on state and local pension plans.

This proposed expansion of the existing reporting and disclosure requirements would add significant reporting burden to state and local plans, possibly doubling the effort and cost of the current reporting requirements. A small number of well-known jurisdictions have severe pension funding problems, but transparent data resources such as the Public Plan Database ensure that these jurisdictions' shortfalls are well-known and understood under the current reporting and disclosure requirements. In addition, PEPTA requires the creation of a new federal bureaucracy that would gather, process, and verify the information for the nation's 2,550 state and local pension plans.

Adding another calculation to public pension plans' disclosure efforts is not only burdensome but misleading. Significant additional and irrelevant reporting requirements will not correct funding issues. Adding a new number to the reporting and disclosure efforts of the Governmental Accounting Standards Board, Actuarial Standards Board, and credit ratings agencies could also impede appropriate funding decisions by causing policymakers to misunderstand the level of contributions required.

GFOA, along with other Public Pension Network members representing both state and local governments and retirement systems, will continue to educate members of Congress about the true fiscal condition of public pension systems, along with considering the extent to which proposed initiatives support flexibility in providing retirement security to public sector employees and opposing congressional proposals to undermine state and local government authority to effectively govern and finance their pension plans. Please stay tuned for a resource page on GFOA's federal relations page with materials and information you can use in reaching out to your elected officials.

GFOA

Thursday, March 24, 2016

More Than 1,600 Advisors Take Pilot Municipal Advisor Exam.

In preparation for the development of a permanent qualification exam for municipal advisors, more than 1,600 municipal advisor professionals representing over 350 firms took the pilot Municipal Advisor Representative Qualification Examination (Series 50) In January and February 2016. These volunteer test-takers will help determine the passing score and validate the question bank for the permanent Series 50 exam, which the MSRB expects to launch in the fall of 2016. The MSRB's Series 50 exam is the first qualifying examination for municipal advisors.

Read more about the development of the Series 50 exam.

Tax-Exempt Bonds: Post-Issuance Compliance Issues.

Why Borrowers Using Tax-Exempt Bonds Need a Post-Issuance Compliance Policy

For borrowers using tax-exempt bonds, particularly 501(c)(3) organizations, it is tempting to treat the issuance of tax-exempt bonds as the end of a financing process that can be unfamiliar and somewhat complicated. However, it would be unwise for a borrower to place its bond documents on a shelf and ignore them.

There are a number of issues that can arise post-closing that could affect the taxability of the bonds, many of which are addressed in a tax exemption agreement that the borrower likely entered into at closing. These issues include (1) use of the bond proceeds of the bonds, including arbitrage issues relating to investment of the bond proceeds, (2) restrictions on use of the bond-financed property including, in the case of 501(c)(3) bonds, restrictions on the borrower's ability to enter into leases and other contracts related to the bond-financed property with for-profit entities, (3) in the case of 501(c)(3)bonds, maintenance of the borrower's 501(c)(3) status, and (4) disposal of all or part of the bond-financed property. As the borrower has gone to some effort to obtain the advantages of a tax-exempt bond, it should ensure that its post-closing actions and inactions do not jeopardize the tax treatment of those bonds by establishing a post-issuance compliance policy.

The specifics of a post-issuance compliance policy will vary depending on the borrower, the relevant Internal Revenue Code provisions authorizing the bonds and the type of project financed with bond proceeds. For example, post-issuance compliance policies related to 501(c)(3) bonds should focus significant attention on contracts with any private businesses for the use or management of any part of the bond-financed property. Post-issuance compliance policies related to low-income housing bonds should contain detailed provisions related to the requirements for verification of tenants' income limits, and methods of ensuring that the tenant income requirements are adequately monitored and maintained.

As a practical matter, having a comprehensive post-issuance compliance policy that identifies potentially problematic actions related to the bond-financed property and the use of the proceeds is likely to reduce or eliminate violations of federal tax law and the relevant regulations. Employees of

the borrower dealing with the bond-financed property and bond proceeds should receive training on the post-issuance compliance policy and, in particular, should understand which types of actions (including third-party contracts, investment of bond proceeds and disposal of bond-financed property, among other actions) need to be flagged, and the compliance officer or outside counsel with whom those actions should be vetted. As Internal Revenue Service ("IRS") Publication5091 notes, reliance on the Tax Exemption Certificate and Agreement alone regarding future compliance obligations is not recommended, as this agreement and the related financing documents may not be known to the relevant employees or may not contain sufficient detail. Further, the language used in the Tax Exemption Certificate and Agreement is legal and technical in nature, and may not be properly understood by employees responsible for the day-to-day functions of the organization, who may not have been involved in the financing transaction at all.

There is another important potential benefit to borrowers involved in tax-exempt financing of having a written post-issuance compliance policy. Tax Exempt Bonds ("TEB"), a division of the IRS, administers federal tax laws applicable to tax-exempt bonds.1 As part of its oversight of tax-advantaged bonds, TEB administers a Voluntary Compliance Agreement Program ("VCAP"), which is a procedure for resolving violations of the federal tax laws applicable to tax-exempt bonds. Parties to a tax-exempt bond issuance that participate in the VCAP generally receive more favorable outcomes than in instances where the IRS's examination of the bonds reveals an issue.2 As part of the information submitted by a borrower to participate in the VCAP, the borrower needs to identify how the violation was discovered and whether it has post-issuance procedures in place to monitor federal tax law compliance.

Using the VCAP following identification of an issue pursuant to a borrower's written post-closing compliance procedures could have several advantages for the borrower. In many cases, the amount that must be paid to resolve an issue under the VCAP will increase the longer the period between the violation and the submission of the VCAP request, so having policies and procedures in place that will promptly identify violations after they occur is important in minimizing the borrower's exposure to additional costs.3 A closing agreement entered into under the VCAP is final and conclusive as to the matters addressed, and may not be reopened or modified by the IRS.4 Further, IRS procedures state that, absent extraordinary circumstances, a bond issuance will not be selected for examination while it is under the VCAP review. A borrower with a comprehensive post-issuance compliance policy is therefore better positioned to take advantage of the VCAP if tax issues arise.

Therefore, while the specifics of the post-issuance compliance policy will vary depending on the type of bonds and the specifics of the borrower's industry and situation, we recommend that all borrowers involved in tax-exempt financing adopt and follow written policies related to post-issuance compliance with federal tax laws and regulations.

Footnotes

1 Note that the TEB VCAP program also applies to other types of tax advantaged bonds, such as tax credit bonds that provide a tax credit to the bond holder, and direct pay bonds, where the issuer receives a refund of part of the interest it pays on the bonds.

2 See https://www.irs.gov/Tax-Exempt-Bonds/New-Voluntary-Closing-Agreement-Program--equest-Form.

3 See Internal Revenue Manual 7.2.3.4.2 and 7.2.3.4.4.

4 See IRC 7121 and the corresponding Regulations.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Last Updated: March 16 2016

Article by Mindy F. Rice

Reinhart Boerner Van Deuren S.C.

NABL: SEC Charges Municipal Advisor for Failing to Disclose Conflict.

The U.S. Securities and Exchange Commission (SEC) has charged Central States Capital Markets, its CEO and two employees for breaching their fiduciary duty by not disclosing a conflict of interest to a municipal client. This is the SEC's first case in enforcing the fiduciary duty for municipal advisors since the implementation of the 2010 Dodd-Frank Act. According to the order, while Central States served as a municipal advisor to a client on municipal bond offerings in 2011, two of its employees, in consultation with the CEO, arranged for the offerings to be underwritten by a broker-dealer where all three worked as registered representatives. Central States CEO John Stepp and employees Mark Detter and David Malone did not inform the client of their relationship to the underwriter or the financial benefit in serving multiple roles.

Click here to read the press release.

Click here to read the SEC order.

SEC Approves MSRB Plan To Lengthen Board Terms To Four Years.

WASHINGTON – The Securities and Exchange Commission has approved a Municipal Securities Rulemaking Board proposal that extends MSRB board terms to four years from three.

The approval means that all board members who start their terms in MSRB's fiscal year 2017, which begins on Oct. 1 of this year, will serve four-year terms. Also, only six new members will be selected next year instead of the normal seven.

The proposed changes to the board's Rule A-3 on board membership have drawn industry support since the MSRB first announced them in October of last year. They were approved on Thursday but the MSRB did not announce the SEC's decision and it was not posted on the commission's website until Friday.

"Longer board terms support greater continuity and institutional knowledge while preserving the benefits of a yearly incoming class with new perspectives and expertise," said MSRB executive director Lynnette Kelly.

The SEC said in its release approving the changes that it "believes that the effect of the proposed rule is beneficial and the proposed changes will improve the effectiveness … of the board."

The Securities Industry and Financial Markets Association and Bond Dealers of America said in comment letters that they agreed the changes would help board members be more effective during

their tenures.

SIFMA said the changes would specifically help public members who may have had limited exposure to the municipal dealer and advisor industries before joining the board.

BDA asked the MSRB to use the changes as an opportunity to reevaluate its training process for board members and make sure it is updated to reflect any changes in market practices or new regulations. Responding to BDA's comments, the MSRB said it already revises and improves its orientation process consistently.

The MSRB board is made up of 21 members, 11 of which are public and 10 of which are regulated. The members currently serve staggered three-year terms with a new "class" of seven members joining the board every fiscal year. The classes are named for the year in which its members are scheduled to leave the board.

The new arrangement approved by the SEC will keep the 21-member, majority-public board structure, but change the number of classes to four. One class will have six members and the other three will have five. The MSRB said it designed the changes to keep the balance between public and regulated members in each class as even as possible.

The changes also eliminate a requirement that each new class have at least one non-dealer municipal advisor. The MSRB said the requirement, which would have led to four non-dealer MAs on the board at any given time, may have inadvertently limited representation of other regulated members. Despite the change, there will still be a requirement that the board in its current form have at least three non-dealer advisors serving at any time.

Additionally, the proposal also limits the number of consecutive terms a member can serve to two. Members would only be eligible for a second term if they are invited to do so because of a board-determined special circumstance or if they are filling a vacancy and are therefore only serving a partial term.

The SEC made its approval conditional on the MSRB implementing its stated plan to shift the board structure over three fiscal years, starting in 2017. For this next fiscal year, one public representative from the class of 2016 will receive a one-year extension and six new members will join the board. In fiscal year 2018, one public and two regulated representatives from the class of 2017 will each receive a one-year extension and five new members will join the board. Finally, for fiscal year 2019, three public and two regulated representatives from the class of 2018 will receive a one-year extension and five new members will join the board.

By fiscal year 2020, no further extensions will be needed and five new members will join the board. After that, new classes will be named annually in a repeating sequence of six members, then five members, then five members, then five members.

Any board member whose term expires on or after the end of MSRB fiscal year 2016 will be eligible for a one-year extension during the transition period. The full board will then vote by ballot to determine who receives the extensions.

The MSRB's proposal also lists several smaller changes to bring Rule A-3 up to date. It will eliminate a portion of the rule that laid out a transition process the board undertook in fiscal years 2013 and 2014 to move to 21 members from 15 because the process has concluded. It will also insert the updated name of a committee referenced in the rule.

The Bond Buyer

By Jack Casey

March 18, 2016

SEC: Don't Argue About Materiality After MCDC Submission.

WASHINGTON – Issuers are not likely to change the Securities and Exchange Commission staff's minds about the violations they have disclosed under the commission's municipal self-reporting initiative, the commission's top cop for municipal securities enforcement said on Thursday.

LeeAnn Gaunt, chief of the SEC enforcement division's municipal securities and public pensions unit, said that by the time her office calls issuers who have submitted information under the Municipalities Continuing Disclosure Cooperation initiative to talk about settlement terms, they have already looked at all of the issuer's reported disclosure violations and concluded which are material.

She made her comments during a panel discussion at the National Association of Bond Lawyers' Tax and Securities Law Institute held here. The panel focused on what issuers and their attorneys can expect as the MCDC initiative moves towards issuer settlements.

MCDC, first announced in March 2014, allows underwriters and issuers to receive lenient settlement terms if they voluntarily self-report any instances during the past five years in which the issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements and the underwriters failed to discover the misstatements. The underwriter portion of the initiative concluded with a third round in January. Altogether, 72 underwriters representing 96% of the underwriting market by volume, paid $18 million to settle violations with the SEC.

The SEC has already started reaching out to issuers about settlements and has said it intends to pursue actions against non-reporting entities after it finishes settling with those who did report. The commission also has left open the possibility of taking enforcement actions against individuals related to the disclosure failures.

Underwriters that raised materiality defenses after being contacted by the SEC about settlement terms "did not get much traction with trying to argue with us," Gaunt said, adding she expects issuers to follow the same trend. However, she said the SEC will not "close its ears" to such arguments if they do arise.

Gaunt said the communication between her office and reporting issuers is expected to be brief. All issuers who submitted information under the initiative will receive a response as to whether the unit found material disclosure failures. Any settlement discussions resulting from the disclosures should take at most a couple of weeks, she said. The SEC's goal is to have all of the issuer settlements completed within the calendar year.

"Certainly we will be applying pressure because we want to get [this] done," she said. "We're going to try to keep people on a pretty tight leash when we offer settlement terms."

She added that the SEC understands issuers may need more time to get an authorized person or authority to sign off on a settlement.

Mitchell Herr, a partner in Holland & Knight's Miami office, moderated the panel and said after

listening to Gaunt's explanation of the MCDC settlement talks that he came to the conclusion that those who submitted information were "in a way confessing instead of just self-reporting."

Peter Chan, a partner at Morgan Lewis in Chicago and architect of the MCDC initiative, said that issuers who wanted to defend the materiality of some of their submissions should have included those arguments in what they originally sent the SEC.

Both Herr and Ken Artin, NABL's president and a lawyer at Bryant, Miller & Olive, asked Gaunt if issuers could obtain further leniency under MCDC from the SEC's 2001 Seaboard Report. That report explains that cooperation can lead to leniency in enforcement actions. They asked if issuers might be allowed to file Wells Submissions, in which a defendant in an SEC action explains its position through a memo or videotape in hopes of getting SEC commissioners and officials to change their minds.

Gaunt said that MCDC, while not explicitly linked with the Seaboard Report, already follows its message by allowing self-reporters more lenient terms than they may have received in full enforcement actions. She also said that Wells Submissions are not generally found with settlements and that if issuers wanted the benefit of a Wells Submission, they could opt out of the MCDC settlement and be subject to further SEC investigations under a more normal enforcement process.

When asked whether the commission may pursue individuals at a later date under MCDC, Gaunt did not offer much insight except to say her unit is focused on asking about settlement terms for reporting entities at this point. Chan said he suspects "that there is tremendous interest by the commission and staff" as well as the industry to move on from MCDC. Because of that, he wondered if the SEC would investigate every case and every self-report to try to identify potentially liable individuals.

He hypothesized that the SEC could use the "gigantic" amount of data it is currently sitting on from MCDC to find possible cases by looking for individuals that come up more often than others or instances where there is a red flag because an individual seemed to know there were issues with the continuing disclosure certifications.

The Bond Buyer

By Jack Casey

March 10, 2016

SEC Sues Muni Adviser for Undisclosed Fees Under New Rules.

The U.S. Securities and Exchange Commission for the first time acted to enforce new rules placed on state and local government financial advisers, alleging that a Kansas firm breached its fiduciary duty by reaping undisclosed fees from the underwriter of its client's bond offerings.

Central States Capital Markets failed to tell a city it was advising that it had arranged for the bonds to be underwritten by a broker where three of the firm's employees worked. Central States, which is based in Prairie Village, Kansas, received 90 percent of underwriting fees on three deals, according to the order, which named Chief Executive Officer John Stepp and two other employees.

"By failing to disclose their financial interest in the underwriting of the city's offerings, Central

States — the city's municipal advisor — and its employees deprived the city of the opportunity to seek unbiased financial advice," Andrew Ceresney, the director of the SEC's enforcement division, said in a statement.

The action is the first brought under authority the SEC was given in the Dodd-Frank law to regulate the firms advising governments that borrow in the $3.7 trillion municipal market. That 2010 law was a response to the financial crisis, when some debt deals arranged by advisers saddled states and cities with billions in unexpected costs. Among other provisions, the law requires advisers to put their client's interests first.

Without admitting or denying the findings, Central States and the employees agreed not to violate similar securities laws in the future, the SEC said. The firm is disgorging $289,827.80 and paying an $85,000 penalty. The name of the city wasn't disclosed.

Prior Settlement

Stepp didn't immediately respond to a phone call seeking comment. Stepp and two employees of the firm agreed to pay $62,500 in fines.

Last year the firm agreed to another settlement with the SEC that found it failed to provide adequate due diligence to ensure "the truthfulness" for disclosure on municipal bond offerings it underwrote, according to the June 2015 order. The firm, which self reported the violations, failed to make sure the issuer had provided proper disclosure, the order said. The firm agreed to a $60,000 penalty.

Bloomberg Business

by Darrell Preston

March 15, 2016 — 9:15 AM PDT Updated on March 15, 2016 — 1:15 PM PDT

Buyers Sing Blues After Memphis Bond Default Goes Unrecognized.

Early last month, a ministry that owns two dilapidated apartment complexes in Memphis said the federal government cut off rental subsidies used to repay $12 million of bonds, triggering a default that would cause the price of the securities to tumble by as much as 81 percent.

Apparently, not all investors got word of the debacle. Seven days after the apartments' owner, Global Ministries Foundation, made the disclosure, the tax-exempt debt was still sold in lots of $25,000 and $50,000 to buyers for as much as 110 cents on the dollar. Within days, they saw the value of their bonds plummet to as little as 21 cents.

"It's odd that the price didn't adjust more quickly," said Richard Ryffel, a former municipal-bond banker at Bank of America Corp. who teaches finance at Washington University's Olin Business School in St. Louis. "Why would they have bought at that price?"

The trades show that small-time investors, who are the biggest holders of state and local debt, may still not be receiving key information when they buy bonds, despite regulators' years-long effort to inject more transparency into one of Wall Street's most opaque niches.

It wasn't until 2005 that investors could even access real-time prices to see whether they were being

overcharged when trading in the $3.7 trillion market, where more than 50,000 borrowers have issued over a million securities. In 2009, the Municipal Securities Rulemaking Board, the industry's regulator, created its EMMA system, the first comprehensive, publicly accessible website where issuers report information that could affect the value of their bonds. Yet many investors don't know the records are available or rely on brokers to disclose the risks.

MSRB rule G-47 prohibits dealers from purchasing or selling municipal bonds for a customer without disclosing orally or in writing "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market." MSRB rules also require that brokers take into account all the factors about the value of the security and charge "fair and reasonable" prices.

"We have what we think are very significant safeguards for retail investors," said MSRB Executive Director Lynnette Kelly, when asked about the Memphis bonds. "We can't opine on whether there's been a rule violation or not. Obviously the enforcement agencies have access to all of this trade information."

The MSRB, whose board includes representatives from securities firms, writes the rules but doesn't enforce them. That's left up to the Securities and Exchange Commission and the Financial Industry Regulatory Authority. SEC spokesman John Nester and Finra spokesman Ray Pellecchia declined to comment.

It's uncertain whether any brokers ran afoul of the rules when trading the housing bonds, which the Cordova, Tennessee-based non-profit ministry sold through a Memphis authority in 2011 to raise money to purchase the apartments. The identities of those buying and selling the bonds isn't publicly disclosed.

Trickling Out

On February 12, Global Ministries posted on the MSRB's website a letter from the U.S. Department of Housing and Urban Development saying that the federal agency was terminating rental assistance because of the decrepit conditions. A letter from the trustee, Bank of New York Mellon Corp., said the loss of federal funds caused a default under the bond contract.

The securities didn't trade again until Feb. 18, when a customer purchased $50,000 of them for 110.67 cents on the dollar.

The price held up the following day, with $25,000 worth changing hands for 110 cents at 9:26 a.m. New York time. Not long before 1 p.m., Standard & Poor's cut the rating on the bonds by ten steps to CCC+, seven ranks below investment grade, saying HUD's action will lead to operating losses and, eventually, a payment default within the next two years unless the apartments can be sold for enough to retire the debt.

Prices on the bonds fell to an average of 64 cents on Feb. 22, the next trading day. By the end of the week, they hit a low of 21 cents.

Ryffel, the former banker, said he doubts the buyers were intentionally left in the dark.

"I don't think a broker-dealer would lightly skirt making lawfully required disclosure," said Ryffel. "Any dealer in the know about these bonds would say the last thing I want to do is fail to disclose when there's hair all over the deal."

Bloomberg Business

by Martin Z Braun

March 17, 2016 — 9:05 PM PDT Updated on March 18, 2016 — 5:06 AM PDT

SEC Reports First 'Fiduciary' Settlement Involving Municipal Adviser.

WASHINGTON—The Securities and Exchange Commission announced on Tuesday a settlement with a Kansas adviser to resolve allegations that the firm violated a provision of the 2010 Dodd-Frank financial overhaul law that requires municipal advisers to put the interests of municipal clients ahead of their own.

"A municipal adviser's first duty should be to its municipal client, not its own bottom line," SEC enforcement chief Andrew Ceresney said, in announcing the first-of-its-kind case.

The SEC said when the adviser, Central States Capital Markets, worked in 2011 on a municipal-bond deal for an unnamed city, two employees and its chief executive arranged for the offerings to be underwritten by a broker-dealer where the three men also worked, but didn't disclose the conflict of interest to the city.

The firm agreed to settle the claims and disgorge $290,000 in profits and a separate penalty. The three men also agreed to settle the case, the SEC said.

A lawyer for the firm didn't immediately respond to a request for comment.

The men were aware of the conflict posed, the SEC said. In April 2011, one emailed: "if we are going to charge an [advisory] fee and [the City's administrator] keeps calling us [municipal advisors], should we not resign as [municipal advisors] to [underwrite] this issue? Out of an abundance of caution I believe we should resign…."

The SEC said there was a draft resignation letter attached to the email, but said the men never sent the document to the city.

The case comes as the investment industry is bracing for new fiduciary rules that are expected to require retirement advisers to also put clients' interests ahead of their own.

THE WALL STREET JOURNAL

By ARUNA VISWANATHA

March 15, 2016 11:57 a.m. ET

Write to Aruna Viswanatha at Aruna.Viswanatha@wsj.com

MSRB Lengthens Board Member Terms of Service.

Washington, DC – On March 17, 2016, the Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission to lengthen the term of service for members of its Board of Directors to four years from three, among other amendments to MSRB Rule A-3, on

Board membership.

“Longer Board terms support greater continuity and institutional knowledge while preserving the benefits of a yearly incoming class with new perspectives and expertise,” said MSRB Executive Director Lynnette Kelly.

The Board establishes regulatory policies and oversees the operations of the MSRB and has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors.

Under the amended rule, the 21-member Board will be divided into four staggered classes – one class of six members and three classes of five – to ensure consistent and manageable turnover from year to year. Due to this change, instead of selecting seven new Board members for the term beginning in Fiscal Year 2017, the MSRB will select a class of six. Board members will be precluded from serving more than two consecutive terms.

The MSRB is implementing a three-year transition plan during which the Board will vote to determine which Board members’ terms will be extended by one year. All members beginning a term on the Board in FY2017 or later will serve four-year terms.

Date: March 18, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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SEC: RIEDC, Wells Fargo Defrauded Investors In 38 Studios Deal.

WASHINGTON – The Securities and Exchange Commission on Monday charged a Rhode Island agency, its underwriter, and three individuals associated with $75 million of 2010 bonds for a startup video game company with defrauding investors by not revealing the complete financial status of the company or the extent of the compensation arrangement with the underwriter.

The commission also settled related charges against First Southwest, the agency’s financial advisor at the time, for failing to document its advisory relationship with the agency for seven months. First Southwest, without admitting or denying the findings, agreed to disgorge $120,000 of ill-gotten gains plus pay prejudgment interest of $22,400 as part of the settlement.

The SEC filed its complaint alleging fraudulent disclosures related to privately-placed bonds for the now-bankrupt video game company 38 Studios in a federal district court in Providence, R.I. The complaint names the Rhode Island Economic Development Corp., now called the Rhode Island Commerce Corp., Charlotte-based underwriter Wells Fargo Securities, as well as Peter Cannava, who the SEC said was Wells Fargo’s lead banker on the deal. The litigation against these parties is ongoing with the SEC seeking injunctions against future violations and civil penalties of unspecified amounts for each defendant.

Gabriel Boehmer, a spokesperson for the firm, said Wells Fargo disputes the SEC’s allegations in connection with the placement of the municipal bonds and will respond to the specific allegations in the complaint in court.

Two other individuals, former RIEDC executive director Keith Stokes and former RIEDC deputy director James Michael Saul, already settled charges and agreed to each pay $25,000 without admitting or denying the allegations that they were responsible for the RIEDC not making complete and truthful disclosures in the bond placement memo — the key disclosure document for potential investors. The two former RIEDC executives are also barred from participating in future muni offerings.

The charges stem from the $75 million of muni bonds that the RIEDC privately placed in November 2010 to help finance a project being developed by 38 Studios, whose board chair and majority shareholder was former baseball player Curt Schilling. The funding for the project was part of a Rhode Island program intended to spur economic development and promote job growth. The RIEDC loaned 38 Studios $50 million in bond proceeds and used the remaining funds to pay related bond offering expenses and establish a reserve fund and a capitalized interest fund.

The loan was meant to be repaid with revenues 38 Studios generated from a multi-player video game project code-named Project Copernicus. However, the bond placement memo failed to disclose to investors that Massachusetts-based 38 Studios needed at least $75 million to produce the game and even more money to relocate to Rhode Island. The video game company did not obtain the extra financing and eventually defaulted on its loan in 2012.

“Municipal issuers and underwriters must provide investors with a clear-eyed view of the risks involved in an economic development project being financed through bond offerings,” said Andrew Ceresney, director of the SEC’s enforcement division.

The SEC included evidence in its complaint against the RIEDC, Wells Fargo and the three individuals that the defendants either knew or should have known, about the company’s financing issues before moving forward with the private placement. The company had made clear throughout its negotiations with the RIEDC that it would require $75 million and it was clear from discussions and documents at the time that the company would only receive $50 million from the RIEDC loan, the SEC said.

Both Stokes and Saul reviewed the bond placement memo, as well as other financial documents, for the RIEDC. The SEC alleged Cannava had primary responsibility for Wells Fargo on the 38 Studios bond offering as well as the authority to sign contracts and agreements on behalf of Wells Fargo.

The SEC complaint also alleges that Wells Fargo misled investors by not informing them that the firm had a side deal with 38 Studios that allowed it to receive almost double the amount of compensation as was disclosed in the offering documents. The additional compensation created a conflict of interest, according to the commission.

“An underwriter’s ‘skin in the game’ is material information to investors,” said LeeAnn Ghazil Gaunt, chief of the SEC enforcement division’s municipal securities and public pensions unit.

When 38 Studios was first trying to get additional financing, it was considering both an RIEDC loan as well as funding from an equity private placement. Wells Fargo worked on both financing options during the spring of 2010, but ultimately did not find any investors for the equity private placement. The underwriter designed a $400,000 fee structure to insure it would be compensated for the work it did on both financings, even though one wasn’t chosen. Wells Fargo only disclosed that it would receive a $406,250 share of a $634,065 placement agents’ fee but not the additional $400,000, according to the SEC’s complaint.

The SEC said the actions by the RIEDC and Wells Fargo violated SEC rules that prohibit fraud in the

offer or sale of securities while, Wells Fargo additionally violated MSRB rules on fair dealing and disclosure by municipal market professionals. The three individuals were found to have aided and abetted the violations of their employers.

Rhode Island general treasurer Seth Magaziner said in a statement that the fraud charges illustrate the urgent need for stronger debt management and oversight in Rhode Island.

“My office has taken action to strengthen debt management in Rhode Island, by replacing the financial advisor involved in the 38 Studios deal and introducing legislation to strengthen oversight of public borrowing at all levels of government,” he said. “I am committed to working with the General Assembly to reform Rhode Island’s system of debt management and oversight, to minimize the chance of a future public debt debacle.”

The Bond Buyer

By Jack Casey

March 7, 2016

Fed's Brainard: Regulation May Hurt Bond Market Liquidity — But it's Preventing Something Much Worse.

In a speech Monday, Federal Reserve Governor Lael Brainard admitted there is a liquidity issue in the bond market and that regulation may be a part of the problem.

But, she argued, this regulation is also preventing another 2008-style banking collapse.

Which is simply more important.

The issue of bond market liquidity has been a consistent theme over the past years or so with financial executives such as JP Morgan CEO Jamie Dimon, Blackstone CEO Steve Schwarzman, and Oaktree Capital’s Howard Marks weighing in on the issue and generally pointing the finger at a lack of liquidity exasperating moves in financial markets.

Some of the blame has been pointed at federal regulations that force banks to have more cash on hand.

Brainard recognized that there are some liquidity strains, especially in the high-yield bond market, but these are worth the increased security offered by banks’ holding fewer risky assets.

“While acknowledging the role of regulation as a possible contributor, it is important to recognize that this regulation was designed to reduce the concentration of liquidity risk on the balance sheets of the large, interconnected banking organizations that proved to be a major amplifier of financial instability at the height of the crisis,” said Brainard.

Brainard conceded that, “there may be some deterioration in the resilience of liquidity at times of stress, along with a greater incidence of outsized intraday price movements,” adding that, “Relatedly, liquidity appears to be more segmented based on the characteristics of the securities being traded and the underlying structure of the markets in which they are traded.”

And so essentially Brainard is allowing that regulations have probably caused some decline in liquidity conditions in markets, but the impacts are being felt by smaller investors rather than by large, systemically-important banks. (Recall that banks themselves were the ultimate bagholders on many mortgages that went south in the run-up to the financial crisis.)

This, in turn, reduces the likelihood of contagion to the broader economy.

Here's Brainard's complete statements on liquidity:

Liquidity

In addition to raising uncertainty around the outlook, the recent financial market volatility has underscored the importance of ongoing attention to the resilience of market liquidity. Although it is fair to say that the recent uptick in volatility has in part reduced earlier concerns about prolonged low volatility and associated reach-for-yield behavior, it has placed added focus on the resilience of liquidity, particularly in markets, such as the market for corporate bonds, that may be prone to gapping between liquidity demand and supply in stressed conditions.

The Federal Reserve's surveillance of liquidity conditions in financial markets has broadened and deepened considerably since the "taper tantrum" in mid-2013 and the events of October 2014 in the Treasury market. The analysis so far suggests a few preliminary observations. While it does not appear that day-to-day liquidity has declined notably, some characteristics of liquidity provision are changing. Broadly, traditional price-based measures of liquidity such as bid-asked spreads and the price effect of a given trade size generally remain in line with pre-crisis norms in most markets. In contrast, both anecdotes from market participants and the declining size of trades in some markets suggest it may have become more expensive to conduct, and may take more time to implement, large trades.

Moreover, there may be some deterioration in the resilience of liquidity at times of stress, along with a greater incidence of outsized intraday price movements. Relatedly, liquidity appears to be more segmented based on the characteristics of the securities being traded and the underlying structure of the markets in which they are traded. Based on granular disaggregation of the traded securities, liquidity appears little changed in secondary markets that have traditionally been highly liquid, such as on-the-run Treasury bonds and highly rated corporate bonds. By contrast, there has been some reduction in liquidity in the segments of these markets that have historically been less liquid.

The move toward somewhat greater segmentation of liquidity, in conjunction with ongoing electronification and acceleration of trade execution, might be contributing to increased linkages across markets. Anecdotally, it appears market participants may be using relatively more liquid instruments to hedge exposures in other less liquid market segments, perhaps unintentionally contributing to increased correlation across markets.

From a broader financial stability perspective, the possible deterioration in the resilience of liquidity suggests a special focus on segments where price gaps are most likely to arise at times of stress between holders of relatively illiquid or thinly traded securities that want to sell and dealers with an apparently reduced willingness to take the other side of the trade, as indicated, for example, by leaner dealer inventory holdings. Mutual funds holding relatively less liquid assets is one area of focus. Despite having share prices that move with market prices, these funds can give rise to first-mover advantages for redeeming shareholders and create the potential for destabilizing waves of redemptions and asset fire sales if liquidity buffers and other tools to manage liquidity risk prove insufficient. In this regard, our surveillance has been closely monitoring for any signs of liquidity strains associated with the recent increases in spreads for high-yield corporate bonds, as well as for

idiosyncratic events affecting particular funds in this segment, such as the events surrounding the abrupt closing of Third Avenue Management's Focused Credit Fund last December.

More broadly, the regulatory agencies in the United States and the Financial Stability Board internationally have work under way focusing on possible fire-sale risk associated with the growing share of less liquid bonds held in asset management portfolios on behalf of investors who may be counting on same-day redemption when valuations fall. The recent proposal by the Securities and Exchange Commission (SEC) to ensure mutual funds have ample liquidity buffers under stressed scenarios and undertake measures to address the risk of heavy redemptions and fire sales is notable in this regard. Our surveillance will continue to undertake more granular analysis of liquidity resilience and associated risks.

Across financial markets, it is difficult to disentangle the effects on liquidity of changes in technology and market structure and changes in broker-dealer risk-management practices in the wake of the crisis on the one hand and enhanced regulation on the other. While the leverage ratio and other Dodd-Frank Act requirements likely are encouraging broker-dealers to be more rigorous about risk management in allocating balance sheet capacity to certain trading activities, the growing presence of proprietary firms using algorithmic trading in many of these markets, which predated the crisis, is also influencing trading dynamics in important ways. The Request for Information issued by the U.S. Treasury and the recent proposals from the Commodity Futures Trading Commission and the SEC will be important in deepening our understanding. While acknowledging the role of regulation as a possible contributor, it is important to recognize that this regulation was designed to reduce the concentration of liquidity risk on the balance sheets of the large, interconnected banking organizations that proved to be a major amplifier of financial instability at the height of the crisis.

Business Insider

by Bob Bryan

Mar. 7, 2016, 3:30 PM

SIFMA: Cut MSRB's Proposed Close-Out Period for Muni Trades in Half.

WASHINGTON – The Securities Industry and Financial Markets Association wants municipal securities transactions to be closed out within 15 days of settlement, rather than the 30 days proposed by the Municipal Securities Rulemaking Board.

The MSRB proposed the 30-day period in January in an amendment to a more than 30-year-old portion of its Rule G-12 on uniform practice that the board said would lessen the effect of interdealer transaction failures on the market. The self-regulator currently recommends that dealers who fail to deliver securities to another dealer by the agreed upon settlement date close out the interdealer trade failure within 90 days of the settlement date.

The proposal would allow the purchasing dealer to issue a close-out notice the day after the settlement date and mandate the 30 calendar-day timeframe. The changes would also allow the purchasing dealer to start close-out procedures within three business days of the settlement date instead of the current 10-business day window. Once the rule is approved, dealers would have 90 days to comply with it.

Leslie Norwood, a Securities Industry and Financial Markets Association managing director and co-

head of its munis group, said SIFMA believes “30 days is great” but that the MSRB has not gone far enough and should instead mandate the close-out occur in 15 days.

“In the interest of investor protections, investors need the certainty to know that securities are in their accounts,” Norwood said. SIFMA is also proposing that if both sides agree that more time is needed to complete the close-out, the shorter timeline could be extended another 15 days.

“The industry is willing to commit to a faster standard and we think the MSRB should take us up on it,” Norwood said, adding in her comment letter that “almost universally, failed transactions don’t get better with age, and it is easier to have conversations about close-outs for failed transactions sooner rather than later.”

In addition to proposing an even shorter close-out period, SIFMA also requested that the MSRB reconsider the existing requirement that close-outs need both sides to agree before they can be carried out. SIFMA asked for additional guidance when one dealer is trying to resolve a fail but the other party is not cooperating. It suggested the MSRB should consider allowing a party that has already taken reasonable steps to resolve the fail to unilaterally cancel a transaction if the counterparty is unresponsive.

The group also said it would like to talk to the MSRB and Depository Trust & Clearing Corp., whose managing director expressed his support for the MSRB proposal in a letter to the board, on whether a purchasing dealer should be required to accept a partial delivery on an inter-dealer fail from the National Securities Clearing Corp.’s Continuous Net Settlement system, which often serves as counterparty for buyers of municipal bonds.

While the MSRB wants to limit the close-out timeline, it made clear in its proposal that the three interdealer options for remedying a failed transaction would remain the same through the transition. The options would allow the purchasing dealer to either: choose a “buy-in” and go to the open market to purchase the securities; choose to accept securities from the selling dealer that are similar to the originally purchased securities; or allow the purchasing dealer to require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

Mike Nicholas, chief executive officer for Bond Dealers of America, said BDA appreciates “the commonsense approach the MSRB has taken in regard to the proposed amendments” but has several concerns with the three options available for closing out a transaction and would like to see a 180-day transition period for dealers to adjust to the rules after they’re finalized.

Nicholas pointed out that some munis trade infrequently and that in some cases only a few investors may hold the vast majority of a small serial maturity within a larger issuance. In that case, it is hard for dealers to use the first close-out option and buy the same security within 30 days.

While dealers could then try to find a comparable security for its customer, Nicholas said, it is important to note that finding such bonds could be cost prohibitive for BDA’s small and middle market dealers.

BDA also suggested the MSRB add a requirement to the third close-out option for the selling dealer to deliver securities to its customer within 30 days.

Additionally, BDA is requesting that the MSRB clarify information related to several systems dealers may use to resolve fails. First, the group is asking the MSRB to state more clearly that dealers should use the original settlement date for calculating timeframes. BDA said dealers would have

questions if they use the NSCC's automated fail clearance system, called the Reconfirmation and Pricing Service, which resets the settlement date to make net capital calculations. It is also asking that the MSRB give additional guidance on how dealers should resolve fails using the Automated Customer Account Transfer Service, which facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The Bond Buyer

By Jack Casey

March 8, 2016

SEC Issues Record Fine to California's Largest Agricultural Water District.

LOS ANGELES—California's sustained drought has set another record, this time with the U.S. Securities and Exchange Commission.

The SEC on Wednesday fined California's largest agricultural water district $125,000 to settle civil charges that it misled investors over its ability to pay debt on a $77 million bond. It is only the second time the SEC has fined a municipal bond issuer and represents the largest fine paid by an issuer.

According to SEC documents, the Westlands Water District, which serves central California, overstated its ability to make payments on a 2012 bond offering as the drought reduced water supply and depressed revenue.

During a 2010 board meeting discussing transactions meant to boost the district's revenue numbers to show investors it could meet its debt obligations, General Manager Thomas Birmingham joked that district officials were engaging in "a little Enron accounting," according to SEC documents.

Mr. Birmingham has agreed to pay a $50,000 penalty, and former Assistant General Manager Louie David Ciapponi has agreed to pay $20,000, the SEC said.

The district and its officials agreed to the settlements without admitting or denying wrongdoing, according to the district and the SEC.

"Westlands, [Messrs.] Birmingham and Ciapponi determined that entering into the settlement to fully resolve the matter was in the District's best interest," according to a statement from the district.

The SEC didn't allege the district or officials "intended to mislead potential purchasers" of the 2012 bond, the district statement said.

California has endured a drought that has pummeled the state and prompted Gov. Jerry Brown to mandate a 25% cut in water use in urban areas.

The Westlands Water District supplies water to more than 700 family-owned farms in western Fresno and Kings counties that produce $1 billion in crops each year, according to the district.

The district pulls water from the Sacramento-San Joaquin Delta and the San Luis Reservoir. According to the district's website, the total water available "is about 13% short" of what's needed

to “to water the entire irrigable area” in the district.

The district assured investors it could still generate revenue equal to 125% of its debt-service payments, known as a debt coverage ratio. Investors use those assurances to make decisions about purchasing bonds. Failing to meet a debt covenant could put an issuer in technical default and drive up the cost of borrowing.

SEC investigators said Westlands “failed to disclose it had engaged in extraordinary accounting transactions” in 2010 to meet its debt coverage ratio without raising rates on customers.

District projections showed it would be about $10 million short of maintaining its ratio for fiscal year 2010, according to SEC documents.

“Westlands learned in 2010 that drought conditions and reduced water supply would prevent the water district from generating enough revenue to maintain” its debt ratio, according to an SEC statement.

To make up the difference the district reclassified cash from reserve and other accounts “to record additional revenue,” SEC documents say.

Before making the transactions, the district “consulted with its independent auditor,” who believed they were permissible, according to the district’s statement.

The transactions “benefited customers but left investors in the dark about Westlands Water District’s true financial condition,” said Andrew J. Ceresney, director of the SEC Enforcement Division.

THE WALL STREET JOURNAL

By TAMARA AUDI

March 9, 2016 6:18 p.m. ET

Write to Tamara Audi at tammy.audi@wsj.com

Wells Fargo Charged With Fraud in Video Game Start-Up Case.

Wells Fargo has been accused of fraud over its role in underwriting a $75 million municipal bond deal for a video game company in Rhode Island that eventually went bankrupt, leaving taxpayers on the hook for the debt.

On Monday, the Securities and Exchange Commission charged Wells Fargo and the state agency that issued the bonds on behalf of 38 Studios, the now defunct video game start-up, with failing to disclose to investors the company’s true financial picture.

The state agency had agreed to borrow the money in the tax-exempt municipal market and then lend most of the proceeds to 38 Studios, whose chairman and majority shareholder was the former Red Sox pitching ace Curt Schilling.

By lending money to a private company, owned by a local sports hero, state officials had hoped to stimulate jobs and lure other businesses to relocate to Rhode Island, which had been hit particularly

hard by the recession.

But neither the state agency nor bankers at Wells Fargo disclosed in the bond offering documents that 38 Studios faced a funding shortfall even after it had received the bond proceeds.

Unable to pay off the debt, 38 Studios declared bankruptcy, sticking Rhode Island taxpayers with the bill. The bonds carried the state's "moral obligation" to repay them in the event that 38 Studios could not. Although such an obligation stopped short of an explicit requirement, the state has chosen to pay the debt — which totals about $90 million, including interest — for fear of damaging Rhode Island's credit rating.

The debacle set off years of hand-wringing and recriminations in Rhode Island. But the S.E.C.'s lawsuit, filed in the Federal District Court in Providence on Monday, is the first time that Wells Fargo's role in the bond deal has been exposed in such detail.

Wells Fargo had been hired by the Rhode Island Economic Development Corporation to underwrite the tax-exempt bonds in 2010. But the S.E.C. said Wells Fargo also cut a "side deal" with 38 Studios, which agreed to pay the bank an additional $400,000 if the bond deal closed. The side deal was never disclosed to the bond investors, the regulator said.

That side deal enabled the bank to receive twice as much money from the bond deal as was detailed in the official offering documents.

In a statement, the S.E.C. said the San Francisco-based bank failed to inform potential bond investors of the full extent of its economic interests in ensuring that the deal closed.

"An underwriter's 'skin in the game' is material information to investors," LeeAnn Ghazil Gaunt, the head of the S.E.C. enforcement division's municipal securities and public pensions unit, said in a statement. A Wells Fargo spokesman said the bank "disputes the S.E.C.'s allegations in connection with the placement of these municipal bonds."

A spokeswoman for the economic development agency, now the Rhode Island Commerce Corporation, said in a statement that the agency had filed lawsuits against some of its former employees and Wells Fargo in connection with the bond deal.

"The corporation will continue to work toward its goals of recouping money for Rhode Island and holding the defendants in the Commerce Corporation's lawsuit accountable," the spokeswoman said.

THE NEW YORK TIMES

By MICHAEL CORKERY

MARCH 7, 2016

Major California Water District Hit With Rare Federal Fine.

FRESNO, Calif. — Federal regulators issued a rare fine Wednesday to the nation's largest agricultural water district for misleading bond investors about the district's financial circumstances.

Thomas Birmingham, general manager of Central California's Westlands Water District, joked at a 2010 board meeting about carrying out "a little Enron accounting" to overstate the agency's revenue

to avoid increasing rates for customers, the Securities and Exchange Commission said. That misleading information then was used to promote investment in a $77 million bond issue in 2012, the SEC said.

The California water district agreed to pay $125,000 in fines, marking only the second time that the SEC has issued a financial penalty against a municipal-bond issuer, regulators said in a statement.

Birmingham and a former water district official agreed to pay additional penalties totaling another $70,000.

At the time of the incident, Westlands executives were expecting water scarcity and drought to cut into the district's revenue, potentially making the water agency's bond issue less attractive to investors, regulators said.

Rather than raise water rates for its customers, however, Westlands used an improper accounting technique to make the agency look more prosperous than it really was, the SEC said.

The water district's actions "left investors in the dark about Westlands Water District's true financial condition," Andrew J. Ceresney, director of the SEC's enforcement division, said in the statement.

In its own statement Wednesday, Westlands said it had been following the advice of independent auditors.

Under the settlement with the SEC, neither Westlands nor the two executives acknowledged innocence or guilt, the water district said.

Westlands supplies irrigation water to 700 farms growing everything from almonds to tomatoes in 1,000 square miles of the San Joaquin Valley, which leads the nation in producing fruits, vegetables and nuts.

Westlands also is currently slated as one of the possible main participants, at $3 billion, in a $15.7 billion plan promoted by Gov. Jerry Brown to build two, 35-mile-long tunnels to carry more water to Central and Southern California. No water agency has yet formally committed funding for the giant tunnels, however.

Birmingham, the general manager, declined comment Wednesday on whether the SEC action would affect any effort to arrange financing for the proposed tunnels project. State officials leading the tunnels project also declined to comment, said Nancy Vogel, a spokeswoman for the California Natural Resources Agency.

Potential lenders will look hard at the incident in setting interest rates for Westlands, the next time the water district tries to raise money with a bond issue, said Chicago attorney James Spiotto, who specializes in laws related to municipal finance. Spiotto said the penalties didn't strike him as unusually high.

THE NEW YORK TIMES

By THE ASSOCIATED PRESS

MARCH 9, 2016, 5:24 P.M. E.S.T.

California Water District Fined by S.E.C. Over 'Enron Accounting.'

Enron was the huge energy and commodities company whose 2001 collapse revealed one of the largest accounting frauds in corporate history.

The S.E.C. said that Westlands had violated the section of the 1933 Securities Act covering misrepresentation. In a statement that neither admitted nor denied guilt, Westlands said its administrators had cleared the accounting changes with the district's auditor and noted that the settlement did not say the violation was intentional.

Westlands, based in Fresno, supplies irrigation water to a swath of farmland the size of Rhode Island, and its owners effectively control the district. It is the largest customer of the Interior Department's Bureau of Reclamation, which controls the distribution of federal water to farmers.

Westlands has been a powerful player not only in California politics but also in Washington, where it has been an influential voice at the Interior Department and in the development of water legislation in Congress.

Although the S.E.C. charge centers on a 2012 sale of $77 million in bonds, it is rooted in an accounting change two years before that, when the state's long drought had crimped the district's supply of federal water and cut deeply into its income from selling that water to farmers.

Under the terms of earlier municipal-bond sales, Westlands had promised to collect enough fees from its customers that its net revenue would not only pay its annual debt service, but leave a 25 percent cushion.

In 2010, however, the drought-induced dip in water fees had left the district roughly $9.8 million short of that 125 percent requirement — so short that it would be able to cover only 63 percent of its debt service without additional money. That could have led to a downgrade of Westlands's debt rating and to higher borrowing costs.

The straightforward solution would have been to raise the price of its water and other fees — but that would have meant an 11.6 percent price increase for the farmers who controlled the district. Instead, the district took $8.3 million from an account used to pay other expenses and $1.46 million from an account that held money dedicated to another bond issue 11 years earlier.

"We're not collecting any more money from the ratepayers," the S.E.C. settlement quoted Mr. Birmingham telling the district's board. "All we're doing is, we're taking money and saying we are reclassifying it from an account payable to income."

When Westlands sold more municipal bonds in 2012, it assured purchasers that it had met the 125 percent debt-service requirement for the previous five years. In fact, the S.E.C. said, the district not only had run short in 2010, but had changed its accounting methods in 2012 in a way that made the shortfall even greater.

Had it accurately stated its 2010 position, the commission said, it would have told bond buyers that it had only 11 percent of the money needed to service its debt — not 63 percent.

Responding on Thursday to the settlement, Fitch Ratings placed a negative ratings watch on $193.6 million in Westlands debt, indicating a higher chance that those AA bonds would be downgraded. It also placed a negative watch on $29.8 million in bonds issued by the San Luis and Delta-Mendota

Water Authority, a collection of California water districts whose leading member and partial financier is Westlands.

THE BOND BUYER

By MICHAEL WINES

MARCH 10, 2016

MSRB Revises Effective Date for Amendments to Transaction Reporting.

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) a rule change to revise the effective date of several amendments to MSRB Rule G-14, on transaction reporting.

The new effective date of the amendments will be **July 18, 2016** to align with the implementation of similar Financial Industry Regulatory Authority (FINRA) reporting requirements. The MSRB, in its filing, designated this revision for immediate effectiveness. Read the regulatory notice. View the SEC filing.

The amendments to Rule G-14 will enhance the post-trade price transparency information provided through the MSRB's Real-Time Transaction Reporting System (RTRS). View the new rule.

MSRB Seeks Approval to Facilitate Shortening the Settlement Cycle.

The Municipal Securities Rulemaking Board (MSRB) is seeking approval from the Securities and Exchange Commission (SEC) to facilitate shortening the settlement cycle for transactions in municipal securities as a means of reducing risk and improving overall efficiency. The MSRB's proposal is in response to a securities industry-led initiative to shift the current settlement cycle for all fixed-income and equity securities from T+3 (trade date plus three days) to T+2 (trade date plus two days). An industry-wide shift from T+3 to T+2 requires action by multiple regulators, and the MSRB is one of the first to propose rule changes in support of this shift.

View the SEC filing.

SEC Charges Rhode Island Agency and Wells Fargo With Fraud in 38 Studios Bond Offering.

Washington D.C., March 7, 2016 — The Securities and Exchange Commission today charged a Rhode Island agency and its bond underwriter Wells Fargo Securities with defrauding investors in a municipal bond offering to finance startup video game company 38 Studios.

The Rhode Island Economic Development Corporation (RIEDC, now called the Rhode Island Commerce Corporation) issued $75 million in bonds for the 38 Studios project as part of a state government program intended to spur economic development and increase employment

opportunities by loaning bond proceeds to private companies.

According to the SEC's complaint filed in federal district court in Providence:

- The RIEDC loaned $50 million in bond proceeds to 38 Studios. Remaining proceeds were used to pay related bond offering expenses and establish a reserve fund and a capitalized interest fund.
- The loan and, in turn, bond investors would be repaid from revenues generated by video games that 38 Studios planned to develop.
- The bond offering document produced by the RIEDC and Wells Fargo failed to disclose to investors that 38 Studios had conveyed it needed at least $75 million in funding to produce a particular video game.
- Therefore, investors weren't fully informed when deciding to purchase the bonds that 38 Studios faced a funding shortfall even with the loan proceeds and could not develop the video game without additional sources of financing.
- When 38 Studios was later unable to obtain additional financing, the video game didn't materialize and the company defaulted on the loan.

"Municipal issuers and underwriters must provide investors with a clear-eyed view of the risks involved in an economic development project being financed through bond offerings," said Andrew Ceresney, Director of the SEC Enforcement Division. "We allege that the RIEDC and Wells Fargo knew that 38 Studios needed an additional $25 million to fund the project yet failed to pass that material information along to bond investors, who were denied a complete financial picture."

The SEC also charged Wells Fargo's lead banker on the deal, Peter M. Cannava, and two then-RIEDC executives Keith W. Stokes and James Michael Saul with aiding and abetting the fraud. Stokes and Saul agreed to settle the charges without admitting or denying the allegations and must each pay a $25,000 penalty. They are prohibited from participating in any future municipal securities offerings. The SEC's litigation continues against Cannava, Wells Fargo, and RIEDC.

The SEC's complaint further alleges that Wells Fargo and Cannava misled investors in an additional way in bond offering materials:

- Wells Fargo disclosed its bond offering compensation as a share of the placement agent fee plus a $50,000 payment from 38 Studios. No other fees or compensation to Wells Fargo were disclosed, and the bond placement agreement stated that no other money was anticipated.
- Investors weren't informed that Wells Fargo had a side deal with 38 Studios that enabled the firm to receive nearly double the amount of compensation disclosed in offering documents.
- This additional compensation, totaling $400,000 and paid from bond proceeds, created a conflict of interest that Wells Fargo should have disclosed to bond investors.
- Cannava was responsible for Wells Fargo's failure to disclose its additional fees.

"An underwriter's 'skin in the game' is material information to investors," said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit. "We allege that Wells Fargo failed to fully disclose its own economic interest in this bond transaction."

The SEC's complaint charges the RIEDC and Wells Fargo with violations of Sections 17(a)(2) and (a)(3) of the Securities Act of 1933, and charges Stokes, Saul, and Cannava with aiding and abetting those violations. Wells Fargo also is charged with violations of Section 15B(c)(1) of the Securities Exchange Act of 1934 and Rules G-17 and G-32 of the Municipal Securities Rulemaking Board (MSRB). Cannava is charged with aiding and abetting those violations.

In a separate administrative proceeding, the RIEDC's financial advisor for the bond offering – First

Southwest Company LLC – agreed to settle charges that it violated MSRB rules by failing to document in writing the scope of the services the firm was providing in the bond offering until seven months after the financial advisory relationship began. Without admitting or denying the findings, First Southwest agreed to pay disgorgement of $120,000, prejudgment interest of $22,400, and a penalty of $50,000.

The SEC's investigation was conducted by its Municipal Securities and Public Pensions Unit, including Louis Randazzo, Joseph Chimienti, Jonathan Wilcox, Kevin B. Currid, and Deputy Chief Mark Zehner. The SEC's litigation is being led by Kathleen B. Shields of the Boston Regional Office and Mr. Randazzo.

BDA Submits Letter to MSRB on Rule G-12, Modernizing Close-Out Procedures.

The BDA submitted a comment letter to the MSRB on the proposed amendments to Rule G-12, to modernize close-out procedures. You can view BDA's letter here.

The proposed amendments to MSRB Rule G-12 would require open inter-dealer transactions in municipal securities to be closed-out. Currently, there is no MSRB rule that requires a transaction to be closed-out.

The proposal seeks to:

- Require municipal securities transactions be closed-out no later than 30 calendar days after settlement
- Resolve all outstanding inter-dealer fails during a 90-calendar day grace period

Specifically, the BDA letter to the MSRB includes the following:

- A recommendation to improve upon the MSRB's three proposed options for closing out an open transaction
- Guidance for the operational and implementation requirements of the proposed amendments
- A 180-calendar day grace period for current outstanding inter-dealer fails

Additional information:

- You can view BDA's summary of the proposed amendments here.
- You can view MSRB's regulatory notice here.

03-04-2016

UBS Beats Back $3.5M Arbitration Claim from Client's Estate.

UBS won an arbitration case in which the estate of a deceased client had sought $3.5 million in damages related to the firm's sale of Puerto Rico closed-end funds and bonds.

The arbitration panel's decision made it the latest in a series of cases in which UBS has had to defend itself against claims from clients alleging improper sales practices.

In this arbitration, the former client, Gabriel Cadenas, died in 2012, according to Francisco Pujol, his attorney.

In March 2014, Cadenas' estate filed a claim for $3.5 million plus additional punitive damages for breach of contract, negligence and unsuitability among other misconduct, according to a copy of the arbitration award.

At the close of the arbitration hearings, his estate reduced the claim to $1 million plus attorney fees. Cadenas' estate also dismissed its own claims against three UBS employees, records show.

For its part, UBS rejected the allegations and asked the panel to dismiss all claims, according to the arbitration award.

The panel of three arbitrators conducted 12 hearing sessions in January 2016, and came to their decision last month, siding with UBS, but splitting the costs of the hearings – $15,600 – between the two parties.

"UBS is pleased with the arbitrators' decision in this matter" a spokesman for the firm said.

Pujol, the attorney, could not be reached for additional comment. He has pursued and won other cases on behalf of ex-UBS clients seeking damages related to the sale of closed-end funds.

ONGOING PROBLEM

UBS has been engaged in a number of arbitration cases related to the firm's sale of closed-end funds of Puerto Rico bonds.

Beginning in 2013, prices of Puerto Rico municipal bonds fell, leaving the island commonwealth plagued by fiscal troubles in the years that followed. Meanwhile, many clients have claimed that their UBS advisors over-concentrated their portfolios in the funds and other Puerto Rico municipal bonds, leaving them exposed when prices plummeted.

UBS has previously noted that the funds have historically performed well and that there were significant tax advantages for clients to invest in them.

Still, the firm is facing a bevy of complaints in arbitration. UBS noted in its recent earnings report that total aggregate claims from clients have reached $1.5 billion. Some of those cases have already been won, lost or settled.

Last month, an arbitration panel ordered UBS to pay a former client $1.5 million. The client had originally sought about $2 million in damages.

OnWallStreet

By Andrew Welsch

March 3, 2016

Muni Finance Caucus Launched in House.

WASHINGTON – Reps. Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., have launched a

Municipal Finance Caucus made up of House members from both political parties who will fight to protect the tax-exempt status of municipal debt and ensure there is a robust market for municipal securities.

The new caucus was announced on Tuesday by the two representatives and they talked about it while they were speaking on a panel at the National Association of State Treasurers' annual meeting here.

The caucus is designed to be a place to discuss opportunities and challenges for state and local governments to independently fund initiatives as well as to advocate for bipartisan policies to enhance the entities' access to the capital markets, the two lawmakers said.

"We need a voice coming together in Congress," Hultgren said, adding that "what's unique about what's happening is we're taking it on before it really becomes an issue."

While the two legislators have just begun soliciting members to join the caucus, they said they are confident a number of the nearly 120 representatives that signed a 2015 letter opposing a proposed cap to the muni tax exemption would be interested in joining.

NAST partnered with the two representatives to create the caucus and plans to send letters, co-signed by four other groups including the Government Finance Officers Association and more than 600 state and local officials, to leadership on the House Ways and Means Committee and Senate Committee on Finance. NAST members also will meet with legislators during a planned "Hill Day" Wednesday to advocate on muni bonds and other state and local issues.

Hultgren said during the meeting that the caucus responds in part to recent proposals and rulemaking that shows the various authors either do not fully understand municipal securities or did not think through the proposals' likely impacts on the market.

The caucus' planned advocacy on protecting municipal debt's tax-exempt status responds primarily to a proposal President Obama has included in several of his past budgets to cap the value of the muni tax exemption at 28%. Former House Ways and Means Committee chair Dave Camp, R-Mich., had also proposed a 10% surtax on municipal bond interest for high earners.

The legislators and treasurers attending the meeting said that while tax reform is not likely to come until after the presidential election, such proposals would drive up the cost of issuing debt and hamper infrastructure development across the country.

NAST's letter says an American Society of Civil Engineers study from 2013 predicted the country would have to spend $3.6 trillion by the year 2020 to meets infrastructure needs and warns that any change to the tax status of munis would inhibit state and local governments' ability to meet that goal.

"Proposals to change this commitment to tax-free municipal bonds would not only be costly for state and local taxpayers, but also would result in fewer projects, fewer jobs, and further deterioration of our infrastructure," NAST said in its letter.

Ruppersberger said that municipal bonds are the most important tool in the country for financing developments like new roads and schools, adding he is excited to be a founding member of the bipartisan caucus.

Steve Benjamin, the mayor of Columbia, S.C. and chair of the Municipal Bonds for America Coalition, said MBFA greatly appreciates the lawmakers' efforts and has plans to work closely with

them as the caucus grows. MBFA is a coalition of municipal market professionals launched in 2012 that represents dealers, issuers, and local leaders, and is committed to protecting munis' tax exempt status.

"In meetings on Capitol Hill in the past several years, the MBFA has seen a surge of interest in understanding municipal bonds, the benefits of the municipal exemption, and learning how potential legislation could impact the ability of state and local governments to finance critical infrastructure projects," Benjamin said.

In addition to focusing on tax-exemption, the group also plans to address concerns with banking liquidity rules passed in 2014 that do not treat municipal securities as high quality liquid assets, Hultgren said.

Rep. Luke Messer, R-Ind., authored a bill last year that would treat investment grade and readily marketable municipal securities as HQLA under the liquidity rule. The bill passed the House in February on a voice vote but has not moved in the Senate, despite efforts from Messer and others to get sponsors in that chamber.

Hultgren, who co-sponsored Messer's bill, said the liquidity rules are an example of the regulators not understanding the reality of municipal bonds, specifically the frequent serial structure of the their issuances.

"If you go into Senate offices tomorrow, please encourage them to take this up," Hultgren told NAST members listening to the panel. "Municipal bonds fit every [qualification] to a tee. If we fail to correct this, it's going to drive up issuance cost."

Hultgren also said the caucus may work to update the number of projects that could be financed by qualified small issue manufacturing bonds, a type of private-activity bond whose proceeds can be used to finance manufacturing facilities for small- and mid-sized manufacturers. The tax code provisions on small industrial development bonds have not been changed since the 1980s, he said.

THE BOND BUYER

BY JACK CASEY

MAR 1, 2016 2:59pm ET

Congress Creates Bipartisan Municipal Finance Caucus.

The group's top priority will be preserving the tax-exempt status of municipal bonds, which President Obama wants to reduce for higher earners.

State and local governments have a new bipartisan set of advocates for their interests on Capitol Hill. This week, two congressmen launched the Municipal Finance Caucus to protect the municipal bond market.

U.S. Rep. Randy Hultgren, an Illinois Republican, and Rep. Dutch Ruppersberger, a Maryland Democrat, announced the formation of the caucus on Tuesday at the annual legislative meeting for the National Association of State Treasurers in Washington, D.C. They didn't say how many members they've recruited, but both have regularly rallied support on municipal finance issues from

more than 100 of their Democratic and Republican colleagues.

“Our primary focus will be on telling the story of how important the current tax [status] of municipal finance is, and how risky, damaging and how harmful a change would be,” said Hultgren. “So we’re going to be very active, very vocal in telling these stories.”

The development comes as President Barack Obama’s budget once again aims to limit the tax-exempt status of municipal bonds.

It’s a proposal fiercely fought by state and local government associations because it would likely lead to higher interest rates. States and localities sell bonds to raise capital, mostly for infrastructure and school projects. Because the investors that buy them don’t get taxed on the interest, governments can offer a lower interest rate (as much as 30 percent lower), meaning it costs less for them to finance their projects.

Over the past five years, Obama has urged federal lawmakers to cap the tax-free interest of higher earning investors. Aimed at individuals declaring more than $200,000 in taxable income and couples declaring more than $250,000, the president’s current proposal would cap the deductions those individuals can make to 28 percent of their income.

Currently, if a couple makes more than $250,000 — $100,000 of which is from muni bond interest — they don’t pay taxes on that income from interest, which amounts to a $35,000 tax break. But under the administration’s proposal, the couple would only get a break on 28 percent of that income, or $28,000. They would owe the federal government the remaining $7,000 in taxes.

Although the Obama administration argues that the proposal would only affect the nation’s wealthiest earners — who theoretically could afford to pay more in taxes — government finance officials caution that states and localities would likely make up for the higher costs by raising sales and property taxes. That, in turn, would more adversely impact middle- and lower-income earners.

Alternatively, governments could simply invest less in infrastructure projects. That’s equally concerning, as some estimate that state and local governments are behind by as much as $3.6 trillion in infrastructure investments.

At a speech to the treasurers group later on Tuesday, Jason Furman, who chairs the White House Council of Economic Advisers, conceded that they have “completely legitimate” concerns about who would end up paying for higher muni bond interest costs. But he also reminded them that Obama has asked for the interest cap only as part of a larger proposal that would ultimately increase infrastructure investment. For example, the president’s budget calls for a new $10-per-barrel fee on oil companies, which would help pay for $300 billion in new infrastructure investments.

“If you pick and choose a combination that would ultimately result in less infrastructure,” said Furman, “that’s not something the president would ultimately support.”

In reality, neither proposal stands much of a chance in a Congress that remains resistant to raising oil costs and has never debated the municipal tax exemption outside of committee.

Regardless, Hultgren warned that it would be wiser for state and local officials to continue actively lobbying against limiting the tax exemption.

“My fear always is what happens at two in the morning, and they’re drafting a bill and say, we need to find this much money to pay for this,” he said. “So it gets thrown in there, it gets rolled out and how do we roll it back?”

GOVERNING.COM

BY LIZ FARMER | MARCH 2, 2016

Washington Battles Over Munis: Safe or Hard to Sell?

WASHINGTON — Many investors flock to municipal bonds for security. But some federal regulators trying to shore up the banking system aren't convinced the bonds would be easy to sell in a crisis.

The contrast has led to an unusual showdown, with Wall Street, Congress and municipal officials—all of whom are vested in a robust muni-bond market—challenging bank regulators' skepticism toward municipal debt.

At issue are new rules aimed at ensuring banks can raise enough cash during a financial-market meltdown to fund their operations for 30 days. The requirements mean banks have to hold more cash or securities that are easily sellable.

The Federal Reserve and two other bank regulators decided debt issued by states and localities didn't make the cut, when they crafted the rules in 2014. Now, Republicans and Democrats alike are advancing legislation to mandate regulators include municipal securities among the rule's definition of "high quality liquid assets," a category that currently includes cash, Treasury bonds and debt sold by government-sponsored enterprises like Fannie Mae.

The House passed such a bill last month. Senators, led by Sen. Mike Rounds (R., S.D.), Charles Schumer (D., N.Y.) and Mark Warner (D., Va.), are working on related legislation.

"We shouldn't make it more expensive for local governments to finance essential investments such as school and road construction by making it harder to access capital markets," Mr. Warner said in a statement.

He added the Senate bill's provisions would be tailored to "appropriately address financial stability concerns while preserving states and municipalities' access to bond markets."

Regulators don't think it is the place of Congress to second guess how they size up securities. Fed Chairwoman Janet Yellen, at a congressional hearing Feb. 11, said legislation would "interfere with our supervisory judgments."

Big banks such as Citigroup Inc. and Wells Fargo & Co. have sprung into action in lobbying Congress, along with municipal leaders who fret the rules will diminish bank bond-buying which could raise borrowing costs on infrastructure projects.

Banks underwrite muni bonds, buy them as investments and sell them to clients. The lenders have played an increasingly central role in the thinly-traded, $3.7 trillion market.

Banks are the biggest buyers of municipal bonds, according to Matt Fabian of Municipal Market Analytics Inc., a research firm.

Since 2013, banks have collectively purchased about $11 billion of the bonds each quarter and now own about $500 billion of the securities, making them the third-largest holders after individuals and mutual funds, he said.

The Fed last summer tried to defuse the criticism by offering a concession, saying it would reconsider its earlier version of the rules, and include some investment-grade municipal debt.

Municipal officials retort that those adjustments would cover only a narrow sliver of the securities, and those that do qualify would still receive unfavorable treatment compared with debt issued by government-backed mortgage giants and Treasury debt.

Municipal officials also say legislation is necessary because the two other regulators involved—the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp.—have yet to make any changes themselves.

Officials at the OCC remain dismissive of including the muni bonds in the rule, according to people familiar with their thinking, while the FDIC is waiting until the rules go into effect next year before considering amending its version.

Some economists also say the legislation would weaken the bank-funding rule, by allowing banks to rely on thinly-traded securities that they worry won't be easy to sell in another crisis.

While default rates on municipal bonds are tiny, the majority of the debt doesn't trade much, according to a Securities and Exchange Commission report from 2004. It found that less than 1% of municipal securities traded more than one hundred times in a roughly 10-month period. Seventy percent of the bonds didn't trade at all.

Economists note that some of the most-traded municipal debt in recent months are securities issued by Puerto Rican borrowers. The island's unsustainable habit of running chronic deficits has left it with some $72 billion of debt it now says it can't repay—not what most regulators would consider a "high quality" asset.

"The Fed in its proposal went too far in allowing risky securities to be treated as safe, and the legislation would go yet further," said Phillip Swagel, a University of Maryland economist who served in the George W. Bush Treasury. He said Congress's moves illustrate the danger of letting political forces influence safety-and-soundness regulations. And he thinks the Fed should have stood its ground.

James McIntire, treasurer for the state of Washington, rejects arguments munis aren't safe or easily traded. Mr. McIntire, president of the National Association of State Treasurers, cited analysis conducted with the state's financial adviser showing Washington's general obligation debt is at least as liquid as top-rated corporate bonds, which are included in the rules.

Regulators have ignored or dismissed this data, which means Congress must act, he said.

"We really have no alternative," he said, but "to resort to some sort of legislative intervention."

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

March 2, 2016 6:49 p.m. ET

Write to Andrew Ackerman at Andrew.Ackerman@wsj.com

George K. Baum FINRA Case Shows Excessive Fee, Bond Ballot Concerns.

WASHINGTON – The Financial Industry Regulatory Authority ordered George K. Baum & Co. to pay $270,000 for charging a Colorado school district more than four times the firm's normal underwriting fee, partly to pay for costs associated with promoting bond ballot initiatives.

The Kansas City, Mo-based underwriter, without admitting or denying FINRA's findings that it charged the district $43 per $1,000 of bonds issued for a total fee of $416,173.59, consented to the $100,000 fine and the order to pay the school district $170,000 in ill-gotten gains.

Andrew Sears, executive vice president and general counsel for Baum, declined to comment on the matter.

FINRA found that Baum had told the district in a December 2010 memo sent before the February 2011 offering of $9.67 million of general obligation bonds that the typical fee for the offering was much lower, at between $7 and $9 per $1,000 of bonds issued.

FINRA said Baum violated the Municipal Securities Rulemaking Board's Rule G-17 on fair dealing for charging a fee that was "inappropriate" and "disproportionate," given the facts of the offering.

While FINRA did not name the school district in its action, EMMA documents suggest that it is Adams County School District 1 in Colorado, known as Mapleton Public Schools. Documents show the school district issued $9.67 million of GOs in February 2011 and that the bonds were underwritten by Baum, which took $416,173.59 in underwriting fees — the same information cited by FINRA. School district officials could not be reached for comment.

The path to the large underwriter discount Baum received for the deal began in December 2007 when the firm started assisting the district in obtaining voter approval for a proposed bond issue of $65 million. If voters approved the bond issue, the firm was to underwrite it. That issue and another one planned for June 2009 were voted down despite Baum's work with the district.

In an effort to get the desired financing, the school district eventually applied to a state program for financing and, in 2010, was able to get the state to agree to match funds the district raised. In November 2010, voters gave their approval for the school district to issue $31,705,000 in debt with $22,035,000 paid through the state program.

The district then selected Baum to underwrite the remaining $9.67 million of bonds and was charged the $43 per $1,000 of bonds issued fee.

In a memo to the district superintendent in December 2010, Baum gave multiple justifications for its high fee, including that it was appropriate because it had originally believed it would be underwriting $64 million instead of $9.67 million of bonds. The firm also cited its prior work on the unsuccessful ballot initiatives and took credit for the district's success in the 2010 bond election, even though that success was in part because of the district's participation in the state program, FINRA said. Additionally, Baum told the district that its higher fee was necessary because it was only serving as a co-manager on the state program financing and would have received higher compensation if it had been a senior manager.

FINRA found those justifications "were not appropriate given the facts and circumstances of the 2011 offering."

Muni market participants and regulators have been concerned for several years that some dealer firms are contributing to bond ballot campaigns in return for obtaining the underwriting business that results if voters approve the bonds.

At least a dozen Wall Street and other firms and some of their executives have urged the MSRB to severely restrict such contributions to prevent pay-to-play practices, much like it restricted dealer and muni advisor contributions to issuer officials under Rule G-37. But so far, the MSRB has only required dealers to disclose bond ballot contributions as well as the deals they underwrite.

The MSRB initially began collecting quarterly dealer disclosures detailing contributions to bond ballot campaigns in 2010. Changes to Rule G-37 required firms to disclose contributions over $250 made to political action committees that were formed to raise money for ballot initiatives in states like California where voter approval is required for bond sales.

In 2013, the SEC approved expanding G-37 to require dealers to make public the timing of their contributions, the identity of the issuer of the voter-approved bonds, and any related underwriting activity.

In January of this year, California Attorney General Kamala Harris issued an opinion that said in part that it is illegal in California for school and community college districts to purposely incentivize municipal finance professionals with the promise of business if they advocate for passage of bond ballot initiatives.

A 2014 study by Todd Ely, a professor in the School of Public Affairs at the University of Colorado Denver, and Thad Calabrese, a professor in New York University's Wagner School of Public Service, found that the underwriters that contributed to campaigns in California received higher fees in their deals and generally saw an average rate of return of $1.70 for every dollar they contributed. The study observed California underwriting activity between 2007 and 2012 and concluded the bump in fees was likely because underwriters were recouping their contributions to bond ballot initiatives.

Another study, by Marc Joffe of Public Sector Credit Solutions, examined more than 800 bond deals since 2012 and found that issuance costs averaged 1.02%, but ranged to about 10% for some California school districts. The 2015 study, published by the Haas Institute for a Fair and Inclusive Society at the University of California-Berkeley, also found that underwriter discounts made up the largest amount of total issuance costs for municipal entities. Additional data Joffe shared with The Bond Buyer showed the underwriter discount as a percentage of the face amount of the issuance exceeded 2% in a number of issuances.

THE BOND BUYER

BY JACK CASEY

FEB 23, 2016 4:26pm ET

Six Firms To Pay $103.5M in Preliminary Settlements Over Bid-Rigging.

WASHINGTON – Six broker-dealers and investment providers have agreed to pay $103.35 million in preliminary settlements of charges by issuers and state attorneys general that they engaged in bid-rigging and price fixing for municipal investment products and derivatives.

The proposed money to be paid is a result of a coordinated effort by 22 attorneys general along with the city of Baltimore and the Central Bucks School District in Pennsylvania, which are leaders of a class action suit with numerous issuers. The litigation has been ongoing since about 2008.

About $100.5 million of the preliminary settlement amounts come from the issuer class action litigation and includes all six firms. The rest comes from preliminary settlements with the attorneys general and only concerns two firms, New York-based Natixis Funding Corp. and French multinational company Societe Generale.

Of the six proposed settlements, UBS AG agreed to pay the most — $32 million in the class action litigation. Natixis and Societe Generale agreed to pay about $30 million and $26.75 million, respectively, with $28.45 million and $25.41 million of those amounts, resulting from the class action litigation.

The remaining three firms involved in only the class action litigation are Minneapolis-based Piper Jaffray & Co., which would pay $9.75 million, London-based National Westminster Bank, which would pay $3.5 million, and Kansas City, Mo-based George K. Baum & Co., which would pay $1.4 million.

The proposed class action settlements are subject to preliminary approval by Judge Victor Marrero, who sits on the U. S. District Court for the Southern District of New York in Manhattan. The documents will then be circulated among the issuers in the class action suit to gather their comments. If, after receiving comments from the class participants, Marrero gives final approval to the six settlements, it will bring an end to more than eight years of litigation that began when a large number of issuers filed actions that were then consolidated with several lead plaintiffs in the New York district court.

Lawyers for the issuers either could not be reached for comment or declined to comment.

However, New York Attorney General Eric Schneiderman, who announced the attorneys general portion of the settlement, said the attorneys general “will not tolerate this type of misconduct at any level, especially as [they] work to restore public faith in [their] economic institutions.” He added that he will continue to hold responsible any firms at fault to ensure that the marketplace operates honestly and fairly.

The preliminary settlements follow others in the same class action litigation under which five firms paid a total of $125 million. JPMorgan Chase paid $44.58 million, the most of the firms in these five prior settlements. The other four firms that previously settled include Morgan Stanley, GE Funding Capital Market Services Inc., Bank of America, and Wachovia Bank, which is now Wells Fargo & Co.

The probes of bid rigging and price fixing involving guaranteed investment contracts and other investments of muni bond proceeds began in November 2006 and involved the U.S. Department of Justice’s antitrust division, the Federal Bureau of Investigation, the Internal Revenue Service’s criminal division, and the Securities and Exchange Commission.

In the middle of that month, the U.S. Marshalls, helping with the investigations, raided the offices of at least two GIC brokers, CDR Financial Products, in Beverly Hills, Calif., and Investment Management Advisory Group, Inc., in Pottstown, Pa.

After that several broker-dealers and muni investment providers, as well as their employees, began receiving subpoenas requesting documents and other information.

Eventually, the attorneys general joined the probes and lawyers in private practice filed class action

suits on behalf of issuers.

Municipalities, school districts, and nonprofit organizations that issue munis often reinvest their proceeds or work with firms to enter into contracts to hedge interest rate risk. The investigations uncovered anticompetitive and fraudulent conduct involving individuals at a number of large financial institutions with municipal securities business. The federal agencies found that broker-dealers and investment product providers rigged the bidding process for those products so that issuers did not necessarily get the best prices for them.

The investigations led to numerous lawsuits and enforcement actions by the issuers, attorneys general, and federal regulators against the firms and individuals. Bank of America, UBS, JPMorgan, Wachovia, and GE previously agreed to pay a total of more than $740 million as a result of Justice Department investigations, according to documents.

Additionally, at least 17 individuals associated with the broker-dealers and investment providers were either convicted or pleaded guilty as a result of the DOJ investigations, the records show.

THE BOND BUYER

BY JACK CASEY

FEB 24, 2016 4:18pm ET

Regulators Tone Deaf, Stephens Says.

PHOENIX – Overzealous regulators are a big problem for middle-market broker-dealers, according to Warren Stephens, chief executive officer of Stephens, Inc. and a founding member of the Bond Dealers of America.

Stephens, who since 1986 has headed the Little Rock, Ark.-based firm that his family founded during the Great Depression, described the challenges of the industry in a wide-ranging interview with The Bond Buyer.

Chief among his concerns are the significant new rules and enforcement initiatives from federal regulators in recent years, which Stephens said have demonstrated a lack of understanding of the municipal bond business landscape.

“The challenges are numerous,” Stephens said, honing in on the Municipalities Continuing Disclosure Cooperation initiative, which the Securities and Exchange Commission launched in March 2014. The MCDC program allowed underwriters and issuers to receive lenient settlement terms if they self-reported any instances during the previous five years in which issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

As of Feb. 2, the SEC had completed its underwriter settlements, having ordered a total of 72 firms representing 96% of the market share for muni underwriting to pay a total of $18 million for selling municipal bonds using offering documents that falsely stated issuers had filed timely disclosure in compliance with their continuing disclosure obligations.

A key priority for the Bond Dealers of America, which represents middle-market firms like Stephens,

has been to point out what it feels is the disproportionate impact of regulation and enforcement on firms much smaller than the major Wall Street fixtures.

Stephens, who said nobody lost any money as a result of the instances his firm self-reported, strongly agrees.

But Stephens also has a more general sense that regulators' efforts have been misguided. "The whole MCDC thing is just a perfect example of that," Stephens said. His firm was fined $400,000, Stephens said, a mere $100,000 less than the maximum $500,000 fine levied against some of the largest investment banks in the world.

The SEC's municipal advisor rule, for example, imposes a fiduciary duty on anyone who gives bond-related advice to a state or local issuer. It also prevents anyone who has given such advice from underwriting a resulting bond issuance.

Many municipal advisors do not have to worry about this because they are non-dealer advisors who do not have an underwriting business, and some issuers have expressed a preference for non-dealer advisors in the wake of the MA rule's adoption. But Stephens said the presence of such advisors is generally not any help to the deal team.

"I don't think they add any value," he said, because an advisor who doesn't have any experience going out in the market with securities is less likely to understand how best to serve the issuer client.

Stephens further added that he doesn't put much stock in the idea that issuers need a third party muni advisor at all.

"We consider ourselves an advisor to all our clients," he said.

He said much recent regulation of the municipal securities arena is pointless.

"It's hurting the efficiency of the market," he said. "We're complying with rules that don't really matter. It's not useful. We're just pushing paper around."

Stephens said that regulators were generally more receptive to industry input in the past. While the Municipal Securities Rulemaking Board and the SEC have frequently invited market participants to comment or reach out to them as needed, Stephens is not alone in feeling that his concerns have been ignored.

Issuer officials such as Florida's bond finance director, Ben Watkins, have leveled similar charges.

Stephens is less concerned by the market landscape in the wake of the Detroit bankruptcy and the ongoing Puerto Rico crisis.

The treatment of bondholders in Detroit and elsewhere where investors were forced to take steep haircuts on their securities have caused some bond lawyers and analysts to question basic market assumptions about the security of the general obligation pledge and the willingness of municipalities to use bankruptcy to restructure their debts. Stephens said he is concerned that courts would side with other creditors over bondholders, but said he doesn't sense any seismic shift in the landscape.

"From our firm's perspective, nothing has changed in the marketplace," he said. "I think we've always placed a high premium on financially sound issuers. A credit is only as good as the financial's behind it."

THE BOND BUYER

FEB 25, 2016 5:37pm ET

George K. Baum Overcharged School District, Regulator Says.

Municipal-bond underwriter George K. Baum & Co. agreed to pay a $100,000 fine over allegations it charged a school district four times the typical fee to sell debt, in part to help cover the cost of bond elections, a regulator of securities dealers said.

The firm in 2011 charged an unnamed district $416,173, or $43 per $1,000 of bonds issued, according to the Financial Industry Regulatory Authority, or Finra. The fee was “was inappropriate given the underwriting work it performed,” Finra said. Baum had told the school district a typical fee would be $7 to $9 per $1,000 of bonds.

State and federal officials have raised questions about the high underwriting fees by dealers that provide services to help borrowers get voters to authorize bonds. California Attorney General Kamela Harris said last month that promising underwriters they will be hired to sell debt if the provide election services is illegal.

The Municipal Securities Rulemaking Board, which oversees the $3.7 trillion tax-exempt bond market, bans most contributions from underwriters to elected officials who oversee awarding of bond work. In 2013 it began requiring dealers to disclose contributions or services donated to passing bond issues. At the time Lynnette Kelley, executive director, said the revelations would “shine light on potential connections between dealers’ financial contributions and the awarding of bond business.”

Underwriters Overcharging

A study by the Haas Institute for a Fair and Inclusive Study last year that U.S. state and local governments found that smaller school districts in California and various kinds of special districts nationwide are sometimes paying $20 per $1,000 or more in underwriting fees. The Haas Institute is a policy center at the University of California at Berkeley.

“We found many cases of overcharging by underwriters and other types of municipal bond service providers,” said Marc Joffe, the author of the study.

George K. Baum self-reported the violations under the U.S. Securities and Exchange Commission’s continuing disclosure initiative, which involves municipal securities underwriters voluntarily revealing violations of disclosure obligations in bond documents. Baum settled without admitting or denying the findings. Jonathan Baum, the firm’s chairman and chief executive, declined to comment.

Higher Fees

According to Finra, Baum, in justifying its fee, told district officials it had originally thought it would be selling a larger bond issue and that it had provided services to help the district pass bond elections. Finra said those factors had “no reasonable relationship to the actual underwriting by the firm.”
In addition to the fine, Finra said in its February disciplinary report that the firm would give up $170,000 in fees and interest.

A study released in August by Todd Ely of the University of Colorado in Denver and Thad Calabrese of New York University reported that underwriters that contributed earned fees 12.75 percent higher, on average, than those that didn't, based on 118 contributions and 192 issues between 2007 and 2012. The report also found potentially more expensive debt structures for bonds underwritten by the firms that made contributions.

"It's one thing to worry about the appearance of impropriety," said Ely. "It's another thing when when you have to pay more because there is a higher cost to pay the firm that helped with the election."

Bloomberg Business

by Darrell Preston

February 22, 2016 — 1:11 PM PST Updated on February 23, 2016 — 8:44 AM PST

Bond Dealers Would Have to Report Retail Markups in Finra Plan.

Brokers would have to reveal how much they earn on bond transactions that involve retail clients under a U.S. regulator's plan for cracking down on inflated commissions.

The Financial Industry Regulatory Authority proposal, if approved by the Securities and Exchange Commission, would force brokers to report markups on bonds they hold for no more than one day, according to a statement released Friday. The requirement would close a loophole that allows brokers avoid disclosing commissions on bond sales, while markups on stock trades have to be reported.

"Finra has found that some individual investors pay considerably more than others for similar trades," Chief Executive Officer Richard Ketchum said in the regulator's statement. "Providing meaningful and useful pricing information will assist customers in monitoring costs, promote transparency into firms' pricing practices, and help enhance investor confidence."

Securities regulators have struggled for decades to improve transparency in the bond market, where the majority of trades are still completed by telephone and most price quotes are never made public. Some retail investors pay markups that are more than 2 percent of the value of their investment-grade bond trade, while institutional investors on average pay much less, according to Finra data.

If the rule had been in effect early last year, its disclosure requirement would have covered 98 percent of all retail bond trades, Finra said in September. It won't apply to trades between dealers and institutional investors.

The SEC and Finra began a campaign for the disclosure almost two years ago, after SEC Chair Mary Jo White told Finra and the Municipal Securities Rulemaking Board to draft a rule to protect retail investors. Wall Street firms and trade groups such as the Securities Industry and Financial Markets Association opposed the requirement, arguing that most commissions are fair and that retail investors can research prices using public databases maintained on Finra's and MSRB's websites.

"Markups have been greatly reduced and while outliers exist, trading data demonstrates that markups have narrowed and that the market is not as uncompetitive as some critics have noted," Craig Noble, managing director and head of capital markets trading at Wells Fargo Advisors LLC,

told an SEC advisory panel last month.

Bloomberg Business

by Dave Michaels

February 26, 2016 — 12:23 PM PST

Smaller Brokerages Band Together to Challenge Regulatory Costs.

Fifteen brokerages have banded together to protest regulations imposed since the 2008 financial crisis that they say unreasonably treat them the same as giants like Morgan Stanley and Bank of America Corp.'s Merrill Lynch.

"You can't just say we have to regulate trading and markets and have all of us comply with a rule written for the largest firms," said Curt Bradbury, chief operating officer of Stephens Inc. and chair of the newly formed American Securities Association.

For instance, he pointed to a Securities and Exchange Commission crackdown on municipal-bond disclosures. In June, the SEC charged and fined 36 municipal underwriting firms for giving inaccurate information to investors, including levying the maximum fine allowed of $500,000 on Goldman Sachs Group Inc., Raymond James Financial Inc.'s brokerage unit and Robert W. Baird & Co. Stephens was fined $400,000. "We tried to make the point that if you make the fines proportionate, it would make Goldman's fine a hundred times larger than $500,000," Mr. Bradbury said.

Mr. Bradbury said the fact that some giant firms, including Goldman, are deemed systemically important financial institutions, or SIFIs, sets a precedent for treating firms of varying sizes differently. "Yes, we're grousing about the burden of regulation and its extent but also pointing out that a SIFI is different from a non-SIFI and regulations should be different for both," he said. "Rules imposed on the entire industry are simply inappropriate for our firms."

The added costs of complying with added regulation fall more heavily on smaller firms, Mr. Bradbury and others say.

Indeed, Goldman Sachs Chief Executive Lloyd Blankfein said at a conference last year that expensive regulations have "raised the barrier of entry higher than at any other time in modern history," so that "only a handful of players" would be able to compete with one another globally.

The new group wants regulators such as the SEC and the Financial Industry Regulatory Authority to fine-tune how new rules impact different companies based on their size and scope.

The founding members of the new brokerage group are mostly midsize and regional firms. The ASA will oversee the Bond Dealers of America, an existing organization that comprises 57 firms, and the newly created Equity Dealers of America, a group with 11 members so far.

Executives at publicly traded securities firms and banks describe how each quarter they are paying higher sums to comply with rules and requirements introduced by the 2010 Dodd-Frank regulatory overhaul.

Among the ASA's focuses is the Labor Department's proposal to protect retirement savers. The rule, which could be ready as early as March, would require financial advisers to put their clients' financial interests above their own. It is expected to speed up a transition from commission-based accounts to fee-based accounts, which many firms say may not be workable for the smaller accounts held by many smaller securities firms.

A report by researcher Morningstar Inc. late last year said regional and independent wealth-management firms will likely face bigger revenue declines tied to the Labor Department's rule, since many may be forced to let go of commission-based individual retirement accounts with $100,000 in assets or less. Bigger firms are expected to fare better since they generally work with investors who have more assets.

The Labor Department rule is "something we have opposed vigorously through all the industry organizations and have not been able to make our point," Mr. Bradbury said. "It may be too late to work on it, but we'll try."

THE WALL STREET JOURNAL

By MICHAEL WURSTHORN

Updated Feb. 24, 2016 10:07 a.m. ET

Write to Michael Wursthorn at Michael.Wursthorn@wsj.com

Natixis, Société Générale Settle Municipal Bond Fraud Charges.

Firms to pay more than $56 million as part of 22-state and private class settlement

Natixis Funding Corp. and Société Générale SA agreed to pay more than $56 million to settle charges of defrauding state and local governments and nonprofits across the U.S. in municipal bond derivative transactions.

New York Attorney General Eric Schneiderman said Wednesday that Natixis will pay about $30 million and Société Générale will pay about $26.8 million in a 22-state and private class settlement. About $53.9 million will go into a settlement fund to pay restitution to municipalities, counties, government agencies, school districts and nonprofits that the states say were harmed in contracts with the banks.

"SG is pleased to have reached agreement to resolve these matters," Societe Generale spokesman said in an email statement.

Natixis couldn't be reached for comment.

The attorneys general of New York and Connecticut, plus other 20 states, in 2008 began investigating the municipal bond derivatives market, where tax-exempt entities including municipalities, school districts and nonprofit organizations issue municipal bonds and reinvest the proceeds until the funds are needed or enter into contracts to hedge interest rate risk.

The attorneys general said they found "anticompetitive and fraudulent conduct" at several large financial institutions, including Natixis and Société Générale. They claim employees at the banks

rigged bids and submitted noncompetitive courtesy bids and fraudulent certificates of arm's-length bidding to government agencies.

Other settlements totaling about $350 million were reached between December 2010 and December 2011 with Bank of America, J.P. Morgan Chase & Co., UBS Group AG, GE Funding Capital Market Services and Wells Fargo & Co.'s Wachovia.

THE WALL STREET JOURNAL

By ANNE STEELE

Feb. 24, 2016 1:39 p.m. ET

Write to Anne Steele at Anne.Steele@wsj.com

FINRA Approves Enhanced Price Disclosure to Retail Investors in Fixed-Income Securities.

WASHINGTON, D.C. — The Financial Industry Regulatory Authority's Board of Governors today approved a proposal designed to help retail customers understand and compare transaction costs in fixed-income securities. The proposal, subject to the approval of the Securities and Exchange Commission, would require member firms to disclose on retail customer confirmations the "mark-up" or "mark-down" for most transactions in corporate and agency debt securities.

"FINRA has found that some individual investors pay considerably more than others for similar trades. Providing meaningful and useful pricing information will assist customers in monitoring costs, promote transparency into firms' pricing practices, and help enhance investor confidence in the market," said Richard Ketchum, FINRA Chairman and CEO.

The proposal would require that if a firm sells or buys a corporate or agency fixed-income security from a retail customer and on the same day buys or sells the same security as principal from another party, the firm would have to disclose on the customer confirmation the firm's mark-up or mark-down from the prevailing market price for the security. The confirmation would also have to include a reference (and hyperlink if the confirmation is electronic) to trade-price data in the same security from TRACE, FINRA's Trade Reporting and Compliance Engine.

The disclosure requirement will not apply to transactions in fixed-price new issues, or in situations where the bonds sold to the retail customer (or bought from the customer) were held by the firm longer than one day.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules, enforcing those rules and the federal securities laws, and informing and educating the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

Friday, February 26, 2016

Contact(s):
Ray Pellecchia (212) 858-4387

MSRB Launches Outreach Effort for Issuers on the Municipal Securities Market.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today it is launching an outreach effort to remind state and local governments about the free education resources and tools available to support their issuance of municipal bonds. The MSRB operates an online Education Center about the municipal securities market and the Electronic Municipal Market Access (EMMA®) website to support market transparency and awareness.

"Part of the mission of the MSRB is to educate state and local governments on how to use the MSRB's free tools to help them navigate the municipal bond market," said MSRB Executive Director Lynnette Kelly. "The MSRB wants to be the 3-1-1 for municipal bond issuers—we're here to assist when they have questions about how to use EMMA and what to expect from their financial professionals."

The MSRB's new campaign will highlight resources issuers can use to help them fulfill their continuing disclosure obligations to investors and understand what they need to know about new regulations for municipal advisors who advise state and local governments on municipal securities transactions. The outreach effort will also help issuers learn how they can take full advantage of the EMMA website to communicate with investors.

A series of webinars, emails and related communications aimed and state and local governments will be offered over the next six months. The first webinar, called "Click, Call, Comply: Understanding Continuing Disclosure," will be offered on March 18, 2016 at 12:00 p.m. Register for the webinar. CPE credit is available.

State and local governments and related organizations that wish to learn more about the MSRB's outreach effort or request the MSRB's appearance at an upcoming event should contact Ritta McLaughlin, MSRB Chief Education Officer, at 202-838-1306 or rmclaughlin@msrb.org. Sign up to receive emails about state and local government education from the MSRB.

State and local governments and other municipal entities issue approximately $400 billion in municipal bonds each year. The issuance of these bonds involves, among other things, the hiring of financial professionals, such as underwriters and municipal advisors, and communicating to investors on a regular basis.

"When state and local governments decide to issue bonds to finance public infrastructure projects, they can benefit from access to objective information about the market," Kelly said. "The MSRB is a neutral resource available to support issuers' information needs and their disclosure obligations."

Date: February 23, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

NABL Submits Additional Issue Price Comments.

Today, NABL submitted a letter to the Internal Revenue Service and the United States Department of Treasury, supplementing NABL's issue price comments submitted on September 22, 2015. In the letter, NABL requests an exception to the general rule for establishing issue price, separate from the alternative method, based on the unique nature of competitive sales and the burden placed on small issuers.

Click here to view NABL's supplemental letter.

For more information about issue price regulations, attend the Tax Hot Topics panel at NABL's Tax and Securities Law Institute. The panel will include John J. Cross III, Associate Tax Legislative Counsel at the Department of Treasury, and a discussion on the proposed issue price regulations.

Oppenheimer One of 7 Firms FINRA Fines Over Minimum Denominations.

WASHINGTON — Oppenheimer & Co., WFG Investments, and E*TRADE are three of seven firms that the Financial Industry Regulatory Authority fined a total of $412,500 for trading municipal securities below the minimum denomination.

The cases were included in FINRA's monthly disciplinary actions released on Tuesday. FINRA also imposed a total of $90,000 in fines against New York City-based BGC Financial, L.P. and Memphis-based Duncan-Williams, Inc. for failures in reporting muni transactions as well as a $225,000 fine against Oppenheimer in New York City for supervisory failures.

Aside from its $200,000 fine against Oppenheimer, FINRA's other fines tied to trading below the minimum denomination ranged from $25,000 to $42,500 and were lower than fines the Securities and Exchange Commission previously levied for similar misconduct.

The SEC charged 13 firms in 2014 for selling Puerto Rico bonds in denominations below the $100,000 set minimum. Those firms paid fines ranging between $54,000 and $130,000. The SEC also penalized StateTrust Investment, Inc. $90,000 in 2015 for trading below an issuer's specified minimum denomination.

Minimum denominations usually range from $5,000 to $100,000 depending on the issuer's assessment of how suitable the bonds are for retail and institutional investors. The minimums found in the wide array of CUSIPs listed in FINRA's recent citations fell throughout that range but many were set at the $100,000, meaning they were suitable only for institutional investors.

Oppenheimer's $200,000 fine was by far the largest of the seven FINRA charged. The regulator found that between January 1, 2012 and June 24, 2014, Oppenheimer executed 148 transactions in municipal securities in amounts lower than the established minimum denominations. The conduct was found to have violated the Municipal Securities Rulemaking Board's Rule G-15 on confirmation, clearance, settlement, and other uniform requirements with respect to transactions with customers. FINRA also found that Oppenheimer's failure to inform its customers of the trades below the minimum denomination violated MSRB's Rule G-17 on fair dealing.

Dallas-based WFG Investments, New-York based E*TRADE, and Salt Lake City-based Zions Direct,

Inc. were each fined $42,500 for their trading below the minimum denomination. Zions executed 12 trades below the established minimums between January 1, 2012 and May 1, 2015, WFG executed19 transactions below the issuers' denominations between January 1, 2014 and April 30, 2015, and E*TRADE's violations involved 14 transactions between January 1, 2012 and May 1, 2015. FINRA found the firms violated MSRB Rules G-15 and G-17, as well as MSRB Rule G-27 on supervision because they did not have appropriate supervisory procedures to catch trades below minimum denominations.

FINRA also fined New York-based Beech Hill Securities and Morristown, N.J. -based Securevest Financial Group $30,000 for trading munis below set minimum denominations. Securevest's violations involved 27 customer transactions between January 1, 2012 and May 1, 2015 and Beech Hill's were in connection with 12 trades January 1, 2012 and March 31, 2015, FINRA found. Both firms were also cited for violating MSRB Rules G-15, G-17, and G-27.

FINRA also levied a $25,000 fine against Seattle-based National Securities Corp., which FINRA found executed 17 customer transactions below established minimums between January 1, 2012 and March 31, 2015 and violated MSRB Rule G-15.

Oppenheimer was also fined $225,000 separately for supervisory failures between January 1, 2009 and September 20, 2014. FINRA found that during that time, Oppenheimer held about 85 short positions in tax-exempt munis that corresponded to long positions in customer accounts. The short positions mainly resulted from trading and operational errors at the firm's retail branch level and trading accounts. In the event of short positions, Oppenheimer would cover the short position and pay taxable interest to the customer. The short position would also move to a branch error account or firm trading account, depending on the part of the firm where the error occurred.

FINRA found that Oppenheimer did not have procedures in place to adequately follow through on the payments to the customers and because of that, many payments were delayed from several months to a year. The procedures the firm had in place also misidentified the interest customers were paid as tax-exempt when it was actually taxable.

Starting in 2013, Oppenheimer recognized the positions were not being covered in a timely way and that the customers were receiving inaccurate information about the tax status of the paid interest. Oppenheimer then started instituting procedures to properly report and cover short positions and has had discussions with the Internal Revenue Service about making payments to protect the affected customers from having to pay additional federal income tax.

FINRA found that Oppenheimer's failures violated MSRB Rules G-27, G-17, and G-8 on books and records.

In the separate citations against the companies with muni transaction reporting failures, FINRA fined Duncan-Williams $50,000 and BGC $40,000.

The self-regulator found that between April 1, 2014 and June 30, 2014, BGC submitted 73 transaction reports to the MSRB's Real-time Transaction Reporting System that contained inaccurate information. FINRA found BGC failed to maintain its records of the analysis done to make sure the securities represented fair market value.

Duncan-Williams was found to have failed to report the correct time of trade to RTRS in 32 muni transaction reports between January 1, 2013 and March 31, 2013. The transactions amounted to 2.03% of the transactions the firm reported during that period.

Both firms were found to have violated MSRB Rules G-8, G-27, and G-14 on reports of sales or purchases.

In addition to citations against firms, FINRA also announced it has barred two individuals, Glenn Nicholas Caruso of East Meadow, N.Y. and Edward Joseph Vierling Sr. of Garden City, N.Y. from having any association with FINRA because of failures to provide testimony regarding relevant municipal bond trading the self-regulators was investigating.

THE BOND BUYER

BY JACK CASEY

FEB 16, 2016 4:04pm ET

MSRB Amends its Rule Regarding Calculations for Bonds that Do Not Pay Interest Semi-Annually.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) an amendment to MSRB Rule G-33, on calculations, to modernize the mathematical formula in Rule G-33(b)(i)(B)(2). The updated formula better reflects the technologies currently available to efficiently conduct this more precise calculation.

The compliance date for the amended pricing formula is July 18, 2016.

Read the regulatory notice.

View the SEC filing.

Initial Support for MSRB Pricing Guidance Proposal.

WASHINGTON – Challenges remain despite initial favorable reaction to a proposal to establish guidance for municipal securities dealers calculating prevailing market price and compensation in principal transactions, say dealers and members of industry groups.

The Municipal Securities Rulemaking Board's guidance, designed to harmonize MSRB standards with those previously established by the Financial Industry Regulatory Authority, was released on Feb. 18 in the form of amendments to MSRB Rule G-30 on prices and commissions. FINRA's guidance took effect in 2007 and currently applies to corporate debt and Treasury securities.

While the board felt FINRA's guidance, which took the Securities and Exchange Commission ten years to approve, was a good starting point, it emphasized that its own guidance would account for the unique aspects of the muni market.

The MSRB's solicitation of comments on establishing the prevailing market price for principal transactions is viewed as a precursor to rule changes that would require dealers acting as principals to disclose to retail customers the markups and markdowns on muni trades.

Leslie Norwood, a Securities Industry and Financial Markets Association managing director and co-

head of munis for SIFMA, said the group is pleased the MSRB is recognizing there must be differences in how it applies the guidelines to the municipal market. The markets for many municipal securities “are diverse, fragmented and localized, and determining the market price of securities that trade infrequently can be challenging,” she said. SIFMA plans to file more detailed comments on the proposed guidance in the coming weeks because the proposal will “likely have a material effect on the MSRB’s pending confirmation disclosure proposal,” according to Norwood.

Mike Nicholas, Bond Dealers of America’s chief executive officer, said BDA appreciates “this logical next step” from the MSRB and believes that “achieving full harmonization of the FINRA and MSRB proposals is an essential component of any future retail confirmation rule.”

Hutchinson, Shockey, Erley & Co. president and chief executive officer Thomas Dannenberg said he plans to think about the proposal further but appreciates the value of consistency and harmonization between regulatory standards. However, while he believes the MSRB is cognizant of the needed differences for the municipal market, he does question “whether an overly forced attempt to harmonize will distort the uniquely distinct characteristics of trading and pricing in the municipal securities market.”

The MSRB’s guidance follows FINRA’s in proposing a “waterfall” or hierarchy of factors that dealers should look at to determine the prevailing market price of a municipal security.

The hierarchy places an emphasis on contemporaneous trades in establishing the value of dealer costs and proceeds, but allows for alternatives if contemporaneous trades are not available.

Micah Hauptman, financial services counsel with the Consumer Federation of America, said that while he is still reviewing the proposal, he has questions about whether dealers will be able to game the calculations “in a way that is more favorable to them and may hide the true transaction costs investors are paying.”

The “waterfall” would first have dealers look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of a prevailing market price.

If the dealer does not believe contemporaneous trades are representative of the security, it can rebut the presumption that the trades determine the prevailing market price by showing changes in factors like interest rates, the credit quality of the debt, or news about the security or issuer that has changed the market’s perception of the market value of the security.

If the dealer does not have contemporaneous trades of the muni security, it must follow a specific order of steps. The first is to look at contemporaneous trades of the muni security among other dealers. If the dealer cannot find any, it can then look at trades of the security between other dealers and institutional investors with which the dealers regularly trade that same security. If there are no trades that fit that qualification, the dealer can then look at electronic platforms where trades occur at displayed quotations.

If there are no contemporaneous trades in the muni security or quotes, the dealer may look at contemporaneous trades of similar securities, which at a minimum would have a comparable yield. To see if a security is similar, the dealer would look at features, provisions, or technical factors that could affect the yield in the same way, such as credit quality, spreads, maturities, call dates, or tax treatment.

If none of the prescribed methods work, dealers could base their prevailing market price calculations on economic models that apply the “waterfall” concept and take into account such

things as credit quality, interest rates, industry sector, maturities, and call provisions.

MSRB Rule G-30, where the “waterfall” provisions would be adopted, generally requires a dealer to buy munis for its own account from customers, or sell munis from its own account to customers, at an aggregate price that is “fair and reasonable.” The transaction price to the customer must bear a reasonable resemblance to the prevailing market price of the security. The dealer’s compensation in principal trades with customers must be computed from the interdealer market price prevailing at the time of the transaction.

THE BOND BUYER

BY JACK CASEY

FEB 19, 2016 4:06pm ET

Why Do Politicians Care So Much About the Fine Print in Regulators’ Liquidity Requirements for Banks?

According to civics textbooks, Congress passes broad laws and leaves it to the regulators to work out the details on how to implement them. But when the regulators craft a rule that could pinch institutions in virtually every congressional district, lawmakers are apt to jump back in.

Hence the unusual bipartisan campaign challenging the Federal Reserve and other bank regulators over the arcane question of just what counts as “level 2A high-quality liquid assets,” or HQLAs, on a bank’s balance sheet.

Under postcrisis rules designed to limit the need for unpopular bailouts, banks are supposed to hold enough liquid assets to fund operations for as long as 30 days in case a new crisis triggers a sudden need for large amounts of cash. Nobody seems to disagree with that goal.

But controversy arose when the regulators ranked different kinds of assets in terms of their value in providing liquidity. They gave the highest weight to cash, Treasurys, and mortgage-backed securities. They want to give less weight to securities issued by municipal governments. “Municipal securities generally are not very liquid,” or easily dumped at a time of stress, Fed Chairwoman Janet Yellen told Congress Feb. 11.

But municipal securities are crucial to funding local governments and infrastructure projects around the country. Issuers worry the regulators’ determination will discourage banks from holding munis, forcing them to pay higher interest rates to keep borrowing. On Feb. 1, the House passed by voice vote a bill overriding the rules and allowing banks to count municipal bonds to meet their liquidity requirements.

It’s less about the safety and soundness of banks and more about the ability of towns and counties in their districts to raise funds—a completely different, albeit understandable, goal.

“Without this fix, critical local infrastructure and other projects could lack the financing they need to go forward, costing us jobs and hurting local communities,” Rep. Carolyn Maloney (D., N.Y.), a leading sponsor of the legislation, said in a statement.

The bill still needs to be considered in the Senate, where the issue came up during Ms. Yellen’s most

recent testimony. “This bill would interfere with our supervisory judgments about what constitutes adequate liquidity,” she told lawmakers. But that has nothing to do with building roads.

THE WALL STREET JOURNAL

By JACOB M. SCHLESINGER

Updated Feb. 22, 2016 11:30 a.m. ET

Write to Jacob M. Schlesinger at jacob.schlesinger@wsj.com

MSRB Publishes Draft Guidance to Support Fair Pricing of Municipal Securities and Dealer Compensation Calculations.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today proposed new regulatory guidance on how municipal securities dealers price bonds and calculate their compensation.

“Today’s draft pricing guidance is a major step in the MSRB’s effort to ensure investors are getting a fair price when buying and selling municipal bonds, and ultimately, that they better understand the cost of their transactions,” said MSRB Executive Director Lynnette Kelly. “We are eager to continue our momentum on advancing these important issues in coordination with other regulators.”

The MSRB’s draft guidance seeks to promote consistent compliance by municipal securities dealers with existing fair-pricing obligations to investors and better align standards on these subjects with those that apply to other fixed income securities. The MSRB believes the draft guidance also could support development of a possible mark-up disclosure rule for the benefit of retail investors in the municipal securities market.

Public comments are due March 31, 2016. The MSRB will host an educational webinar about the rule on Thursday, March 10, 2016 at 3:00 p.m. Eastern Time. Webinar participants are eligible to receive continuing professional education credit. Register for the webinar.

MSRB rules govern dealer pricing and compensation, and require dealers to engage in municipal securities transactions with customers at an aggregate price that is fair and reasonable. To meet this standard, the aggregate price must bear a reasonable relationship to the “prevailing market price” of the security, and, as part of the aggregate price, the dealer’s compensation—in the form of a “mark-up” or “mark-down”—must also be fair and reasonable.

The MSRB’s reevaluation of what factors dealers should consider in establishing the prevailing market price of a municipal security seeks to promote consistent compliance with existing fair-pricing obligations. The MSRB also believes that additional guidance on prevailing market price may be necessary for its development of a possible new requirement that municipal securities dealers disclose on customer confirmations the amount of the mark-up or mark-down in certain transactions with retail investors.

Today’s draft prevailing market price guidance for municipal securities is designed to harmonize it with the guidance established by FINRA for purposes of other types of fixed income securities, to the extent appropriate in light of the differences between the markets. At the same time, the MSRB recognizes there are important differences between the municipal market and other markets and is

specifically inviting comment on the appropriate tailoring of the draft guidance to address these differences.

Date: February 18, 2016

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California Wants More Disclosure From Bond Issuers.

LOS ANGELES — Bond issuers in California would have to provide significantly more disclosure to a state agency under recently introduced legislation.

Issuers would be required to submit an annual debt accountability report to the California Debt and Investment Advisory Commission under the bill, introduced by Sen. Bob Hertzberg, D-Los Angeles, at the behest of California Treasurer John Chiang.

Senate Bill 1029 came out of a task force Chiang formed after bond funds were embezzled from the ABAG Finance Authority For Nonprofit Corporations, a Northern California conduit issuer.

The Senate Committee on Government and Finance, chaired by Hertzberg, also produced an oversight report on the ABAG case.

“Public agencies can obligate the public to years of debt service from a bond issue, yet there are few standards on how the bond funds are managed and administered,” Chiang said in a prepared statement. “There is a gross lack of public oversight on the management and administration of bond funds.”

The legislation would also require issuers to certify they have adopted local debt policies and debt issuance is consistent with those policies.

The bill would expand the amount and the frequency of data CDIAC will require, because the treasurer wants to do whatever he can to improve transparency around bond issuance, said Deputy Treasurer Tim Schaefer.

Schaefer called the information currently provided to CDIAC “static,” because issuers provide information when bonds are sold, “but, a year later you don’t know how much has been paid off, refunded, or how much has been spent.”

Issuers disclose adherence to bond repayments in comprehensive annual financial reports posted on the Municipal Securities Rulemaking Board’s EMMA website, but the treasurer wants that information to be more easily accessible, Schaefer said. EMMA also doesn’t require that issuers report what the money was spent on, Schaefer said.

“We would like to have clarity around the use of bond proceeds — and make sure voters have confidence that those dollars will be spent on the capital projects for which they were intended,” Chiang said in an interview. State officials are prepared for pushback from municipalities about the cost of providing more information.

“We fully expect to have animated conversations,” Schaefer said. “We have gone to great lengths to hear objections and to be mindful in the manner that we ask for data.”

Some of the information is contained in the financial transaction report that every city, county, special district and pension fund is required to file with the state controller’s office each year, Schaefer said. Municipalities could just forward that report to the treasurer’s office along with some additional information, he said.

Those reports don’t contain information about what bond proceeds were spent on, and school districts are not required to send financial transaction reports to the controller’s office, he said.

In a “blueprint” issued last week that laid out his infrastructure agenda, Chiang said best practices guidelines developed by the bond task force will also be published in a California Debt Issuance Primer, providing issuers with a desktop reference manual.

The treasurer’s report questioned whether “voluntary” compliance with best practices offers enough protection against willful acts of fraud or mismanagement. He said he will continue to work with the legislature to consider ways to compel public agencies to improve their practices. Chiang formed the task force in February 2015 after it was learned that community development district bond proceeds were siphoned from a conduit issuer operated through ABAG.

Clarke Howatt, who had been director of financial services at the ABAG conduit issuer, pleaded guilty in December to wire fraud and agreed to return $3.9 million to local municipalities.

Howatt embezzled from a $1.3 million bank account that held bond funds for public improvements in San Francisco’s South of Market neighborhood. He also embezzled $2.6 million from accounts intended to fund public improvements at Windemere Ranch in San Ramon, an additional theft revealed when the plea agreement was entered.

“We learned with what happened in San Francisco that oversight of government debt is lacking,” Hertzberg said in a statement. “Millions and millions of dollars of taxpayers’ dollars are in state and local government bonds, and we must ensure they are managed wisely and legally.”

The Bond Buyer

by Keeley Webster

FEB 16, 2016 2:29pm ET

Groups Threaten to Challenge Constitutionality of Revised G-37.

WASHINGTON – Three groups are threatening to challenge the constitutionality of the Municipal Securities Rulemaking Board’s revised pay-to-play rule for municipal advisors.

The revised rule, approved this month by the Securities and Exchange Commission, would take effect beginning Aug. 17. It would put non-dealer muni advisors and MAs acting as third-party solicitors on a par with dealer advisors and underwriters by restricting their political contributions to issuer officials to prevent them from engaging in pay-to-pay practices.

The Center for Competitive Politics, the New York Republican State Committee, and the Tennessee

Republican Party, all urged the SEC in comment letters to disapprove the Rule G-37 revisions, warning they would restrict political speech and violate the First Amendment to the U.S. Constitution.

The CCP is a nonprofit organization that promotes and defends free speech and other First Amendment rights through litigation, communication, activism, and education. The two state Republican groups challenged a previous rule from the SEC aimed at preventing investment advisors from engaging in pay-to-play practices. The U.S. Court of Appeals for the District of Columbia dismissed that lawsuit on a technicality, finding the two groups missed the 60-day deadline to challenge the rule after it went into effect.

Jason Torchinsky, a partner at Holtzman Vogel Josefiak Torchinsky PLLC and one of the lawyers in the Republican committees' challenge to the IA rule, said Wednesday that the SEC's approval of the changes is a "regulatory expansion of limits on the right of individuals to engage in First Amendment protected activity" that "should be subject to a court challenge." He added he believes a challenge will be brought but said details are not yet available.

David Keating, the CPP's president, said the group is "very disappointed the SEC did not consider less restrictive alternatives that could avoid limiting First Amendment rights" and that the rule "is highly vulnerable to a challenge in court."

Rule G-37 was challenged by an Alabama bond dealer William Blount soon after it was approved for dealers in April 1994. He argued the rule violated his constitutional right to free speech. The DC appellate court rejected that argument in 1995, ruling G-37 was "narrowly tailored to serve a compelling government interest." The Supreme Court declined to take up an appeal of that ruling.

But that was a different high court. More recent Supreme Court decisions have overturned restrictions on politically motivated expenditures, such as in Citizens United vs. Federal Election Commission in 2010.

In announcing the SEC's approval of the revised G-37, MSRB executive director Lynnette Kelly said, "The integrity of the municipal market will be well-served by the regulations to help ensure that all municipal advisors that do business with state and local governments do so based on the merits of their work and not on financial influence."

She added that the MSRB has "conducted its municipal advisor rulemaking in the most transparent and rigorous manner" by incorporating significant public and industry input. The self-regulator is "pleased to have created balanced rules that protect the interests of state and local governments," Kelly said.

The pay-to-play rule, along with other recently approved regulations on core duties of municipal advisors and gifts and gratuities limitations, is part of the MSRB's multi-year effort to extend its regulatory regime to municipal advisors to comply with a mandate of the Dodd-Frank Act.

The revised Rule G-37 will prevent both dealers and MAs from engaging in negotiated municipal business with an issuer for two years if the firm, one of its municipal finance professionals or municipal advisor professionals, or a political action committee that is controlled by either the firm or a professional associated with the firm, makes a significant contributions to an issuer official who can influence the award of negotiated muni bond business for dealers or MAs.

However, an MFP or MAP will be allowed to give a de minimis contribution of up to $250 to any candidate for whom he or she can vote for without triggering the ban. There is still no such

exception for a firm.

The rule also divides MA firms into two categories, those that act as third-party solicitors and those that do not. Under the approved rule, an MA third-party solicitor is generally an MA that solicits an issuer or other municipal entity for compensation, even if that MA also provides advice to municipal entities.

Dealers and non-dealer MAs can trigger the two-year ban in different ways.

Dealers can only be subject to a ban on municipal securities business if a contribution is made to an official who can influence the selection of a dealer. Similarly, a non-solicitor MA can only be subject to a ban on municipal advisory business if a contribution is made to an official who can influence the selection of an MA. A temporary ban on negotiated municipal advisory business would include both a ban on advising the issuer or other municipal entity on certain matters and soliciting the municipal entity on behalf of third-party dealers, municipal advisors, and investment advisers.

Dealers that are also MAs could also be subject to a “cross ban” on business, consistent with the type of influence held by the official to whom the contribution was made. A “cross ban” would treat a dealer-MA firm as a single economic unit. For example, if an MFP or MAP of the firm makes a contribution to an official who can influence the selection of dealers and MAs, the firm is subject to a temporary ban on both types of business. However, if an MFP or MAP of the firm makes a contribution to an official who only has influence over one type of business, the firm would be subject to a two-year ban on only that business.

The factors triggering a temporary ban on business for municipal advisor third-party solicitors differ from those for non-solicitor MAs. For MA third-party solicitors, the ban on negotiated municipal advisory business would apply if the official getting the contribution has influence over selecting MAs, dealers, or investment advisors. If a dealer hires a municipal advisor third-party solicitor, the dealer also may be subject to a two-year ban on municipal securities business if the solicitor contributed to an official who could influence the selection of dealers. Similarly, if a municipal advisor hires an MA third-party solicitor, the municipal advisor also may be subject to a ban on municipal advisory business if the solicitor contributed to an official who has influence over selecting MAs.

The SEC also approved related changes to MSRB Rules G-8 and G-9 on books and records and preservation of records. The rules will now require dealers and MAs to disclose to the MSRB on a quarterly basis information about contributions made to issuer officials, payments made to political parties of states or political subdivisions, contributions made to bond ballot campaigns, and muni transactions done with issuers. A new requirement for MA third-party solicitors will require them to list the names of the parties from whom they’ve solicited business as well as the nature of the business solicited.

THE BOND BUYER

BY JACK CASEY

FEB 18, 2016 12:48pm ET

New Bond Rules Target Large Broker Fees.

WASHINGTON — U.S. regulators, moving against what they see as abusive practices in the municipal- and corporate-bond markets, are poised to crack down on large fees that can eat into investor returns.

Regulators are putting the finishing touches on new rules to require brokers to disclose how much they pocket when they buy certain corporate or municipal bonds, then sell the same securities to mom-and-pop investors later that day, according to people familiar with the regulators' plans.

The Financial Industry Regulatory Authority, Wall Street's self-regulator, is expected to finalize the rules next Thursday while the Municipal Securities Rulemaking Board, a sister agency, is expected to adopt nearly identical rules soon. The rules are subject to Securities and Exchange Commission review, and could change before they are put into practice.

The disclosures aim to address long-standing concerns among regulators that everyday investors who buy bonds don't know how much they are paying in broker fees. Regulators also say some investors are charged significantly higher prices for the same or similar securities.

Individuals own lots of bonds: U.S. households hold about $1.5 trillion of municipal paper and about $600 billion of corporate debt, according to the Federal Reserve. Regulators say the new requirements would apply to at least 25,000 daily trades between brokers and individual investors.

At present, many brokers don't disclose their markups. That means investors don't understand the fees and can't compare transaction costs across different firms.

The markup rules could deliver a blow to the brokerage units of large banks like Morgan Stanley that have said the approaches under consideration would be too difficult to implement. The rules are backed by discount brokers Charles Schwab & Co. and Fidelity Investments, which already charge low, flat fees on retail trades.

"We think this is a good move by the regulators to create more transparency for investors," said Jeff Brown, head of regulatory and legislative affairs at Schwab.

"We believe the markup disclosures should apply to all retail fixed-income transactions, not just those that occur within a particular time period," said Stephen Austin, a spokesman for Fidelity.

A spokesman for Morgan Stanley referred to a December comment letter objecting to earlier versions of the rules. At the time, the bank said determining an exact markup would be too difficult for firms with "substantial balance sheets of continuously changing inventory."

The push for more price transparency has been a focus for the SEC, which oversees Finra and the MSRB, for the past few years. In a July 2012 report on trading in the municipal-bond market, the agency wrote that the lack of price transparency undermines the fairness of the $3.7 trillion market.

A Finra spokesman declined to comment. MSRB Chief Legal Officer Robert Fippinger said the board has been working closely with Finra "on a coordinated approach."

The rules have been in the works for more than two years but gained added momentum last summer, when the brokerage Edward Jones agreed to pay the SEC $20 million to settle charges that the St. Louis-based firm and a former employee improperly sold new bonds to customers at prices higher than those negotiated with the bonds' issuers. The case prompted four of the SEC's commissioners at the time to prod the MSRB and Finra to complete the rules.

Progress has been slow, in part because Finra and the MSRB couldn't agree on the same approach

until recently, said people familiar with the matter. In addition to retail markups, brokers also will have to disclose markdowns, or the haircuts individual investors receive when selling their bonds.

Michael Nicholas, chief executive of Bond Dealers of America, an industry group, said dealers “need significant guidance” on how to calculate markups, especially for less frequently traded municipal and corporate bonds.

The MSRB on Thursday proposed guidance for dealers to help them calculate markups.

The markup disclosures are geared to principal trades, in which a broker buys a bond for its own account and later in the day sells it to an individual client.

Under the approach Finra and the MSRB are expected to adopt, brokers will have to disclose markups on any retail trade if the firm bought the same security earlier that day. That time period is broader than a two-hour window the MSRB had proposed last year. Some SEC officials feared that shorter window could be too easily gamed by brokers seeking to avoid the disclosures.

Brokers also will have to calculate the markups based on a bond’s “prevailing market price,” generally what it cost the broker to buy the security, unless there is a market event that causes the bond’s price to change.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

Updated Feb. 18, 2016 6:55 p.m. ET

Write to Andrew Ackerman at andrew.ackerman@wsj.com

Municipal Advisors to be Subject to New Pay-to-Play Regulations.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced that new regulations to safeguard the $3.7 trillion municipal securities market against pay-to-play practices—and the appearance of them—when state and local governments hire outside financial professionals go into effect later this year.

The new regulations extend the MSRB’s well-established municipal securities dealer pay-to-play rule to municipal advisors, including those acting as third-party solicitors, beginning August 17, 2016. The MSRB’s proposed amendments to its longstanding Rule G-37, on political contributions and prohibitions on municipal securities business, were deemed approved on February 13, 2016 under provisions of the Securities Exchange Act of 1934.

“The integrity of the municipal market will be well-served by regulations to help ensure that all municipal advisors that do business with state and local governments do so based on the merits of their work and not on financial influence,” said MSRB Executive Director Lynnette Kelly.

The new regulations will curb, at a minimum, the appearance of quid pro quo corruption in the awarding of municipal advisory business and provide greater transparency regarding municipal advisors’ political contributions. Consistent with the existing MSRB rule for dealers, the new regulations generally prohibit municipal advisors from engaging in municipal advisory business with

municipal entities for two years if certain political contributions have been made to officials of those entities who can influence the award of business.

The MSRB will host an educational webinar about the rule on Thursday, July 7, 2016 at 3:00 p.m. Eastern Time. Webinar participants are eligible to receive continuing professional education credit. Register for the webinar.

The establishment of pay-to-pay regulations for municipal advisors completes the core set of regulations the MSRB prioritized for development in 2013 as a result of its mandate from the Dodd-Frank Wall Street Reform and Consumer Protection Act. The act expanded the MSRB's mission to protect municipal entities and required it to establish regulations for municipal advisors.

Municipal advisors are now subject to supervisory and compliance obligations (MSRB Rule G-44) and will be subject to new MSRB rule provisions on core standards of conduct (Rule G-42) and limitations on gift-giving (Rule G-20) that go into effect this year. In addition, the MSRB launched a pilot professional qualification exam for municipal advisors, in advance of putting a final exam in place this year.

"The MSRB has conducted its municipal advisor rulemaking in the most transparent and rigorous manner," said Kelly. "We have incorporated significant public and industry input and are pleased to have created balanced rules that protect the interests of state and local governments."

Date: February 17, 2016

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Muni Groups Mull Using Auditors, EMMA To Boost Disclosure Compliance.

WASHINGTON – Muni market groups are considering changes to issuer audits, improvements to EMMA, and additional guidance from regulators as part of a collaborative effort to shore up continuing disclosure and prevent additional rules or enforcement actions from the Securities and Exchange Commission.

The groups, which include the Government Finance Officers Association, the National Association of Bond Lawyers, the Securities Industry and Financial Markets Association, and Bond Dealers of America talked about these ideas at their second full meeting last week after first joining together in late October. Representatives from the National Association of Municipal Advisors, the Investment Company Institute, and National Federation of Municipal Analysts also were in attendance.

Dustin McDonald, director of GFOA's federal liaison center, said the groups are "still trying to feel out what might be the most effective tools to inspire and improve continuing disclosure compliance" but that it is a topic "everyone's really digging into and is excited about."

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said she anticipates the collaboration is "going to be a productive effort" that produces reasonable changes.

Securities Industry and Financial Markets Association managing director and co-head of municipal

securities Michael Decker added SIFMA is committed to enhancing municipal disclosure and believes there is a common interest in moving forward on the discussed initiatives in “due course.”

The effort to address continuing disclosure compliance comes as the SEC is expected to soon announce settlements with issuers under its Municipalities Continuing Disclosure Cooperation initiative. Under that program, issuers and underwriters are to get lenient settlements for self-reporting any time during a five-year period that an issuer said it was in compliance with its continuing disclosure obligations, when it was not. The SEC has already settled with 72 underwriters, ordering them to pay a total of $18 million in fines for selling bonds using offering documents that contained material misstatements or omission about issuers’ compliance with their continuing disclosure obligations. The SEC is now turning to issuers.

The groups have been concerned that the SEC could use the disclosure failures uncovered by the MCDC initiative to show that the commission’s Rule 15c2-12 on disclosure is not working and that the SEC needs authority to regulate issuers. They contend this would be a particularly bad time for additional regulation as they adjust to a flurry of new rules for dealers and municipal advisors.

The muni groups have so far focused mostly on ways to work with auditors to ensure issuers are meeting their disclosure obligations. The groups are exploring whether the existing process for auditing issuers’ financials could be modified so that auditors include disclosure compliance assessments in their opinions on issuers’ comprehensive annual financial reports. Such a system could particularly help smaller or less frequent issuers and conduit issuers that have traditionally had the most trouble keeping compliance systems in place. The groups talked with the American Institute of Certified Public Accountants and included several accountants present during their meeting.

They also considered how the Municipal Securities Rulemaking Board could help, particularly by making it easier to file and locate issuers’ disclosure information on its EMMA site.

Giroux said the form of these changes is tricky because there is a question of whether market participants have to more effectively file information on the system or the MSRB staff has to better maintain EMMA to make sure filed information is listed in the right areas. She added that the MSRB is “on the same page” with the groups and supports the goal of improving disclosure to better help muni investors access important information.

In addition to the possible auditor assistance and changes to EMMA, the groups will likely put together some requests for guidance from the SEC. There is no set form those requests will take, but group members expect the requests to at least focus in part on gathering more specifics about the best way for issuers and dealers to comply with 15c2-12 as well as further attempts to find out what information the commission views as material.

The SEC has refused to establish any bright line tests to determine what information is material, saying that, according to case law this determination must be made by investors.

THE BOND BUYER

BY JACK CASEY

FEB 12, 2016 3:24pm ET

GFOA Alert Urges Issuers to Prepare for SEC MCDC Settlement Offers.

WASHINGTON – The Government Finance Officers Association has issued an alert urging municipal issuers to be prepared for settlement offers from the Securities Exchange Commission under its program for voluntary self-reporting of violations in connection with continuing disclosure obligations.

The SEC is turning to issuers following its Feb. 2 completion of settlements with underwriters under the Municipalities Continuing Disclosure Cooperation (MCDC) initiative, first announced in March 2014.

The MCDC program allows underwriters and issuers to receive lenient settlement terms if they self-report any instances during the past five years that issuers falsely claimed in official statements that they were in compliance with their self-imposed continuing disclosure agreements.

As of Feb. 2, the SEC completed its underwriter settlements, having ordered a total of 72 firms making up 96% of the market share for muni underwritings to pay a total of $18 million for selling muni bonds using offering documents that stated issuers had filed timely disclosure in compliance with their continuing disclosure obligations, when they had not. The firms were hit with fines of up to $500,000.

The commission is expected to soon start settling with issuers that falsely disclosed they had complied with their continuing disclosure agreements, such as by filing timely audited financial and operating information, when they had not. The SEC is not expected to impose fines on issuers but has reserved the right to pursue separate enforcement action against government officials found culpable for the material misstatements or omissions in offering documents, GFOA noted in its alert.

“We really put this piece together to try to help our members prepare for MCDC settlements with SEC,” said Dustin McDonald, director of GFOA’s federal liaison center here. “We want our members to know that the SEC will offer them flexibility in the turnaround time to agree to the settlements if additional time is requested.”

The alert said that, while some underwriters were given as little as one week to agree to an SEC settlement offer, issuers should ask for additional time if they need it after being pressed for action.

“The SEC’s Office of Municipal Securities has assured GFOA that issuers will be given greater flexibility in approving proposed settlements and that additional time will be provided,” the alert said.

In any case, issuers should be prepared for tight settlement timeframes and should discuss the process for approving settlement offers with elected officials, governing boards and other decision-makers, the alert recommended.

GFOA also suggested issuers consult with legal counsel on proposed settlements and how best to respond to the SEC’s enforcement division. In addition, issuers should obtain advice from counsel about the appropriate disclosures that should be made about settlements, the alert said.

GFOA told issuers that the SEC may direct them, in settlements, to establish policies and procedures as well as training regarding continuing disclosure obligations within 180 days. The commission may also ask them to provide the staff with a certification within one year that their continuing disclosures comply with their self-imposed obligations, according to the alert.

The SEC has not provided any information on how many issuer settlements it is pursing or whether there will be more than one round of such settlements, GFOA said.

THE BOND BUYER

BY LYNN HUME

FEB 10, 2016 2:49pm ET

GFOA Alert: The SEC MCDC Initiative and Issuer Settlements.

Following three rounds of settlements with underwriters and broker dealers under the Securities and Exchange Commission's (SEC) 2014 Municipalities Continuing Disclosure Cooperation (MCDC) Initiative, the SEC's Enforcement Division has begun reaching out to government debt issuers who participated in the program. As issuers receive calls and settlement proposals from the SEC in the coming weeks, the GFOA wants to alert members who participated in the initiative that they may have very little time to agree to settlement terms once those terms are offered by the SEC's Enforcement Division.

In the three rounds of SEC settlements with underwriters that were announced in 2015 and 2016, **underwriters were given as little as one week to agree to the settlement findings.** *The SEC's Office of Municipal Securities has assured GFOA that issuers will be given greater flexibility in approving proposed settlements and that additional time will be provided, if requested. However, the GFOA is urging members who participated in the initiative, as well as members who many not have participated but were reported by their underwriter, to:*

- Be prepared for tight settlement turnaround times. Issuers who need more time to review the proposed settlement should request additional time from the SEC Enforcement Division staff who is managing the settlement process.
- Consult with your legal counsel and have them review the proposed settlement and settlement findings and provide advice on how best to respond to the SEC's Enforcement Division. Obtain advice regarding appropriate disclosures regarding the disposition of the settlement.
- Initiate conversations with elected officials and any other governing board members to brief them on the situation and be aware of timeframes for internal approval processes to prepare decision-makers for the settlement process.

Background on the MCDC Initiative

In 2014 the SEC's Enforcement Division announced the MCDC Initiative to provide issuers and underwriters the opportunity to self-report instances of material misstatements in bond offering documents regarding the issuer's prior compliance with its continuing disclosure obligations. As issuers interested in participating prepared to file by the December 1, 2014 deadline, the GFOA urged members to exercise caution and familiarize themselves with the details of the initiative before consenting to engage in this program.

For example, though the terms of the initiative preclude SEC from imposing monetary fines on participating issuers, the SEC reserves the right to pursue separate enforcements against individuals within a government who it deems to be culpable of the misstatements. Additional terms agreed to by issuers participating in the initiative include the commitment to:

- Establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the institution of the proceedings;
- Comply with existing continuing disclosure undertakings, including updating past delinquent filings within 180 days of the institution of the proceedings;
- Disclose in a clear and conspicuous fashion the settlement terms in any final official statement for an offering by the issuer within five years of the date of institution of the proceedings; and
- Provide the Commission staff with a compliance certification regarding the applicable undertakings by the issuer on the one year anniversary of the date of institution of the proceedings.

In the three rounds of settlements with underwriters and broker dealers 72 firms paid just over $18 million for failing to identify misstatements and omissions before offering and selling bonds as required by SEC Rule 15c2-12. Violations identified in the settlements included failure to file material event notices and late filings (some as little as 14 days). The SEC Enforcement Division has not offered information on how many issuer settlements it is pursuing, how many rounds of issuer settlements will occur, the terms of any proposed settlements, and over what period of time these settlements will be announced.

Wednesday, February 10, 2016

Richard Ravitch Under Fire For Signing On To Help Puerto Rico.

Richard Ravitch — the go-to guy for cash-strapped municipalities — is taking some heat for volunteering to help Puerto Rico recover from its debt crisis.

Ravitch, who helped save New York in the 1970s and more recently Detroit from total financial ruin, is advising the troubled Caribbean island on a pro-bono basis. In December, he told a Senate committee that the teetering US territory should get congressional authority to declare bankruptcy.

Puerto Rico doesn't have the money to repay its $72 billion of debt. And unlike a US city, it can't seek relief by filing for Chapter 9 bankruptcy protection without congressional approval.

Ravitch, a former lieutenant governor of New York, sits on the board of Build America Mutual (BAM), one of only three firms that insure municipal bonds — and the only one without exposure to Puerto Rico.

The largest muni bond issuer, Assured Guaranty, is suggesting Ravitch is biased and bent on helping BAM.

"Given his background and years of experience, and his position on the board of directors at BAM, it would be surprising if he were unaware that BAM would likely benefit competitively if Puerto Rico's position on bankruptcy prevailed," an Assured Guaranty spokesman said.

Ravitch told The Post, "I don't believe Build America will benefit" from a Puerto Rico bankruptcy. He said the island's governor has asked for his opinion, and he has given free advice.

BTIG analyst Mark Palmer said Puerto Rico's bankruptcy could benefit BAM because it would make municipal bond issuance much more profitable.

"Municipalities [if their credit ratings fell] would buy more insurance to lower their borrowing

costs," he said.

The New York Post

By Josh Kosman

February 5, 2016

MSRB to Seek Public Comments On Prevailing Market Price, Bank Loans.

WASHINGTON – The Municipal Securities Rulemaking Board will seek public comment on both how dealers should calculate the prevailing market price under its proposal requiring dealer disclosure of markups to retail customers and how it can get more issuers to disclose bank loans.

The MSRB will move with "all due speed" on its request for comment on calculating the prevailing market price. She said the MSRB hopes to put out a concept release with questions about how to improve private placement disclosure during the next three to four months, MSRB executive director Lynnette Kelly said during a call with reporters after the MSRB's Jan. 27 and 28 meeting here.

The board's decision to request public input on the prevailing market price come after dealers asked the MSRB for more guidance on the correct way to make the calculations. Kelly said the MSRB recognizes there are "a complex set of factors" that determine the prevailing price and added the MSRB wants to make sure it is "asking the right questions" in its request for comments.

Nat Singer, the MSRB's chair, did not participate in the call but said in an MSRB release that the "step is critical to establishing prevailing market price guidance that is appropriately tailored for the municipal market."

Dealer groups have criticized the markup proposal for not being in line with similar confirmation rule amendments proposed by the Financial Industry Regulatory Authority. FINRA's changes would require dealers to disclose the differential between the price to the customer and the dealer's reference price. The proposed rule changes also diverge in the timing of trades they would require dealers to consider, with the MSRB mandating dealers include trades occurring within two hours of the transaction and the FINRA rule spanning a full day of trading.

The dealer groups also complained the MSRB's proposal will impose substantial costs on dealers.

Kelly said before the meeting that private placements, especially bank loans, have been "a rallying cry" for the organization. The MSRB does not have jurisdiction over issuers though and has instead decided to find alternate ways to "get at the issue," she said.

So far, the board has urged issuers to voluntarily disclose bank loans and adjusted its EMMA system to make it easier for issuers to disclose the loans on their homepages.

Despite its efforts, Kelly said there have only been 138 filings in the special category created on EMMA, which "certainly does not represent any material amount."

"We are taking our call for improved voluntary disclosure to the next level," Singer said in the release. "We want input from the public on the ways we might address this very important issue."

The MSRB also tackled a number of other issues in its meeting, including deciding to file a rule

change with the Securities and Exchange Commission to support a two-day settlement cycle, move forward with an academic product that would use anonymous dealer identifiers, and pursue enhancements to EMMA.

The move to a two-instead of three-day settlement cycle has industry-wide support and the MSRB has made it clear that its changes are predicated on the SEC amending its own rules to establish a T+2 cycle for equity and corporate markets.

In addition to the T+2 discussions, the board decided to file with the SEC its July 16 proposal that would give academics muni trade and pricing data that use anonymous dealer identifiers. The proposal would prohibit academics from reverse engineering and redistributing the data and would also require them to disclose their specific intentions for requesting the information. The data would only be available to academics with institutions of higher education and would have to be more than two years old to be eligible for release.

Researchers who commented on the proposal said the identifiers would improve liquidity and market transparency but dealer groups said they were afraid their identities, trading strategies, and inventories would be discovered through reverse engineering.

“It’s often been a challenge to do research in the muni market given the size of the market, the complexity, the number of individual bonds but we’re hopeful that with this additional data product specifically for academics will make research in the market easier,” Kelly said.

As part of the MSRB’s continuing goal of improving EMMA for market participants, it approved the addition of an economic calendar so that issuers, investors and others can easily access federal economic data releases in the same place where they can find muni information. Kelly added the board is still discussing adding yield curves and a new issue calendar to EMMA.

The board also discussed its decision to issue a request for comment on adding exceptions to its minimum denomination rule and whether it has jurisdiction over newly created savings programs for individuals with disabilities.

The addition of minimum denomination exceptions is part of an ongoing effort to revisit rules and update or change them to keep them consistent with current market trends. The proposed changes to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements for dealers would seek to include transactions involving people who have less than a minimum denomination of bonds because of a divorce or inheritance.

The savings accounts, called ABLE accounts after the Achieving a Better Life Experience Act of 2015 that Congress passed to create them, are tax-advantaged and could resemble 529 College Savings Plans, which the MSRB have jurisdiction over. The board agreed that if the MSRB has jurisdiction over the ABLE accounts too, it would review its rules to see what new rules or changes would need to be made. It said that it expects to get a sense of its jurisdiction over the accounts in the next three to six months.

THE BOND BUYER

BY JACK CASEY

FEB 1, 2016 2:04pm ET

14 Underwriters Pay $4.58M to Settle Disclosure Violations Under MCDC.

The SEC's action completes its sweep of underwriters under the voluntary enforcement program and tees up the commission's first round of issuer settlements.

The Securities Industry and Financial Markets Association provided a tepid response to the announcement.

"Now that the SEC has completed its MCDC Initiative settlements with municipal securities underwriters, the underwriting community can work with regulators and industry members to focus on ways to improve the disclosure paradigm," said Leslie Norwood, a managing director and co-head of munis at SIFMA. "We believe that when nearly 100 percent of a regulated community self-reports and settles with the SEC with respect to a particular enforcement issue, the problem may be more with underlying rules and practices than with nearly every participating underwriter in the industry."

The SEC found that between 2011 and 2014, the 14 underwriting firms sold municipal bonds using offering documents that contained materially false statements or omissions about the issuers' compliance with their continuing disclosure obligations.

The SEC also found that the underwriting firms failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to their customers.

The 14 firms, which did not admit or deny the findings, agreed to cease and desist from such violations in the future. They paid civil penalties of up to $500,000. The firms each agreed to retain an independent consultant to review its policies and procedures on due diligence for municipal securities underwriting.

This is the third wave of settlements with underwriters under the MCDC initiative. In all, 72 underwriters have been charged under the voluntary self-reporting program targeting material misstatements and omissions in municipal bond offering documents.

"The settlements obtained under the MCDC initiative have brought much-needed attention to disclosure obligations in municipal bond offerings," said Andrew J. Ceresney, Director of the SEC's Enforcement Division. "As part of the settlements, 72 underwriting firms – comprising approximately 96% of the market share for municipal underwritings – have agreed to improve their due diligence procedures and we expect that investors will benefit from those improvements."

The MCDC Initiative, announced in March 2014, offered lenient settlement terms to municipal bond underwriters and issuers that self-reported violations. The first enforcement actions against underwriters under the initiative were brought in June 2015 against 36 municipal underwriting firms. An additional 22 underwriting firms were charged in September 2015.

The MCDC Initiative is being coordinated by Kevin Guerrero of the Enforcement Division's Municipal Securities and Public Pensions Unit. The cases announced today were investigated by members of the unit, including Michael Adler, Robert Barry, Joseph Chimienti, Kevin Currid, Peter Diskin, Robbie Mayer, Heidi Mitza, William Salzmann, Ivonia K. Slade, Jonathan Wilcox, Monique C. Winkler, and Deputy Unit Chief Mark R. Zehner, with assistance from Ellen Moynihan of the Boston Regional Office.

The SEC's orders and penalty amounts are:

- Barclays Capital Inc. – $500,000
- Boenning & Scattergood Inc. – $250,000
- D.A. Davidson & Co. – $500,000
- First Midstate Inc. – $100,000
- Hilltop Securities Inc. – $360,000
- Janney Montgomery Scott LLC – $500,000
- Jefferies LLC – $500,000
- KeyBanc Capital Markets Inc. – $440,000
- Mitsubishi UFJ Securities (USA) Inc. – $20,000
- Municipal Capital Markets Group Inc. – $60,000
- Roosevelt & Cross Inc. – $250,000
- TD Securities (USA) LLC – $500,000
- United Bankers' Bank – $160,000
- Wells Fargo Bank N.A. Municipal Products Group – $440,000

THE BOND BUYER

BY LYNN HUME

FEB 2, 2016 5:32pm ET

MCDC Credited with Boosting Muni Disclosure.

AUSTIN – Municipal market participants said continuing disclosure is improving and credited the Securities and Exchange Commission's voluntary enforcement initiative with giving it a boost.

They also had positive things to say about federal oversight and rules for municipal advisors.

They made their remarks here Tuesday at The Bond Buyer's 20th annual Texas Public Finance Conference, as the SEC announced its final group of underwriter settlements under the Municipalities Continuing Disclosure Cooperation initiative.

The MCDC initiative offered favorable settlement terms to municipal bond underwriters and issuers that self-reported violations. In three waves, the SEC hit 72 underwriters with a total of $18 million in fines for failing to conduct adequate due diligence to identify issuer misstatements and omissions before offering and selling their bonds to their customers.

It will soon begin announcing settlements with issuers for selling munis using offering documents that contained materially false statements or omissions about their compliance with their continuing disclosure obligations.

During the panel, David Medanich, the vice chairman of FirstSouthwest, now Hilltop Securities, who is a municipal advisor, said his firm created a disclosure department years ago when the SEC's continuing disclosure rules took effect and took those rules very seriously.

But he credited the MCDC with making market participants more diligent about being timely in meeting their deadlines for disclosing financial and operating information. It also triggered firm and issuer reviews of the whole continuing disclosure process.

"Overall, this has been a real eye opening experience for me … for the firm and for clients. It's

definitely focused everybody on continuing disclosure," he said.

Both he and Kim Edwards, a senior vice president at Piper Jaffray & Co. who was also on the panel, said muni issuers want to do the right thing.

Paul Maco, a partner at Bracewell in Washington, D.C. who moderated the panel, asked if underwriters in Texas have ever walked away from a deal because of the issuer's failure to meet its continuing disclosure obligations.

Edwards said underwriters try to work with issuers to improve their continuing disclosure compliance, rather than walk away from deals. If an issuer has chronic continuing disclosure problems, the firm asks it to provide a statement or some form of certification that it has improved its policies and procedures so the disclosure failures stop, she said.

Georgia Sanchez, assistant city treasurer of Austin who also was on the panel, said that as a result of MCDC, her city reviewed the entire issuance and disclosure process and that this "really helped us."

"It really helped us step up our game and be more transparent," she said.

Shamoil Shipchandler, director of the SEC's Ft. Worth Regional Office and a panelist, said the fact that MCDC has made underwriters and issuers go back and look at their continuing disclosure policies and procedures is a "collateral benefit that is helpful … sort of across the board."

A lot of the larger issuers have adopted policies and procedures on continuing disclosure, but some of the smaller, infrequent issuers have not, Edwards said.

Medanich gave the Government Officers Association and other such organizations kudos for making it clear that disclosure policies and procedures are important to have.

Edwards added that it's good when an issuer has them in place so the underwriter doesn't have to "reinvent the wheel" on continuing disclosure with every transaction.

Maco pointed out that if issuers have policies and procedures in place, it's hard for the SEC to charge them with negligence for violations. "It's a bit of an insurance policy," he said.

He asked Shipchandler if his SEC office will follow up to make sure underwriters that settled under the MCDC initiative are not violating their orders to cease and desist from violations.

Shipchandler said the office won't go searching for violations of C&D orders, that usually the SEC is made aware of them through a competitor or anecdotal information.

Edwards said she's noticed more issuers disclosing more information on their websites. "In general, I think there is more information now," she said.

But when Maco asked if issuers are starting to disclose information beyond what is required for material event notices, such as when an employer leaves and hurts the local economy, Medanich said not really.

If an issuer discloses one large company leaving the area, must every company that leaves from there on out? Medanich asked.

"I'm hesitant," he said. "It's not that I don't want to, but I'm hesitant to supply something additional when I'm not sure of the outcome because where do I stop."

“Just simply filing something to be over-protective is not necessarily a good thing,” he said.

Edwards said there’s a trend of credit rating agencies trying to be more proactive, probably as a result of their mistakes during the financial crisis.

They “have started to offer … opinions” on various topics, she said.

It was challenging for some Texas issuers trying to sell bonds recently, when a rating agency issued a report warning about the credit impacts of falling oil prices. “It’s going to make [issuers’ lives] more challenging,” she said.

Maco asked the panelists how the municipal advisor rules have affected them and whether they are concerned about underwriters giving issuers advice that causes the firms to become MAs.

Medanich he’s always felt he has had a fiduciary duty to put his issuer clients’ interest first, before his firm’s. He said he also thinks underwriters recognize their obligations to deal fairly with market participants.

The MA rules, he said, “clearly define the roles” of the MA and underwriter and makes clear a firm is either one or the other.

“I think it’s a great thing,” he said. “I think it’s made things a little bit clearer and a little bit easier.”

Edwards agreed, but noted, “internally. We’ve had more procedures and policies to clarify.”

“It hasn’t really impacted us at all,” she said. Most issuers have hired an independent registered municipal advisor, she said. The MA rules allow an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn’t have ties to an underwriting firm, and says that it will rely on that MA’s advice.

For issuers that haven’t hired an IRMA, “we are a little bit more cautious,” Edwards said.

Asked about the SEC exam process, Shipchandler said his office will “likely not” be involved in routine examinations of MAs but will certainly look into any complaints or suspected violations.

THE BOND BUYER

by Lynn Hume

FEB 3, 2016 3:44pm ET

SEC Fines Municipal-Bond Underwriters for Making False Statements.

Firms paid about $4.58 million for violating federal securities laws between 2011 and 2014

The Securities and Exchange Commission charged and fined 14 municipal-bond underwriting firms on Tuesday for giving investors inaccurate information in the third batch of penalties for such firms under the U.S. agency’s voluntary self-reporting program.

The firms—which didn’t admit or deny the charges—paid about $4.58 million for violating federal securities laws between 2011 and 2014 by selling municipal debt using offering documents that

contained “materially false statements or omissions” about the borrowers’ compliance with disclosure obligations. Regulators said the firms failed to conduct adequate due diligence to identify the problems before selling the bonds.

The SEC launched the crackdown in 2014 in a bid to pressure underwriting firms and state and local borrowers to admit voluntarily to lapses in investor disclosures in exchange for favorable settlement terms. The lapses include such issues as failing to disclose missed filings of annual financial reports or credit-rating changes.

The agency said Tuesday that 72 underwriters have been charged under the voluntary self-reporting program. The first round of charges was brought in June against 36 municipal underwriting firms. Another 22 were charged in September.

All the firms settled and paid civil penalties up to a maximum of $500,000.

“The settlements obtained under the…initiative have brought much-needed attention to disclosure obligations in municipal-bond offerings,” said Andrew Ceresney, director of the SEC’s enforcement division.

The 72 firms make up about 96% of the market share for municipal underwritings, he said, and all have agreed to improve their due diligence procedures.

Firms in Tuesday’s announcement included Barclays Capital Inc., TD Securities LLC and Wells Fargo Bank N.A. Municipal Products Group.

THE WALL STREET JOURNAL

By ANNE STEELE

Feb. 2, 2016 2:46 p.m. ET

Write to Anne Steele at Anne.Steele@wsj.com

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting January 27-28, 2016 where it discussed initiatives to shed more light on costs and potential risks to investors in the municipal market, and to improve the utility of its Electronic Municipal Market Access (EMMA®) website, among other topics.

Mark-Up Disclosure
The MSRB is in the process of developing a possible new regulation that would require municipal securities dealers to disclose on customer confirmations the amount of the “mark-up” or “mark-down” on a certain class of transactions with retail investors. The MSRB has been coordinating with the Financial Industry Regulatory Authority (FINRA) on a parallel initiative for transactions in corporate bonds. At its meeting, the MSRB Board agreed that its next step is to seek public comment on regulatory guidance on how dealers calculate their mark-ups. Dealers in municipal securities, as in markets for other types of securities, benchmark such charges to investors off what is known as the “prevailing market price” of the security.

“We heard in comment letters on our mark-up disclosure proposal that the industry wants guidance on establishing the prevailing market price for municipal securities,” said MSRB Chair Nathaniel Singer. “The MSRB plans to proceed with developing this guidance by publishing a proposal for public comment. This step is critical to establishing prevailing market price guidance that is appropriately tailored for the municipal market.”

Bank Loan Disclosure
For several years, the MSRB has been advocating for improved disclosure about direct purchases of securities and bank loans by state and local governments. These types of alternative financings are frequently not disclosed to municipal bondholders but may have priority payment status in the event a municipality is not able to meet its obligations. “This is a risk that is often unknown to bondholders,” Singer said. “Investors should have as full a picture as possible about a municipality’s overall debt.”

At its meeting, the Board authorized MSRB staff to develop a concept release seeking public input on whether and how the MSRB could improve disclosure of the amounts and material terms of these alternative financings. “We are taking our call for improved voluntary disclosure to the next level,” Singer said. “We want input from the public on the ways we might address this very important issue.” The MSRB has repeatedly called for voluntary disclosure of bank loans and other alternative financings by state and local governments. However, very few municipalities have publicly provided such information.

EMMA Enhancements
At its meeting, the Board also discussed ways to improve the utility of its EMMA website, the official source of municipal bond data and disclosures. The Board approved the addition of an economic calendar on EMMA so that issuers, investors and others have easy access to federal economic data releases at the same source for information about municipal securities.

Other Regulatory Developments
In other regulatory developments, the Board discussed MSRB Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements for dealers with respect to transactions with customers, related to minimum denominations. The Board approved issuing a request for comment regarding MSRB Rule G-15(f)(iii), which provides a limited exception to the prohibition against sales to customers in amounts below the minimum denomination of an issuance. The request will seek comment on whether the MSRB should expand the exception to include other transactions that may be consistent with the original intent of the prohibition.

In other dealer rulemaking, the Board approved filing a proposed rule change with the Securities and Exchange Commission (SEC) to amend MSRB Rules G-12 and G-15 in order to support the industry-wide initiative to move from a T+3 to a T+2 settlement cycle. To ensure consistency, the effective date of the amendments would be predicated on the SEC making amendments to its rules to establish a T+2 settlement cycle for the equity and corporate bond markets.

In support of the MSRB’s efforts to promote research in the municipal market, the Board decided to move forward with its plans to create a historical municipal trade data product for higher education institutions. The proposed product still requires approval from the SEC.

Finally, the Board discussed the MSRB’s jurisdiction with respect to the sale by municipal securities dealers of interests in ABLE accounts and the potential applicability of various MSRB rules. The Achieving a Better Life Experience (ABLE) Act of 2014 permitted states to create tax-advantaged savings programs to help individuals with disabilities maintain health, independence and quality of life. The Board agreed that if it is determined that the MSRB has jurisdiction over the sale of ABLE

accounts, it would further review its rules for dealers and consider what amendments may be needed.

Date: February 1, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

U.S. House Approves Bill to Classify Muni Securities as High Quality Liquid Assets.

On February 1, the House voted to approve HR 2209, bipartisan legislation that would require federal regulators to classify all investment-grade, liquid, and readily marketable municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, which classifies foreign sovereign debt securities as HQLA while excluding investment-grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Not classifying municipal securities as HQLA would increase borrowing costs for state and local governments to finance public infrastructure projects, as banks would likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

GFOA has been leading advocacy efforts to support this legislation and sincerely thanks Representatives Luke Messer (R-IN) and Carolyn Maloney (D-NY) for their leadership in advancing this important bill, as well as all of GFOA members who sent letters to their federal elected leaders urging support for this bill. Our attention now turns to the Senate, where we are working with a group of bipartisan Senators to introduce a Senate companion bill to HR 2209. Stay tuned.

GFOA

Tuesday, February 2, 2016

California AG's Opinion Targets School Bond Practices.

PHOENIX – School and community college districts violate California law if they hire outside firms to campaign for bond ballot measures or purposely incentivize municipal finance professionals to advocate for passage of a bond measure, the state’s attorney general said in a formal legal opinion.

Attorney General Kamala Harris released the opinion Tuesday in response to a request from Treasurer John Chiang.

California law prohibits using public funds to influence the outcome of an election, including campaigning for the passage of a bond measure. Voter-approved bonds backed by property taxes are

the primary method of new school construction in the state, and Chiang sought a clarification on whether some common industry practices might be violating the law.

“A practice has developed within the municipal financing industry whereby investment bankers, financial consultants, and bond attorneys offer to contract with a school district to provide the pre-election services that the district seeks,” the opinion said. “Under such an arrangement, the firm agrees to provide the pre-election services at no, or reduced, charge to the district in exchange for the district’s promise to select the firm as its contractor to provide postelection services, if the bonds are approved by the voters. Naturally, it is within the firm’s financial interest to be awarded the contract to provide post-election bond services.”

Such California attorney general’s opinions are advisory, and not legally binding on courts, but are generally considered authoritative by the officers and agencies who have requested them and given respect by judges.

Robert Doty, a lawyer and former financial advisor who now runs his own litigation consulting firm AGFS in Annapolis, Md., said the opinion is a significant development.

“This is a very important analysis for finance,” Doty said. “It is not a general attempt to say that contributions are good or bad, except when they are tied to getting business.”

A previous Bond Buyer investigation found a nearly perfect correlation between broker-dealer contributions to California school bond efforts in 2010 and their underwriting of subsequent bond sales, and financial advisors have similarly been accused of using “pay-to-play” tactics.

Former California Treasurer Bill Lockyer questioned the legality of the practices, and in 2013 twelve dealer firms asked the Municipal Securities Rulemaking Board to adopt further restrictions on bond ballot contributions by broker-dealers, which they are required to disclose to the board.

Harris’ opinion points to a 1976 California Supreme Court case, Stanson v. Mott, in which the court ruled that public money could be used only to provide “a fair presentation of relevant information” related to a bond question. Chiang’s request covered several questions, which the opinion dealt with in turn.

First, Harris concluded, school districts violate the law if they hire a firm for services that could be construed as campaigning for the bond measure. Second, they also violate the law if they receive services from a firm in return for bond business when the campaign is successful if the district “enters into the agreement for the sole or partial purpose of inducing the firm to contribute to the bond-election campaign” or when “the firm’s fee for its post-election bond-sale services is inflated to account for its campaign contributions and the district fails to take reasonable steps to ensure the fee was not inflated.”

The opinion notes that districts may legally select an underwriter beforehand and essentially guarantee them the business if the campaign is successful, but the motivation of the district would determine the legality.

“In the absence of evidence to the contrary, of course, it is to be assumed that a district’s actions are proper,” the opinion said. “We therefore would not conclude that the existence of a contingent-compensation contract, standing alone, violates the law.”

The attorney general also concluded that a district runs afoul of the law if it reimburses a municipal finance firm for providing the pre-election services as an itemized component of the fee that the district pays to the firm in connection with the bond sale, as well as if it uses bond proceeds to

reimburse the firm.

Finally, Harris' office found, an entity that provides campaign services to a bond measure campaign in exchange for an exclusive agreement with the district to sell the bonds incurs an obligation to report the cost of such services as a contribution to the bond measure campaign in accordance with state and local campaign disclosure laws.

Lori Raineri, president of independent financial advisory firm Government Financial Strategies in Sacramento, said she was pleased by the opinion and that the attorney general deserved a lot of credit for taking an "important step." Raineri said there are some subtleties and loopholes that will likely to continue being exploited despite the opinion, but that many of the most blatant conflicts of interest have stopped due to increased focus on this issue in recent years. She said she will show the opinion to prospective clients so they are fully informed about the law.

THE BOND BUYER

BY KYLE GLAZIER

JAN 28, 2016 4:09pm ET

Financial Crisis Rule May be Relaxed.

Congress appears to be on the cusp of ordering regulators to relax some of the rules that were put in place after the financial crisis.

The House next week will vote on a bill from Reps. Luke Messer (R-Ind.) and Carolyn Maloney (D-N.Y.) that would change the rules that stipulate what constitutes a safe investment for banks.

If it passes, the legislation would be a big win for state and local governments, as well as the banking industry.

"Making common-sense tweaks to help states and municipalities access the credit market is clearly something that appeals to members on both sides of the aisle," said James Ballentine of the American Bankers Association.

"We're pleased that Republicans and Democrats have recognized that there are problems … that are fixable and we support their efforts to address them."

The bill is already attracting attention in the Senate from key players.

Sen. Charles Schumer (D-N.Y.), who is expected to ascend to Democratic leader next year, has said through a spokesman that either he or a fellow Democrat will be offering companion legislation and will "get it done in the Senate."

If the bill passes and is signed by President Obama, it would represent a rare break from the partisan warfare that has surrounded financial rules.

Ever since the Dodd-Frank financial reform law was enacted in 2010, the debate around regulating Wall Street has been characterized by fierce partisanship.

Republicans have lined up dozens of bills tweaking or scrapping regulations on the financial system,

while Democrats have mostly rallied against them. The White House, when necessary, has chimed in with veto threats, arguing Dodd-Frank needs to be given time to work before it is changed.

The bill coming up for a vote in the House would tweak a set of rules that banking regulators put in place after the financial crisis.

In an effort to ensure banks can muster up enough cash to stay afloat during tough times, regulators established a “liquidity coverage ratio” in 2014, requiring banks to hold a certain amount of safe, easily sold assets that could easily be turned into cash.

The rules stemmed from the international Basel III banking accord.

The major concern for banks, as well as state and local governments looking to sell their debt, is that municipal bonds were generally not included in the high-quality debt category.

State and local government officials say that exclusion could make it harder for them to sell bonds to finance projects. That’s unfair, they say, since state and local debt has long been considered among the safest investments available.

A host of government groups, including the National Governors Association and the National League of Cities, called on Speaker Paul Ryan (R-Wis.) to move on legislation changing the rule December.

They argued that regulators missed the mark in certifying debt from some foreign nations as safe, while failing to do the same for top-ranked debt back home. They added that with massive infrastructure needs coming down the pike, carving out municipal debt would make it that much harder to raise the funds needed.

The financial industry has also thrown its support behind the effort, arguing the debt would be right at home with other high security investments.

In November, the House Financial Services Committee cleared the bill by a vote of 56 to 1. And top Democrats in the Senate, who have stood in the way of regulatory rollbacks in the past, have indicated they are interested as well.

The Federal Reserve already revisited the rule in May, proposing that some municipal debt be considered high quality. However, the other two regulators behind the rule, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, have not followed suit.

So lawmakers want to force the issue, by passing legislation that would require regulators to include highly rated municipal debt under the rule.

Not everyone is on board with the changes. The Wall Street reform group Better Markets is not specifically lobbying on the bill, but is broadly concerned about giving municipal debt the implicit seal of approval.

While municipal bonds have an extremely low default rate, Better Markets argues that if times turn tough, it might be difficult to actually sell the bonds and raise the cash as intended.

“Most of them don’t trade that often, they are by definition not liquid,” said Frank Medina, the group’s senior counsel. “People should be concerned that it’s undermining the regulation.

And municipal debt is not a guarantee, as places like Detroit and Puerto Rico have faced significant trouble paying back bondholders after budget troubles.

“If you’ve got stuff on your books that you can’t sell, and you can’t borrow against, you might as well not hold it at all,” added Medina.

The Hill

By Peter Schroeder – 01/31/16 07:00 AM EST

NABL: SEC Announces Final Round of MCDC Underwriter Enforcement Actions.

The SEC announced today the completion of enforcement actions against municipal underwriters under the MCDC initiative. The enforcement actions are against 14 underwriters with settlement amounts ranging from $20,000 to $500,000.

The SEC’s press release announcing the enforcement actions is available here.

The orders are available here.

MSRB to Seek Public Comments On Prevailing Market Price, Bank Loans.

WASHINGTON – The Municipal Securities Rulemaking Board will seek public comment on both how dealers should calculate the prevailing market price under its proposal requiring dealer disclosure of markups to retail customers and how it can get more issuers to disclose bank loans.

The MSRB will move with “all due speed” on its request for comment on calculating the prevailing market price. She said the MSRB hopes to put out a concept release with questions about how to improve private placement disclosure during the next three to four months, MSRB executive director Lynnette Kelly said during a call with reporters after the MSRB’s Jan. 27 and 28 meeting here.

The board’s decision to request public input on the prevailing market price come after dealers asked the MSRB for more guidance on the correct way to make the calculations. Kelly said the MSRB recognizes there are “a complex set of factors” that determine the prevailing price and added the MSRB wants to make sure it is “asking the right questions” in its request for comments.

Nat Singer, the MSRB’s chair, did not participate in the call but said in an MSRB release that the “step is critical to establishing prevailing market price guidance that is appropriately tailored for the municipal market.”

Dealer groups have criticized the markup proposal for not being in line with similar confirmation rule amendments proposed by the Financial Industry Regulatory Authority. FINRA’s changes would require dealers to disclose the differential between the price to the customer and the dealer’s reference price. The proposed rule changes also diverge in the timing of trades they would require dealers to consider, with the MSRB mandating dealers include trades occurring within two hours of the transaction and the FINRA rule spanning a full day of trading.

The dealer groups also complained the MSRB’s proposal will impose substantial costs on dealers.

Kelly said before the meeting that private placements, especially bank loans, have been “a rallying

cry" for the organization. The MSRB does not have jurisdiction over issuers though and has instead decided to find alternate ways to "get at the issue," she said.

So far, the board has urged issuers to voluntarily disclose bank loans and adjusted its EMMA system to make it easier for issuers to disclose the loans on their homepages.

Despite its efforts, Kelly said there have only been 138 filings in the special category created on EMMA, which "certainly does not represent any material amount."

"We are taking our call for improved voluntary disclosure to the next level," Singer said in the release. "We want input from the public on the ways we might address this very important issue."

The MSRB also tackled a number of other issues in its meeting, including deciding to file a rule change with the Securities and Exchange Commission to support a two-day settlement cycle, move forward with an academic product that would use anonymous dealer identifiers, and pursue enhancements to EMMA.

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As part of the MSRB's continuing goal of improving EMMA for market participants, it approved the addition of an economic calendar so that issuers, investors and others can easily access federal economic data releases in the same place where they can find muni information. Kelly added the board is still discussing adding yield curves and a new issue calendar to EMMA.

The board also discussed its decision to issue a request for comment on adding exceptions to its minimum denomination rule and whether it has jurisdiction over newly created savings programs for individuals with disabilities.

The addition of minimum denomination exceptions is part of an ongoing effort to revisit rules and update or change them to keep them consistent with current market trends. The proposed changes to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements for dealers would seek to include transactions involving people who have less than a minimum denomination of bonds because of a divorce or inheritance.

The savings accounts, called ABLE accounts after the Achieving a Better Life Experience Act of 2015 that Congress passed to create them, are tax-advantaged and could resemble 529 College Savings

Plans, which the MSRB have jurisdiction over. The board agreed that if the MSRB has jurisdiction over the ABLE accounts too, it would review its rules to see what new rules or changes would need to be made. It said that it expects to get a sense of its jurisdiction over the accounts in the next three to six months.

THE BOND BUYER

BY JACK CASEY

FEB 1, 2016 2:04pm ET

Bond Advisors Behaving Badly re: Tax-exempt Bonds.

We all know that the federal tax rules and regulations applicable to tax-exempt bonds are very complex. So are the federal and state securities laws. At times this is frustrating for bond advisors. However, we should remember that the federal and state securities laws are intended to protect investors/bondholders by requiring that all material facts be disclosed fully and accurately, thus allowing the investors/bondholders to make informed decisions regarding their investments.

All bond advisors likely make small mistakes at times over the course of their careers that violate the complex securities laws, or that cause their issuer clients to inadvertently violate the federal tax rules. We oftentimes refer to these small, inadvertent mistakes as “foot faults”. More aggressive bond advisors sometimes commit more serious violations that result in civil penalties. The bond advisors that commit fraud may end up under the supervision of the Federal Bureau of Prisons, rather than the Securities and Exchange Commission (“SEC”).

Assuming you are like me (an advisor that tries to comply with all of the rules and regulations) you may have the same morbid curiosity I do about what actions bond advisors take that result in civil or criminal penalties and/or even jail time. (I think it basically makes me feel good about myself and what a law-abiding bond advisor I am.) Below is a list of some actions that recently resulted in charges, fines, settlements and/or incarceration for bond advisors during the last several months. This list includes only a few of the more interesting cases. Unfortunately, there are many more.

(1) Christopher Brogdon has recently been charged by the SEC with fraud. Mr. Brogdon allegedly misrepresented in offering documents what types of projects the potential bondholders would be investing in. For example, many of the bond offering documents he gave potential investors discussed funding nursing homes, assisted living facilities and retirement communities. However, instead of using all of the bond proceeds for such stated purposes, Mr. Brogdon used some of the proceeds for other business ventures he was involved in, and to pay debt service on other bond issues that he had been involved with (a sort of Ponzi Scheme). Mr. Brogdon, being a devoted spouse, even transferred some of the bond proceeds to his wife’s personal bank accounts.

(2) Douglas MacFaddin and Charles LeCroy recently settled with the SEC. Both were investment bankers that the SEC had accused of improperly making payments to certain broker-dealers associated with one or more commissioners of Jefferson County, Alabama. According to the SEC, all parties involved knew that the broker-dealers would be doing little or no work to earn the money. In exchange for these generous payments, the two former investment bankers secured very large bond and swap deals for their employer. As part of the settlement reached with the SEC, each agreed to disgorge the profits he earned personally during the process. Given the relatively minor fine for MacFaddin’s and LeCroy’s alleged criminal actions, I am guessing that they provided evidence to be

used against bigger fish up the food chain (who were criminally prosecuted for taking bribes).

(3) Investors in a failed sucralose plant recently agreed to settle their suit against the former Morgan Keegan for $8.5 million. There are several other pending lawsuits related to the failed project. The bondholders, other investors and the Missouri Secretary of State all claim that Morgan Keegan committed securities fraud. First, the plaintiffs argued that Morgan Keegan did not do adequate due diligence. If it had, the plaintiffs allege, it would have discovered that the company that was to operate the sucralose plant was not currently operating a similar facility in China. (In other words, the subject company did not have the experience that Morgan Keegan purported it had). Second, the plaintiffs claim that Morgan Keegan made false statements. For example, the plaintiffs allege that Morgan Keegan said that the bonds were secured by company patents, when in fact, the patents had been denied. Seems like a pretty material misstatement to me.

(4) As you probably remember, the SEC charged Edward Jones with pricing-related fraud a few months ago. Instead of selling municipal bonds to its customers at the initial offering price, Edward Jones bought the bonds for its own inventory at the initial offering price. Later, Edward Jones sold the municipal bonds to its clients at prices exceeding the initial offering price, thus making an unauthorized profit. The SEC imposed a significant fine on Edward Jones and is requiring Edward Jones to make restitution to its customers (or more likely former customers).

In closing, the four instances above should serve as a reminder as to why we need rules and regulations governing municipal bonds – because some bond advisors do behave very badly.

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Morgan Stanley Paid New Jersey Widow Over Puerto Rico Losses.

Morgan Stanley paid a New Jersey widow $95,632 to compensate for her losses on Puerto Rico securities, in what may be the first case of its kind involving mainland investors and commonwealth debt.

A Financial Industry Regulatory Authority arbitration panel decided in October that the bank must pay Morrisa Schiffman for compensatory damages. She asked for $157,267.17 for unsuitable recommendations, failure to disclose and negligent supervision, according to the case document. Seth Lipner, a lawyer at Deutsch & Lipner in Garden City, New York, who represented Schiffman, said that he knows of no other case where a mainland investor won compensation for Puerto Rico bond losses.

“She’s a widow who was using the income to supplement her retirement,” Lipner said in a telephone interview Thursday. “I do anticipate seeing more people complaining as they come to realize that these bonds are not coming back to par.”

Commonwealth securities, which attracted investors because they’re tax-exempt in all U.S. states, lost about 19 percent since the start of 2013, while the broader municipal-bond market gained nearly 11 percent, according to S&P Dow Jones Indices. Puerto Rico bonds fell in value and began trading at distressed levels in 2013 on investor concern that the island wouldn’t be able to repay all of its obligations on time and in full. The commonwealth and its agencies racked up $70 billion by borrowing for years to fix budget shortfalls.

UBS Settlement

“Morgan Stanley is disappointed with the panel’s decision, but has paid the award,” Christy Jockle, a spokeswoman at the bank, said in a statement. “The firm believes it has made appropriate disclosures regarding Puerto Rico. The arbitration involved a bond purchased in 2008.”

UBS Group AG agreed in September to pay about $34 million to settle regulatory claims that a Puerto Rico unit allowed a broker to sell risky municipal bond investments to conservative customers.

Ray Pellecchia, a Finra spokesman, was unable to confirm if the Shiffman case is the first of its kind.

Lipner said that he has filed for arbitration in three more cases of individual investors who’ve lost money on their Puerto Rico securities and involving Bank of America Merrill Lynch, Stifel Nicolaus & Co. and Hennion & Walsh Inc.

Restructuring Talks

Bill Halldin, a spokesman at Bank of America Merrill Lynch, declined to comment. Anne Hveem, a spokeswoman at Hennion & Walsh, didn’t have an immediate comment. Sarah Anderson, a spokeswoman at Stifel, didn’t immediately respond to an e-mail and phone message.

“People didn’t need the investments that they were put into,” Lipner said. “Representatives need to know what they’re recommending. And what we’re finding across the board in the states is that they didn’t.”

Puerto Rico is seeking to lower its debt stack by asking investors to accept less than the full value on their holdings or waiting longer to be repaid. The commonwealth is expected to present Friday its first debt-restructuring proposal to advisers and lawyers for creditors.

Bloomberg Business

by Michelle Kaske

January 28, 2016 — 2:29 PM PST

California Muni Dealers Can't Fund Bond Campaigns to Get Hired.

Promising municipal bond underwriters in California that they will be hired to sell debt if they

provide election services that get voters to approve new authorizations is a violation of the law, state Attorney General Kamala Harris said in a ruling this week.

California law bans local officials from using public money to promote passage of bond issues. While they can provide basic information about what a proposed bond issue is for and how much it will cost, they can't take steps to actively persuade voters to approve the authorizations. Harris' Jan. 26 ruling also says schools can't inflate underwriting fees to cover the cost of campaigns.

Former Treasurer Bill Lockyer, who sought the opinion in 2013, praised the ruling, and said it could open up school districts and vendors to prosecution.

"It makes it clear that prior practices of this sort are illegal," Lockyer said in a telephone interview Thursday.

Lockyer sought the opinion after finding school districts in the state entered agreements with underwriting firms in which the districts award the dealers the right to sell the bonds in return for providing services to pass an initiative. He said at the time the agreements raise "substantive questions" about whether school officials broke the law by using public money to advocate passage.

"A school or community college district violates California law concerning the use of bond proceeds if the district reimburses the municipal finance firm for the cost of providing pre-election services from the fees the district pays to the firm in connection with the bond sale," Harris said in the opinion.

Mark Paxon, general counsel for current Treasurer John Chiang, declined comment on the opinion because it is still being reviewed. A spokesperson for Harris didn't respond to a request for comment.

Bloomberg Business

by Darrell Preston

January 28, 2016 — 10:57 AM PST

MSRB to Offer Continuing Professional Education Credit for Webinars and Events.

Washington, DC – Participants in educational webinars hosted by the Municipal Securities Rulemaking Board (MSRB) are now eligible to receive continuing professional education (CPE) credit. The MSRB is a registered sponsor of CPE in accordance with the requirements of the National Association of State Boards of Accountancy (NASBA). The CPE credit applies to both live and on-demand events.

"Joining the ranks of the National Registry of CPE Sponsors affirms the MSRB's ability to provide high-quality educational content that supports market knowledge and compliance with municipal market regulations," said MSRB Executive Director Lynnette Kelly. "The designation is another step in the development of the MSRB's educational offerings."

Certified public accountants and many other professionals that work in the municipal market must earn CPE credit to maintain professional licenses or comply with internal training requirements. The

MSRB will provide webinar participants with certificates of attendance for its events upon completing the CPE requirements.

The MSRB's educational offerings include its online Education Center, where investors, state and local governments and others can access free resources about the municipal market, outreach events and live and on-demand webinars covering new and developing regulations.

Visit the MSRB's new on-demand webinar portal to access all MSRB's webinars currently available for CPE credit.

Date: January 26, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB to Discuss Bank Loans, Markup Disclosure at Meeting.

WASHINGTON – The Municipal Securities Rulemaking Board plans to discuss bank loans and dealer disclosure of markups to retail customers during its board meeting here next week.

At the meeting on Jan. 27 and 28, the board also will consider academic use of MSRB data, shortening the trade settlement cycle, savings accounts for individuals with disabilities and financial abuse of the elderly, according to an MSRB release.

The MSRB is expected to consider whether it should take action on bank loans. It has focused on bank loans so far by encouraging issuers to voluntarily disclose them. The self-regulator also made adjustments to its EMMA system last August to make it easier for issuers to disclose the loans on their homepages.

"Bank loans have certainly been a rallying cry for this organization," said MSRB executive director Lynnette Kelly. "We'll continue to talk about bank loan issues, what board members are seeing in the market, and any observations that people want to make."

While the board only plans to have a discussion on the topic, Kelly said there is nothing stopping the 21 board members from choosing to go out and solicit comments from the industry or ask the Securities and Exchange Commission for more information.

The board's discussion on markup disclosure in confirmations sent to retail customers will center on the criticisms and other comments market groups made in letters sent to the MRSB about the proposed changes to Rule G-15 on uniform practices.

Dealer groups criticized the proposal for not aligning with similar confirmation rule amendments proposed by the Financial Industry Regulatory Authority. FINRA's changes would require dealers to disclose the differential between the price to the customer and the dealer's reference price. The proposed rule changes also diverge in the timing of trades they would require dealers to consider, with the MSRB rule mandating dealers include trades occurring within two hours of the transaction and the FINRA rule spanning a full day of trading.

The groups also said the MSRB's rule will impose substantial costs on dealers if it is adopted.

No action item is scheduled on confirmation disclosure during the board hearing but Kelly said the next step for the board is to meet with FINRA to see if there can be a “meeting of the minds” on the type of proposal to pursue.

The MSRB board will also discuss a set of comment letters the self-regulator received in September about a proposal to give academics muni trade and pricing data that use anonymous dealer identifiers.

The July 16 proposal would prohibit academics from reverse engineering and redistributing the data. It also would require them to disclose their specific intentions for requesting the information. The data would only be available to academics with institutions of higher education and would have to be more than two years old to be eligible for release.

Researchers who commented on the proposal said the addition of anonymous dealer identifiers would improve liquidity and enhance transparency in the market.

But dealer groups said they were afraid the identifiers would open their members up to having their identities, trading strategies, and inventories discovered through reverse engineering. The groups instead advised the MSRB to release data that combines dealers with similar characteristics and excludes all primary trades.

The board is also planning to talk about several other initiatives the MSRB has focused on in the past, including improving EMMA such as by adding yield curves, and helping facilitate a market transition to a T+2 settlement cycle.

The MSRB’s proposal to change muni trade settlements to two days from three after execution has general support from market groups and is tied to the SEC making similar changes as part of an industry migration that would be completed by the end of the third quarter of 2017.

The MSRB will additionally revisit its Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. A portion of that rule prohibits dealers from trading bonds in amounts below the minimum denominations set by issuers. The minimum denomination is usually set at $5,000 but can be as high as $100,000 if the issuer determines the bonds are unsuitable for retail investors.

The board’s discussion will center on a possible request for comment on amendments that would allow more exceptions from the minimum denomination requirement in certain circumstances, such as beneficiaries of a will receiving set portions of an individual’s bond holdings or parties in a divorce splitting investments.

The goal of any change would be to keep the rule as strong as possible while providing for exceptions that may not meet the rule exactly, but follow the spirit of it, Kelly said. She added a parallel goal would be to never create a situation where a trade creates more people holding a position below a minimum denomination than before.

For example, if an individual were to come into possession of $75,000 of bonds that have a $100,000 minimum denomination, the updated rule may allow the individual’s dealer to sell bonds in an amount below the minimum denomination to individuals who already hold at least $100,000 of the bonds.

The re-evaluation of the rule is part of the MSRB’s larger effort to update its rulebook to reflect current market conditions, Kelly said. Additionally, the MSRB is discussing its possible jurisdiction over tax-advantaged savings programs that help support individuals with disabilities maintain

health, independence, and quality of life. The programs are a result of the Achieving a Better Life Experience Act of 2015 and may resemble 529 College Savings Plans in potentially falling under the MSRB's jurisdiction.

The agenda also includes plans to discuss efforts by state agencies, other self-regulatory organizations, and policy makers to protect elderly investors from the risk of, or actual, fraud. The MSRB does not have a specific rule that applies to the effort, but the board is fully engaged in monitoring the other agencies' activities, Kelly said.

THE BOND BUYER

BY JACK CASEY

JAN 20, 2016 1:32pm ET

Dealer, Advisor Groups Ask for Revisions to MSRB Pay-to-Play Rule.

WASHINGTON – Dealer and advisor groups want revisions to a Municipal Securities Rulemaking Board proposal to extend pay-to-play prohibitions to non-dealer municipal advisors.

The MSRB filed its changes to MSRB Rule G-37 on political contributions, as well as MSRB Rules G-8 on books and records and G-9 on preservation of records, with the Securities and Exchange Commission on Dec. 16.

Rule G-37 already applies to dealers and prevents them from engaging in negotiated transactions with an issuer for two years if the dealer, one of its municipal finance professionals, or a political action committee controlled by the dealer or an MFP makes a significant contribution to an issuer official who can influence the award of muni bond business.

The rule includes a de minimis exception to the ban for individuals who give no more than $250 to any candidate for whom they can vote.

The proposed rule changes would extend both the prohibition and exception to non-dealer MAs, with certain differences depending on whether the MA is a third-party solicitor. The updates to the MSRB's two recordkeeping rules would include documentation requirements to assure compliance with the G-37 amendments.

Terri Heaton, president of the National Association of Municipal Advisors, said NAMA supports the MSRB's effort to extend the rule to MAs, but believes that the proposal will not lead to as a strong a rule as it could.

"We believe that rulemakings could be further strengthened to create a true barrier from allowing political donations to influence business being done in the municipal securities sector," Heaton wrote in her letter. She added NAMA would most like to see an outright ban on contributions to bond ballot initiatives instead of continuing to allow them to be made but with proper disclosure.

Heaton also said the rule needs to more clearly identify the responsibilities and disclosure requirements for dealers and MAs.

"Without such clarifications, municipal advisors may inadvertently omit information that should be

disclosed," she said.

Bond Dealers of America chief executive officer Mike Nicholas agreed with Heaton, saying BDA supports the goal of the rule but would like to see revisions to eliminate "some unnecessary and duplicative regulatory filings for dealers" who may also act as MAs on other transactions.

"Despite our concerns with the proposal's lack of harmonization with contribution limits and record-keeping requirements applicable to other federal pay-to-play regimes, BDA supports the level playing field that applying MSRB pay-to-play rules to non-dealer municipal advisors will create," Nicholas said.

He recommended the SEC ask the MSRB to give guidance in the form of answers to frequently-asked-questions that allow dealer employees who act as both dealers and MAs to avoid keeping dual records and copies of disclosures for the same contributions.

Nicholas also said BDA would like to see the de minimis exception increased to $350 to harmonize the rule with existing de minimis contribution limits for investment advisors and swap dealers under Commodities Future Trading Commission and SEC investment advisor political contribution rules.

Leslie Norwood, associate general counsel and co-head of the municipal securities division for the Securities Industry and Financial Markets Association, said SIFMA "is looking forward to the SEC's approval of the changes" and echoed BDA's comments about the rule leveling the regulatory playing field.

Under the proposed rule changes, dealer and municipal advisory firms would be divided into two broad categories: dealer firms and their MFPs, and municipal advisor firms and their municipal advisor professionals. MAPs would be defined similarly to MFPs. MA firms would be subdivided into MA firms that act as third-party solicitors and those that do not. An MA third-party solicitor generally would be an MA that solicits, will solicit, or wants to be hired to solicit a municipal issuer or other entity for compensation, even if that MA also provides advice. Under the existing rule, a dealer can only be subject to a ban on muni business if a contribution is made to an official who can influence the selection of a dealer. Similarly, under the rule changes, a non-solicitor municipal advisor can only be subject to a ban on MA business if a contribution is made to an official who can influence the selection of an MA. A ban on MA business would include both a ban on advising the municipal entity on certain matters and soliciting the municipal entity on behalf of third-party dealers, MAs, and investment advisors.

But dealers who are also MAs could be subject to a "cross ban" on business, depending on the type of influence of the official they contribute to. A "cross ban" would treat a dealer-MA firm as a single economic unit. For example, if an MFP or MAP of the firm makes a contribution to an official who can influence the selection of dealers and MAs, the firm is subject to a temporary ban on both types of business. But if an MFP or MAP of the firm makes a contribution to an official who only has influence over the selection of underwriters, for example, the firm would be subject to a temporary ban on underwriting business.

For MA third-party solicitors, the ban on municipal advisory business would apply if the official receiving the contribution has influence over selecting MAs, dealers, or investment advisors. If a dealer hires an MA third-party solicitor, the dealer also may be subject to a temporary ban on negotiated municipal securities business if the solicitor contributed to an official who could influence the selection of dealers. Similarly, if an MA hires an MA third-party solicitor, the MA also may be subject to a ban on municipal advisory business if the solicitor contributed to an official who has influence over selecting MAs.

THE BOND BUYER

BY JACK CASEY

JAN 21, 2016 3:04pm ET

BDA Submits Letter to SEC on MSRB Pay-to-Play Rule.

The Bond Dealers of America submitted a comment letter to the SEC on MSRB's proposed pay-t--play rule. You can review the draft letter here.

More specifically, the letter addresses:

- BDA's support of extending MSRB's rule to cover MAs;
- BDA's request for additional guidance on regulatory filings for dealers; and,
- BDA's request to raise the de minimis threshold from $250 to $350 to harmonize the contribution limit with other regulators

Additional information:

- You can view MSRB's filing to the SEC here.
- You can view BDA's previous comment letter to on G-37 here.

Confirmation Disclosure and Bank Loans Among Topics at Upcoming MSRB Board Meeting.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published an agenda for its upcoming Board of Directors meeting, to be held January 27-28, 2016 in Washington, DC. The Board of Directors meets quarterly to oversee the strategic direction of the organization, make policy decisions, and authorize rulemaking and market transparency initiatives.

Among the Board's agenda topics is the MSRB's proposal to require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of principal transactions. The Board plans to discuss public comments received on its proposal, and determine next steps. The mark-up disclosure proposal seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market.

The Board also will continue its ongoing discussion of secondary market disclosure in the municipal market related to bank loans and other alternative financings. The MSRB has been advocating for voluntary disclosure of this information to investors because of the potential impact of bank loans and other debt-like obligations on the seniority status of existing bondholders, among other implications. At its meeting, the Board will explore possible regulatory action in this area to promote disclosures about bank loans affecting the overall indebtedness of an issuer.

Another topic the Board will discuss is the MSRB's existing rule related to the minimum denomination at which municipal securities can be sold to investors. Minimum denominations have been the focus of recent regulatory examinations and enforcement actions, and the Board plans to discuss potential clarifications to MSRB Rule G-15, on uniform practice requirements for municipal

securities dealers, which include provisions on minimum denominations.

Read the MSRB Board of Directors' meeting agenda.

Date: January 20, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Sends SEC Revised Proposal to Lengthen Board Terms.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve its slightly revised proposal to lengthen board members' terms to four years from three.

Market participants will have 21 days after the SEC publishes the filing in the Federal Register to submit comments to the commission on the proposed changes to MSRB's Rule A-3 on board membership. Most groups were supportive of the initial proposal in the first round of comments.

The MSRB board currently has 11 public and 10 regulated members who served staggered three-year terms. Each MSRB fiscal year, which begins on Oct. 1, seven members leave the board and seven new members join. The MSRB names each incoming group of seven the "class" of the year they leave the board.

The MSRB in its initial proposal, released on Oct. 25, said the increased board terms would "improve continuity and institutional knowledge of the board from year to year, while retaining the benefits of the regular addition of new members." The board said new members must overcome a learning curve that can keep them from being fully effective until they are more than a year into their service.

Under the proposal, the three classes of seven members that serve on the board at any given time would change into four classes, three of which would have five members and one of which would have six. The new structure would maintain the majority-public nature of the 21-member board, the MSRB said.

This latest version of the proposal differs slightly from the initial one in terms of how the transition to four board classes would occur. The initial one circulated by the MSRB for comment would have put a committee of board members not being considered for extensions in charge of nominating the members who would be eligible. Then the full board would vote on those nominees.

This latest version would make any previously elected board member whose term will expire on or after the end of MSRB fiscal year 2016 on Sept. 30 eligible for a one-year extension. The full board would then vote by ballot to determine who receives the extensions.

The MSRB says it made the change after further considerations led it to believe that it would be hard to create a special committee of members that represented the board when 18 of them could not be considered for the committee because of their eligibility for extensions. Any concerns about potential conflicts of interest in the newly proposed selection process should be mitigated by the large number of members both voting and eligible for extensions, making it difficult for any one member to affect the outcome of the election.

The MSRB proposal also describes the process it will use to transition to a four-class board, which will begin with the class selection for fiscal year 2017.

One public representative from the class of 2016 will receive a one-year extension and six new members will join the board. Then, for fiscal year 2018, one public and two regulated representatives from the class of 2017 will receive one-year extensions and five new members will join the board. Finally, for fiscal year 2019, three public and two regulated representatives from the class of 2018 will receive a one-year extension and five new members will join the board.

By fiscal year 2020, no new extensions will be needed and five new members will join the board. In fiscal 2021, there will be six new members and then five in each of the next three years. The cycle will be repeated every four years.

In addition to changing the number of board classes and the length of tenure, the proposal would also limit the number of consecutive terms a board member could serve to two and eliminate a requirement that each class must have at least one non-dealer municipal advisor.

Board members can currently only serve a consecutive term if they receive an invitation to do so because of a board-determined special circumstance or if they are filling a vacancy and are therefore only serving a partial term. The rule would keep the special circumstances rule and add the two consecutive term limit for a maximum service limit of eight years.

The elimination of the non-dealer municipal advisor requirement would prevent the MSRB from mandating that every board has four non-dealer municipal advisors. The MSRB was concerned that such a requirement could limit the representation from other regulated entities.

THE BOND BUYER

BY JACK CASEY

JAN 15, 2016 5:29pm ET

NABL: SEC Announces 2016 Examination Priorities.

On January 11, 2016, the Securities and Exchange Commission announced the 2016 examination priorities for the Office of Compliance Inspections and Examinations' (OCIE).

The priorities include public pension advisers, focusing on pay-to-play, including undisclosed gifts and entertainment. OCIE also expects to allocate examination resources to newly-registered Municipal Advisors to assess compliance with recently adopted SEC and MSRB rules.

The SEC press release is available here.

The OCIE 2016 examination priorities are available here.

OCIE's August 19, 2014 letter concerning the Municipal Advisor Examination Initiative is available here.

MSRB's Net Assets for FY-15 Almost Triple from Five Years Ago.

WASHINGTON — The Municipal Securities Rulemaking Board had $69.52 million of net assets at the end of September, nearly triple the $25.94 million it had five years ago, according to MSRB financial documents.

Additionally, almost all of the self-regulator's revenues from fees rose in fiscal 2015, especially underwriting revenues from fees, up almost 30%, and revenues from enforcement agency actions, which more than tripled.

The only drop in revenue was from data subscriber fees, which fell about $34,425 or 1.85% to $1.82 million from $1.85 million.

The figures are from the MSRB's financial statement for fiscal year 2015, which ran from Oct. 1, 2014 through Sept. 30 of last year.

The board's $69.52 million of net assets for fiscal 2015 was up $9.1 million or 15% from $60.39 million at the end of the previous fiscal year. The board's net assets have been steadily growing for five years, after dropping for two fiscal years.

The board's total revenues for fiscal 2015 rose almost $9.34 million or 29% to $41.33 million from $31.99 million.

Its total expenses rose $2.72 million or 9.2% to $32.20 million from $29.48 million in 2014. Market information transparency programs and operations, at $15.56 million, made up almost half of the MSRB's expenses in fiscal year 2015. The next greatest expenses were $6.85 million for rulemaking and policy development and $5.56 million for administration.

In the revenue category, underwriting fee revenues rose to $12.99 million in fiscal year 2015 from about $9.98 million the previous year. Revenues from municipal advisor professional fees followed suit rising to $1.34 million compared to $968,700 in 2014. Fiscal 2015 was the second year MSRB collected those fees.

Revenue from rule violations also rose to more than $2.65 million from $709,523 in 2014. The Dodd Frank Act allowed the MSRB to collect a share of enforcement revenues from both the Securities and Exchange Commission and the Financial Industry Regulatory Authority.

This huge increase does not take include any enforcement revenue from either of the two sets of settlements that groups of underwriters entered into with the SEC under its Municipalities Continuing Disclosure Cooperation initiative, but may include enforcement revenue from the Edwards Jones case where Edward Jones paid $15 million in penalties to settle a case involving primary market pricing abuses.

While technology fee collections appeared to increase substantially to $7.27 million in fiscal 2015 from nearly $3.70 million, the latter figure does not take into account a $3.6 million partial rebate the MSRB gave to dealers in 2014 because the technology fund had exceeded its reserve target.

The MSRB's investments showed a gain of $8 million, growing to $57.93 million in fiscal 2015 from $49.77 million in 2014.

Underwriters, who have traditionally paid the large majority of the collected MSRB fees, have

consistently complained that newly regulated municipal advisors should have to shoulder more of the burden. Responding to such concerns, the MSRB proposed a plan last August to better distribute costs among regulated entities based on their level of involvement in market activities.

The self-regulator also decided it would raise its initial and annual fees, which all regulated members pay starting on Oct. 1, 2015 and would lower its underwriting fee starting on Jan. 1 of this year.

The initial fee rose to $1,000 from $100 and the annual fee changed to $1,000 from $500 while the underwriting fee dropped to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000.

The MSRB also made the previously temporary technology fee permanent at $1.00 per transaction for each interdealer and customer sale report to the board and said it would no longer use the technology fee money solely for capitalized hardware and software expenses but instead would use it wherever the organization deemed appropriate.

Dealer and advisor groups both criticized the change, saying it treated members unfairly.

Michael Decker, managing director and co-head of municipal securities with the Securities Industry and Financial Markets Association, said in September that the MSRB failed to address the previous inequities to underwriters and suggested the self-regulator instead impose an activity-based fee structure on MAs that would mimic the current underwriting fee.

Terri Heaton, president of the National Association of Municipal Advisors, said in September that small MAs will face an undue burden as they are forced to absorb the increased initial and annual fees.

THE BOND BUYER

BY JACK CASEY

JAN 11, 2016 4:33pm ET

New MSRB Notice Summarizes Provisions of Municipal Advisor Conduct Rule.

The Municipal Securities Rulemaking Board (MSRB) today published a regulatory notice detailing the development of its core conduct rule for municipal advisors and summarizing each of the new rule's provisions. MSRB Rule G-42, taking effect in June 2016, was approved by the Securities and Exchange Commission (SEC) in December 2015. Read the MSRB approval notice.

To facilitate compliance, the MSRB will host a free educational webinar in advance of the effective date of Rule G-42. The webinar will be held on Thursday, April 28, 2016 from 3:00 p.m.-4:00 p.m. Register for the webinar. Submit questions in advance of the webinar to MSRBEvents@msrb.org.

Also, the MSRB, in conjunction with the SEC and the Financial Industry Regulatory Authority (FINRA), will host a general compliance outreach program for municipal advisors in Philadelphia, PA and via live webcast on Wednesday, February 3, 2016. Register to attend.

MSRB Notice Details MA Conduct Requirements; Webinar Planned.

WASHINGTON – The Municipal Securities Rulemaking Board on Tuesday released a regulatory notice detailing new core conduct requirements for municipal advisors.

The MSRB also plans to hold a webinar to discuss Rule G-42's requirements on April 28 before they are implemented in June.

Rule G-42 was approved by the Securities and Exchange Commission on Dec. 23. The MSRB first proposed Rule G-42 in January 2014 and, after making several changes, filed it with the SEC for approval in April 2015. The SEC twice extended the time to consider the rule and the MSRB filed two amendments — one tightening and clarifying language contained in the rule and the second allowing for a limited exception to a controversial principal transaction ban for MAs.

A central portion of the rule defines the fiduciary duty MAs owe their clients to include both a "duty of care" and a "duty of loyalty."

The duty of loyalty is owed to an MA's municipal issuer clients and requires the advisor "without limitation … to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to [its] financial or other interests." The duty prevents an MA from engaging with municipal issuer clients if the MA cannot manage or prevent conflicts of interest.

The duty of care is owed to all clients and requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

Whether providing direct advice to a client or reviewing a third party's recommendation to a client, the MA has to show that it has a reasonable basis for the conclusions it shares with its client. To fulfill the obligation, the MA must tell its client about: the evaluation of material risks, potential benefits, structure and other characteristics of the recommended muni transaction or financial product; the basis for the advisor's belief that the transaction or product is suitable for the client; and whether the MA has investigated or considered other alternatives for the client. The MA must take into account such things as the client's financial situation and needs, objectives, tax status, risk tolerance, and liquidity needs, according to the notice.

Another part of the rule requires MAs to document their advisory relationships in writing before, at the start, or promptly after the start of their advisory activities with a client. The documentation portion of the rule requires seven pieces of information, including a description of the scope of municipal advisory activities and any conflicts of interest, the disclosure of which is described in a different section of the rule.

The rule does not provide an exhaustive list of reportable conflicts of interest, which must be reported before or at the start of the relationship, but lays out several examples, including: MA payments to be made to an issuer official to obtain an engagement for services; any advice an affiliate of the MA provides to the client that is directly related to the municipal advisory activities of the MA and; any fee-splitting arrangements involving the MA and a provider of investments or services to the client.

Conflicts of interest that are disclosed in writing must be detailed enough to tell the client the

nature, implications, and potential consequences of each conflict and must include an explanation of how the MA plans to address each instance, the MSRB said.

If an MA uses “reasonable diligence” to conclude it does not have any conflicts of interest, it must inform its issuer client or other borrower in writing that it came to that conclusion.

Additionally, if an MA gives advice to a client inadvertently, it does not have to follow the disclosure and documentation requirements. Instead, the MA could give its client a document that includes a disclaimer explaining and identifying the inadvertent advice and stating the MA is no longer giving that client advice. The MA must also review its supervisory procedures to better prevent inadvertent advice in the future.

The rule includes a list of specified prohibitions on MA activity, including excessive compensation in relation to the advice given, inaccurate invoices for advisory work, and false or materially misleading representations of an MA’s expertise. MAs also cannot enter into fee-splitting arrangements with an underwriter on a transaction for which the MA is providing advice or with regard to an undisclosed relationship with an investment or service provider for a municipal entity or obligated person client of the MA.

A final and controversial portion of the rule bans MAs from acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. The transaction would include any bank loan if its amount exceeds $1 million.

The proposed rule contained an outright ban on principal transactions for most of the time it was considered and drew strong criticism from dealer and issuer groups. They claimed the ban was overly burdensome and would drive up costs for issuers.

Rule G-42 now includes a narrow exception to the ban for registered broker-dealers on sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt securities, or corporate debt securities. The exception allows MAs to either make written disclosure on a transaction-b--transaction basis and receive the issuer’s written or oral consent or meet several additional procedural requirements so that the MA could make oral rather than written disclosure.

The Bond Buyer

by Jack Casey

Jan 13, 2016

State Street Pays $12 Million for SEC's Pay-to-Play Allegations.

State Street Corp. agreed to pay $12 million to settle U.S. Securities and Exchange Commission claims that a former senior vice president helped route illicit cash payments and political contributions to win lucrative contracts to service Ohio pension funds.

Vincent DeBaggis, who headed State Street’s public funds group at the time, hired an immigration attorney with no lobbying experience to funnel money to Ohio’s then-deputy treasurer Amer Ahmad, according to a statement Thursday from the SEC. DeBaggis also worked with a State Street lobbyist, Robert B. Crowe, to give at least $60,000 to the incumbent Treasurer’s election campaign.

From February 2010 to April 2011, State Street paid the attorney, Mohamed Noure Alo, $160,000 in fees with a substantial portion sent to Ahmad. Ahmad and Alo have been criminally convicted for other misconduct during Ahmad's tenure and are in federal prison.

"Pension fund contracts cannot be obtained on the basis of illicit political contributions and improper payoffs," Andrew J. Ceresney, head of the SEC's enforcement division, said in the statement. "DeBaggis corruptly influenced the steering of pension fund custody contracts to State Street through bribes and campaign donations."

Wall Street's main regulator has been cracking down on the so-called pay-to-play scandals in the $3.7 trillion municipal bond market. In one of the largest, former New York State Comptroller Alan Hevesi spent 20 months in prison after pleading guilty to directing $250 million in pension funds to an investment firm in exchange for travel, gifts and more than $500,000 in donations.

State Street, which didn't admit or deny the SEC's findings, agreed to pay an $8 million penalty and $4 million in disgorgement and interest. The firm is a custody bank, and keeps records, tracks performance and lends securities for institutional investors including mutual funds, pension funds and hedge funds.

"The SEC's allegations regarding Mr. Crowe are patently untrue," his attorney Arthur McMahon said in a statement. "We are disappointed that Mr. Crowe will be required to defend himself and his reputation in a case that the SEC has no basis for bringing." Crowe is a partner at Nelson Mullins Riley & Scarborough.

The Ohio Public Employees Retirement System said in a statement that unlike most pension funds in U.S., it has no authority to contract, select or dictate terms with custodial banks and supports changes to the selection process in Ohio.

Requests for comment from an attorney representing DeBaggis weren't immediately returned. State Street didn't immediately return a request for comment.

Bloomberg Business

by Matt Robinson

January 14, 2016 — 11:51 AM PST Updated on January 14, 2016 — 3:06 PM PST

BDA's January 2016 Member Fly-in Focused on FINRA 4210 Margin Amendments.

BDA member firms met with senior regulatory staff at the SEC and FINRA and senior congressional staff in DC to discuss FINRA's proposed margin amendments for the mortgage market.

On Thursday January 7th, as part of BDA's member fly-in initiative, BDA member firms and BDA staff met with the SEC, FINRA, and senior staff at the Senate Banking Committee and the House Financial Services Committee to discuss the proposed TBA, CMO, and specified pool margin amendments to Rule 4210 that FINRA filed with the SEC. BDA submitted a comment letter in October 2015. The proposed rule can be read here.

Participants included:

- Erica Willems and Nick Pruhs from Baird
- Chris Melton from Coastal Securities
- Jason McCloud and Jeffrey Skinner from Stifel Nicolaus
- Allen Riggs from Vining Sparks

Meetings included:

- SEC Office of Trading and Markets
- FINRA senior regulatory staff
- Senate Banking Counsel
- House Financial Services Counsel

BDA members in attendance focused on the various compliance burdens the rule presents that are listed below. In addition, BDA expressed concerns to the SEC and senior congressional staff with SRO overreach in violation of congressional intent.

- Advocating for at least an 18 month implementation timeframe if this rule is approved.
- The burden of establishing margin agreements with all of a dealer's exempt and non-exempt accounts that trade mortgage products. And the fear that many dealer clients (large and small) will choose not to enter into margin agreements or that smaller dealers that do a small amount of mortgage business will chose to exit the market.
- Managing and tracking exposures to retail clients that do not present systemic risk and will very rarely have exposures that will exceed the proposed rule's $250,000 minimum transfer level. BDA firms also advocated for higher minimum transfer and gross open position limits.
- The inconsistency of the margin and liquidation time requirements compared to existing rules for other securities.

Bond Dealers of America

01-11-16

BDA Submits Comment Letter to SEC in Response to FINRA ATS Trade Reporting Amendments.

BDA submitted a comment letter to the SEC on SR-FINRA-2015-055, a Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide FINRA with Authority to Grant Exemptions from TRACE Reporting for Certain ATS Transactions.

Please review BDA's comment letter to the SEC here.

- The proposed rule creates a process for ATSs to be exempt from certain TRACE reporting responsibilities if certain conditions are met. For an ATS to be exempt, the ATS and a dealer will be required to have a written agreement in place which states that the dealer (and not the ATS) is responsible for reporting trades to TRACE.
- Additionally, dealers will be required to add ATS MPIDs to the TRACE reports for exempted trades. BDA's letter objected to the fact that FINRA filed these rule changes as "non-controversial" for immediate effectiveness with a July 18, 2016 implementation date without a sufficient public comment period.
- Additionally, BDA argues that dealers should be given more time to work with compliance

personnel, third-party vendors, and ATSs before the implementation date.

Bond Dealers of America

01-13-15

The Tougher U.S. Pension Rules in Puerto Rico's Rescue Plan.

The proposed changes would mark unprecedented federal authority over state and local pensions and make their financial status look a lot worse.

Congress might choose to extend unprecedented federal authority over state and local pensions. An effort to impose new reporting requirements, if approved, would ultimately cast the financial status of state and local pensions in a much more dire light.

The proposed requirements were included as part of a financial assistance bill introduced last month to address Puerto Rico's debt crisis, but they would also apply to states and localities throughout the United States.

The legislation, sponsored by Orrin Hatch, a Utah Republican who chairs the Senate Finance Committee, would make state and local pension plans file annual reports with the U.S. Treasury Department. The new filings would have to include an alternative valuation detailing how well-funded the plan is. In nearly every case, that would mean a lower valuation.

State and local government groups, including the National Conference of State Legislatures and the National Association of State Retirement Administrators (NASRA), quickly voiced their opposition to the idea. They sent a letter to Congress, along with 15 other groups, complaining that the proposed provision targets all pensions, rather than limiting the issue to Puerto Rico, and that extra filing at the federal level would be too time-consuming and costly.

"I just don't understand the nexus between adding state and local pension provisions into a bill that has to do [with] Congress' oversight and assistance to Puerto Rico," said Jeannine Markoe Raymond, NASRA's director of federal relations.

The legislation was prompted by Puerto Rico's dire financial problems. Its government is saddled with $72 billion in debt that it can't pay and wants to cut its bond payments in order to meet other obligations, including pensions. The island territory has already defaulted on a debt payment, and going forward, its political leaders said they'll only make full payments on the debt it's legally obligated to pay.

But for some in Congress, the legislation is an opportunity to fix more than just Puerto Rico's finances.

"This pattern will inevitably repeat itself in several of the states if nothing changes," said a Senate aide who asked not to be identified. "If Congress is going to help the territory, then now is the time to begin addressing the broader problem, and a more accurate disclosure of public pension liabilities is a good place to start."

The biggest potential change centers on each pension plan's discount rate — that is, the rate of return on investments that's used to determine its overall fiscal health. The higher the expected rate

of return, the lower the amount of funding a government needs to pay into its pension plan. The opposite, of course, is true when the rate of return is lower. The Senate bill would require plans to use an assumed rate of return pegged to a Treasury rate (these days, around 3 to 4 percent), instead of the 7 to 8 percent rate most plans now use. That change would have a drastic effect on how financially healthy a plan looks.

New Jersey has already experienced this.

The state's plans recently had to change the way they value their pension assets and liabilities due to new state and local pension accounting rules from the Governmental Accounting Standards Board last year. As a result, New Jersey's state employees fund went from being 46 percent funded in 2013 to only 28 percent funded in 2014. Its state teachers plan dropped even further — from 57 percent funded to 34 percent. All told, the accounting change more than doubled the state's unfunded liability for those two plans to $75 billion.

This isn't the first time Congress has sought to interfere with state and local pension regulations.

In 2011 and again in 2013, California Republican Rep. Devin Nunes proposed a so-called pension transparency bill nicknamed PEPTA. It failed both times to gain any traction, but his legislation similarly called for state and local pensions to file additional reports with the Treasury that showed the plan's funding status using a market rate of return.

Nunes didn't seek to make use of a market rate mandatory, but his approach included a big stick, threatening to remove a vital infrastructure financing perk: Governments that didn't participate could not issue tax-free municipal bonds.

Given disagreement in Congress over a Puerto Rico bailout, Hatch's bill faces a tough road ahead. Democrats favor a proposal by President Obama that, among other things, would let Puerto Rico restructure its debt in bankruptcy. The addition of the reporting requirements for all state and local pensions could very well be an additional point of contention.

Raymond said her group plans to use the debate over the latest proposed legislation as an opportunity to educate members of Congress about the overall fiscal health of state and local governments. Included along with last month's opposition letter was an overview of state and local governments' financial data.

"Every state, since the Great Recession, has made changes to one or more of its pension plans," said Raymond. "I'm not sure everyone understands that. This isn't an area that has been ignored by state and local governments."

GOVERNING.COM

BY LIZ FARMER | JANUARY 7, 2016

The Trials and Tribulations of Auditing Government.

The people who probe governments' finances and effectiveness often have little power and are at risk of losing more, says Philadelphia Controller Alan Butkovitz.

Controllers (otherwise known as comptrollers) produce a remarkable amount of important

information that could improve government transparency. Though their function and title differs from place to place, they generally oversee and audit government finances, examine program effectiveness and monitor compliance with laws.

But all too often their work ends up buried in old computer files and gathering dust in file cabinets. This is sometimes because their conclusions are politically unpopular or because they simply don't take the steps necessary to draw attention to their work.

This is a significant concern for Philadelphia Controller Alan Butkovitz, who has been in office since 2006. He's worried about what he calls a "trend of taking power away from controllers." He spoke with us about this issue and the importance of the position in the following interview, which has been edited for clarity and length.

We know you're concerned about controllers having sufficient influence. Could you comment about that?

There's a trend of taking power away from controllers. The budget power is all in the hands of the mayor and city council — or for the counties, in the county commissioners. They've been very restrictive in the kinds of money that they're willing for the controllers to have. There's an ongoing legislative assault to take away more power from controllers.

The controller's offices in many smaller counties are completely overwhelmed with routine day-t--day operations. They do a professional job and then get unfunded and outvoted. Then they shrug their shoulders and say they stood for the right thing.

Any advice for other controllers?

You have to avoid becoming isolated, and you have to show that you're able to win a fight.

Do you have any success stories for controllers in these situations?

Thirteen years ago, school districts were underwater financially. There were calamitous deficits and a lot of misrepresentation back in 2006. When we attacked this issue, there was a lot of skepticism. It took a long time and a lot of examples to shift opinions, but now we don't have to do the outreach. There are all sorts of stakeholders who come to us for a judgment of what could be done with the schools. You have to develop a personal credibility with the public that is based on concrete issues.

How do you develop that kind of credibility?

You need to be persistent on specific issues — instead of hitting an issue and then being done with it. There is no automatic deference to controller findings. In this era, you have to accumulate allies, evidence and a scorecard for being right. It takes many years.

We try to become the expert in Philadelphia on the subject we're involved with. It's hard to argue with us. That's even the case with issues of corruption. We did the first forensic audit regarding the Philadelphia sheriff's office. There was $11 million of inappropriate spending and that had an impact on over 7,000 people.

How does that kind of persistence and development of expertise evolve?

We identified high priority issues like slow response times on ambulances or failure of the license and inspection department to do their safety enforcement mission competently. We would revisit

those issues on very short timetables. It took a lot of time to build the case on each issue.

Are there any particular tools you've used that have helped get attention to your findings?

We developed video audits. We have found they have devastating impact. For example, we did our third review of the condition of school buildings. The video that showed the bathrooms clogged with human waste that isn't cleaned up — that had the school district surrender. Traditionally it has been able to deny the situation.

Is there any lesson you've learned that you wish you had known when you were newer to the office?

We developed a relationship with the media and became a resource for them. It would have been tremendously valuable to have those strong relationships in place in the first year. A lot of the work we do is technical and difficult to understand. I would have liked to create the relationships more quickly.

Are there any ways you wish the controller's office was treated differently within the government structure?

I wish that the controller was consulted at earlier points in the process on policy matters. We have the role of giving an opinion to the Pennsylvania Intergovernmental Cooperation Authority, but that doesn't come until after the city council approves the budget. We're the only people who delve into the accuracy of the projections about the city's finances for the next five years. It's a little backwards. Our opinion should be required before the council approves the budget.

That would also be a good idea in a number of other policy areas. For example, we have found a lot of systemic problems in a lot of agencies like L&I [Licenses and Inspections]. When we find a pattern of systemic abuse, there ought to be the requirement that our well-thought-out solutions get considered.

What about your relationship with Mayor Nutter, who has just left office? We've heard it hasn't been the best.

I wish we would have had a better relationship with Mayor Nutter, but I don't know how we could have done that. He used to call me at 11 at night to yell at me. The option would have been to do what he wanted, which would have been sacrificing our independence. Part of that is the nature of the relationship. You're criticizing people and giving demerits in their career advancement.

GOVERNING.COM

BY KATHERINE BARRETT & RICHARD GREENE | JANUARY 7, 2016

MSRB Proposes Rule Changes on Interdealer Transaction Failures.

WASHINGTON – The Municipal Securities Rulemaking Board is seeking comment on a proposal it says would lessen the effect of interdealer transaction failures on the municipal market while providing needed changes to an outdated rule.

The proposed changes are to a portion of MSRB Rule G-12 on uniform practice that governs close-

out procedures after a dealer fails to deliver securities to another dealer by the agreed upon settlement date. Under the new proposal, interdealer failures would have to be closed out within 30 calendar days of the settlement date, instead of the currently recommended 90 days.

Comments on the proposal are to be submitted by March 6.

This section of G-12 has not been updated since 1983 and the proposal is part of a larger MSRB effort to revise, reorganize and retire rules that may have become outdated or less effective as market practices and participants have evolved.

The proposal would eliminate the dated references to phone notification and take into account the current trading environment, which now includes things like alternative trading systems and the Depository Trust & Clearing Corp.'s automated comparison system and book entry settlement.

"Evolutions in the municipal securities market have modernized the manner in which interdealer transactions are cleared and settled," said MSRB executive director Lynnette Kelly. "More timely resolution of open transactions would give investors greater certainty in their purchases and would benefit dealers by reducing the risk and costs associated with failed interdealer trades."

Rule G-12 currently offers optional procedures to close out interdealer failures and allows the purchasing dealer to give the selling dealer notice of close-out on any business day from five to 90 business days after the settlement date. However, the rule's 90-day close-out deadline is not a requirement and dealers that want to resolve interdealer failures sometimes cannot do so because they do not have a willing or cooperative counterparty, the MSRB said.

The proposed rule changes would allow the purchasing dealer to issue a close-out notice the day after the settlement date and would then mandate the 30 calendar day timeframe. The changes would also allow the purchasing dealer to start close-out procedures within three business days of the settlement date, a change from the current 10-business day window. Additionally, the proposal would change the earliest day for execution to four days after electronic notification instead of the rule's current 11 days after telephonic notice.

If the proposal is implemented, the MSRB will give dealers a 90-calendar day grace period to resolve all outstanding interdealer failures.

While the time period for close-outs would be significantly shortened, the three interdealer options for remedying a failed transaction would remain the same through the transition. The purchasing dealer could choose a "buy-in" and go to the open market to purchase the securities. It could also choose to accept securities from the selling dealer that are similar to the originally purchased securities in a number of areas. Lastly, the purchasing dealer could require the seller to repurchase the securities along with payment of accrued interest and the burden of any change in market price or yield.

One area of concern the MSRB specifically mentioned is when the purchasing dealer agrees to sell securities to a customer but never receives them from the selling dealer. While the proposal would not specifically govern the relationship between the purchasing dealer and its customers, the MSRB said it would benefit customers by providing greater certainty that the securities they paid for are in their account. Additionally, the rule changes may give customers greater confidence in the market.

Customers and their dealers will still have to consider which of the three interdealer close-out options works best for the situation, as a customer may not want different securities that have the same properties or would likely have to pay taxes on the interest they receive if the dealer chooses

the third option of recouping its payment and any accrued interest.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said BDA is pleased that the MSRB is trying to provide clearer information for investors. She added however that there could be unknown costs to BDA members and that the organization plans to provide more feedback closer to the comment deadline.

Leslie Norwood, associate general counsel and co-head of the municipal securities division for the Securities Industry and Financial Markets Association, said SIFMA "wholeheartedly" supports rulemaking like this that reduces risk and costs to dealers while giving investors greater certainty. SIFMA will continue to look for any unanticipated or negative consequences that could come from the proposal and file a comment letter, she added.

THE BOND BUYER

BY JACK CASEY

JAN 6, 2016 3:04pm ET

MSRB Reminds Underwriters of February 29, 2016 Deadline for Submissions of 529 College Savings Plan Data.

The Municipal Securities Rulemaking Board (MSRB) reminds underwriters that the semiannual submissions of data on municipal fund securities, including 529 college savings plans, are due to the MSRB no later than February 29, 2016. MSRB Rule G-45 requires a dealer, when acting in the capacity of an underwriter for a 529 college savings plan, to provide the MSRB with information. The required information includes plan descriptive information, assets, contributions, withdrawals, fees and cost structure, benchmarks and performance.

Additional Resources

EMMA Dataport Manual and Specifications for 529 College Savings Plan Data (Form G-45) Submissions

Submitting 529 College Savings Plan Data

A Growing Conflict in Wall St. Buyouts.

It goes by a rather innocuous-sounding name, the sort of phrase you might breeze past in a loan document: "designated lender counsel."

But pay attention, because it's the latest conflict-ridden practice on Wall Street.

Over the last several years, a new, insidious relationship has quietly developed between the nation's largest private equity firms, the banks that lend them billions to fund their buyouts and the law firms that advise on these deals.

Historically, when a bank, like JPMorgan Chase, made a loan to a private equity firm planning a big acquisition, like the Blackstone Group, the bank would hire an outside law firm to scrutinize the loan and the transaction.

That made a lot of sense: Loans made to finance private equity deals are some of the riskiest because they typically involve a lot of debt. They are called “leveraged buyouts” for a reason. Having a team of lawyers review an often complex loan document could keep a bank from making a deal that might later come back to haunt it. The Federal Reserve, so worried about these kinds of loans, has since the financial crisis sought to make it tougher for big banks to make highly leveraged loans by issuing rules that determine the amount of money they can lend.

But neither the Federal Reserve nor any other regulator has addressed this latest private equity maneuver.

Instead of allowing a bank to hire its own lawyers to vet a potential loan, many large private equity firms — Blackstone, Apollo Global Management, Kohlberg Kravis Roberts and Carlyle Group among them — now regularly require the banks to use a specific law firm that they designate, hence the term “designated lender counsel.” The private equity firms pay for the law firm’s services, too.

Think about it this way: It is, in effect, the equivalent of your employer giving you an employment agreement and telling you that the only lawyer who can look it over is the one the company has retained.

Bankers and their in-house lawyers privately complain that the private equity firms are assigning them law firms that have little allegiance to them and might not necessarily have their best interests at heart. But given the pressure to secure these big loan deals — which can be worth hundreds of millions of dollars in fees — few are willing to publicly criticize the practice.

Indeed, when I called private equity firms — representatives from which all refused to speak on the record about this practice — they all said that if the banks were really that upset about it, the firms would have already heard complaints.

But that ignores the influence that private equity firms have over the banks, and the banks’ lack of incentive to speak up.

“The borrower has a lot of muscle, a lot of leverage,” Robert Profusek, a partner at the law firm Jones Day and one of the few lawyers who would speak on the record about this issue, said of the private equity firms. “When you’re competing for business, you’re not going to turn it down because you can’t use law firm A rather than law firm B.” (Mr. Profusek’s firm does some work as designated lender counsel.)

Not all private equity firms are pushing the banks to hire their recommended law firms. Notably, Clayton, Dubilier & Rice, one of the pioneers of the leveraged buyout industry, does not engage in the practice. A representative for the firm declined to comment.

When I was reporting this column, many private equity executives and lawyers suggested that the practice had taken place for many years. “There’s nothing new here,” one dealmaker said. Another called it “irrelevant.” They said that the law firms assigned to work for the banks had a fiduciary duty to give them proper advice and that there would be too much reputational risk in rolling over for a private equity firm.

That might be true, but it doesn’t change the fact that the law firms doing this work have two “clients”: the private equity firms that refer them all the business and the banks, to whom they owe

the fiduciary duty.

In the past, each bank lending money on a deal would hire its own law firm, which resulted in multiple law firms scrutinizing every transaction. Even then, assuming the deal was completed, the private equity firm paid the legal fees.

Private equity firms defend the practice, saying it saves clients from having to pay double or triple the amount in legal fees. The firms also say that this practice takes place on big corporate loan deals. For many decades, large American companies that regularly issue debt, like I.B.M. and General Electric, have designated a law firm to represent the banks underwriting loans. The companies justify this because the deals are boilerplate.

But in the private equity arena, it's very different. There is no great efficiency to having one law firm handle all of it, because each transaction is specific to a different company. It might be a real estate deal one day, and a technology or pharmaceutical deal the next.

"Most of the due diligence isn't about the firm, it's about the portfolio company. So it isn't like you build up this knowledge base," Mr. Profusek said.

Some law firms, like Paul Hastings, have made a lucrative business serving as a designated lender counsel, aggressively marketing their services to the real client: the private equity firms. According to the Thomson Reuters Deals Intelligence, in 2010 Paul Hastings had virtually no relationship with banks making leveraged loans; today, it is the No. 2 ranked law firm in this business. A spokeswoman for Paul Hastings declined to comment.

The banking industry's association, the Securities Industry and Financial Markets Association, issued a report in 2013 that raised red flags about using designated lender counsel in the context of municipal bond offerings. The association said that the practice should be disclosed by the municipalities in their bond offering documents. "Any undue influence by an issuer, however, that calls into question the qualifications or independence of underwriter's counsel may create risk to the issuer," it wrote.

Of course, the choice of which law firm will represent a bank on a big private deal will not lead to the next financial crisis. But if regulators care about reducing risk and eliminating conflicts in the markets, this practice might be a good one to examine.

The New York Times

By Andrew Ross Sorkin

Jan. 4, 2016

In Puerto Rico's Debt Crisis, an Absence of Enforcers.

The municipal bond market in the United States is desperately lacking enforcers. Puerto Rico's debt crisis is the latest example to expose the shortcoming. Foolish financial crowds had better wise up to other danger zones.

Since the investment strategist Ed Yardeni coined the term "bond vigilantes" in the 1980s, it has become somewhat accepted wisdom that if public officials are unwilling to rein in spending, markets

will do it for them by making it more expensive to borrow. That failed to happen in Puerto Rico.

The public debt of the United States commonwealth in the Caribbean has soared to around $70 billion from under $40 billion in 2006, when expiring manufacturing tax breaks pushed its economy into a recession from which it has yet to recover. The burden is crippling for the island of 3.6 million people, where the poverty rate exceeds 40 percent. High unemployment and rising departures of residents mean last week's decision to skip $37 million of scheduled interest and principal payments is probably only the beginning.

As recently as 2012, yields on Puerto Rico's general obligation debt were just 2 percentage points higher than an index of similar bonds rated AAA, according to the Thomson Reuters Municipal Market Monitor. That's about as much as other government borrowers on the low end of the investment-grade scale were paying at the time, despite debt levels already topping $60 billion. It was only in 2013, after years of deficit spending and economic stagnation, that borrowing costs belatedly started to surge.

Several factors came into play. First, failure to pay is rare. For 2015, the default rate on municipal debt through November was less than 0.2 percent, according to Bank of America Merrill Lynch. Puerto Rico bonds are also exempt from federal, state and local income tax, making them hugely appealing to retail investors and mutual funds. Throw in near-zero United States Treasury rates, and it's no wonder discipline weakened.

Other cash-poor local governments, including those of New Jersey, Illinois and the City of Chicago, also might have been spared some of the trouble they now face by more discerning debt investors. Without bond vigilantes, fiscal profligacy is all but inevitable. Puerto Rico at least represents a chance to relearn the lesson.

THE NEW YORK TIMES

By KEVIN ALLISON

JAN. 7, 2016

MSRB Requests Comment on Modernizing Close-Out Procedures.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to update its requirements for procedures for municipal securities dealers related to the close-out of open inter-dealer transactions. Proposed amendments to MSRB Rule G-12 would require that open transactions be closed out no later than 30 calendar days after settlement date, and make other changes designed to accelerate the close-out process.

"Evolutions in the municipal securities market have modernized the manner in which inter-dealer transactions are cleared and settled," said MSRB Executive Director Lynnette Kelly. "More timely resolution of open transactions would give investors greater certainty in their purchases, and would benefit dealers by reducing the risk and costs associated with failed inter-dealer trades."

The proposed rule change is the result of an ongoing effort to promote regulatory efficiency by revising, reorganizing or retiring MSRB rules based on an assessment of current market practices and input from regulated entities, other market stakeholders and fellow regulators. Rule changes resulting from the review seek to promote more effective and efficient compliance for regulated

entities, and to align MSRB rules with those of other self-regulatory organizations or government agencies where appropriate.

Comments should be submitted no later than March 6, 2016.

Date: January 6, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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GFOA Secures Wins in End-of-Year Federal Legislation.

On December 18 Congress approved a $1.1 trillion fiscal 2016 omnibus spending package that includes several GFOA priority items – a two-year extension of the Cadillac Tax and a one-year extension of the Internet Tax Freedom Act.

The Cadillac Tax: The omnibus spending bill contains a two-year delay of the implementation of the Cadillac Tax. Thanks in part to an informational campaign conducted by GFOA with a broad coalition of public and private employers, retirement systems, and many other interested groups, repealing the Cadillac tax levied on high-cost employer-sponsored health coverage gained bipartisan and bicameral support throughout the last few months of 2015.

The Cadillac tax, designed originally to begin in 2018, has well over half of the members in both chambers opposing the tax as cosigners on legislation that would fully repeal the tax. On December 3rd, for example, an amendment to repeal the tax easily passed the Senate in a 90-10 vote earlier this month. This vote was merely symbolic, though, as the measure was tacked to the reconciliation bill which the White House vetoed.

While the White House does not support a two-year delay, the President has indicated he will not veto the omnibus legislation based on the postponement.

The Internet Tax Freedom Act: The fiscal 2016 omnibus spending bill extends the Internet Tax Freedom Act for just one year. This one-year extension is welcome in contrast to the alternative – a permanent extension of the ITFA, which GFOA strongly opposes.

Congressional champions of a permanent ITFA extension actually snuck the language of their bill (HR 235/S 431) into an unrelated measure (HR 644), which the House approved on December 11. However Senate leadership soon realized that they lacked the votes to pass the a measure with permanent ITFA language included in it, thanks to a swift and direct information campaign from the GFOA, our state and local government association partners, and a coalition of Senators who support our position on ITFA. Our successful advocacy efforts stalled Senate consideration of HR 644 until February 2016. Ahead of the vote GFOA is asking our members to send letters to their Senators urging them to oppose HR 235/S 431 – the Internet Tax Freedom Forever Act and strip the language of this measure from the conference report on HR 644. A draft letter is available for your use here.

Clock Ticking on Advisors' Compliance With SEC Pay-to-Play Rules.

Now that FINRA, MSRB have filed pay-to-play rules with SEC, compliance with third-party solicitor provision at hand

Now that the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board have filed their proposed pay-to-play rules with the Securities and Exchange Commission, the clock will start ticking on when advisors must start complying with the third-party solicitor provision of the SEC's "pay-to-play" rule, says Karen Barr, president and CEO of the Investment Adviser Association.

While advisors have been required to comply with most provisions of the SEC's pay-to-play rule since 2011, the SEC delayed the compliance date of the third-party solicitor aspect of the rule so that FINRA and the MSRB would have time to adopt a pay-to-play rule for broker-dealers and municipal advisors, Barr told ThinkAdvisor Thursday.

Earlier in 2015, the SEC staff "stated publicly that [the SEC] would not enforce these provisions until the later effective date of either FINRA- or MSRB-adopted pay-to-play rules," which must be approved by the SEC. Both FINRA and MSRB filed their proposed rules on Dec. 16.

Barr notes that IAA had concerns with how FINRA's original proposal would have affected solicitors affiliated with investment advisors, but IAA is "pleased that FINRA eliminated the problematic provision" in its final rule that was sent to the SEC.

The SEC released "much-needed clarity" provided in mid-June frequently asked questions (FAQ) regarding compliance with new provisions in its pay-to-play rule.

FINRA's proposed rule change would amend FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish "pay-to-play" and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisors.

The MSRB's proposal seeks to safeguard the municipal securities market against pay-to-play practices, and the appearance of those practices, when state and local governments hire outside financial professionals.

The proposed regulations would extend the MSRB's well-established municipal securities dealer pay-to-play rule to all municipal advisors, including those acting as third-party solicitors, ushering in the first time that MSRB rule provisions are specifically tailored to the activities of those that solicit business from municipal entities on behalf of third-party municipal securities dealers, municipal advisors and investment advisors.

"For more than 20 years, the MSRB's pay-to-play rule for dealers has served as a model for other regulations to address public corruption, or the appearance of corruption," said MSRB Executive Director Lynnette Kelly, in a statement. "Applying this proven model to municipal advisors will ensure that all regulated municipal finance professionals are held to the same high standards of integrity."

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors, "whose advice to state and local governments can impact municipal finance deals in the billions of dollars," MSRB says.

The proposed amendments to MSRB Rule G-37 would curb the giving of political contributions to state and local officials in exchange for the award of municipal advisory business and provide greater transparency regarding municipal advisors' political contributions. Consistent with the existing rule for dealers, the rule would generally prohibit municipal advisors from engaging in municipal advisory business with municipal entities for two years if certain political contributions have been made to officials of those entities who can influence the award of business.

Also like the existing rule for dealers, municipal advisors would be required to disclose their political contributions to municipal entity officials and bond ballot campaigns for posting on the MSRB's public Electronic Municipal Market Access website.

ThinkAdvisor

By Melanie Waddell

Washington Bureau Chief
Investment Advisor Magazine
@thinkadv_career

December 31, 2015

MSRB Seeks Board of Directors Applicants.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.7 trillion municipal securities market, is accepting applications for its Board of Directors. The Board sets the strategic direction of the organization, makes policy decisions, authorizes rulemaking and market transparency initiatives, and oversees MSRB operations.

The MSRB is seeking individuals knowledgeable about the municipal market to help craft policies on the regulation of financial professionals, market structure, the MSRB's Electronic Municipal Market Access (EMMA®) website — a vital tool used by market participants to monitor municipal security trade price and disclosure information — and other topics.

The MSRB Board consists of 11 independent members that are representative of the public, including investors, municipal entities and other non-MSRB regulated individuals. The Board also has 10 members that represent MSRB-regulated entities, including broker dealers, bank dealers and municipal advisors. The MSRB is seeking applicants to fill four public and three regulated-entity positions, one of which is a municipal advisor. The seven Board terms begin October 1, 2016.

Qualified individuals from around the country representing diverse organizations and market perspectives should consider applying. Applicants with strong knowledge of the pricing and trading of municipal securities, including those with institutional "buy-side" experience, are encouraged to apply. The MSRB is particularly interested in investor applicants. MSRB Rule A-3 outlines requirements for all applicants to the Board, including specific eligibility requirements to serve as a public or regulated Board member.

To be considered for a position on the MSRB Board of Directors, submit an application, which is available on the MSRB Board of Directors Application Portal, no later than February 19, 2016. Questions can be directed to Sara Majroh, Manager, Corporate Governance, at 202-838-1359 or at

smajroh@msrb.org.

Date: January 4, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Reminds Regulated Entities of January 1, 2016 Implementation Date of Underwriting Fee Decrease.

The Municipal Securities Rulemaking Board (MSRB) reminds brokers, dealers and municipal securities dealers that amendments to MSRB Rule A-13, reducing the underwriting fee, become operative January 1, 2016. The underwriting fee is decreasing from .003% ($.03) to .00275% ($.0275) per $1,000 of the par value. The reduction in the underwriting fee followed an extensive holistic review of MSRB fees by its Board of Directors.

Read the regulatory notice.

Dealers Want MSRB, FINRA to Adopt Same, Less Costly Markup Proposals.

WASHINGTON – Dealer groups want the Municipal Securities Rulemaking Board and Financial Industry Regulatory Authority to adopt the same approach, but one that is less costly and burdensome, for requiring dealers acting as principals to disclose to retail customers the markups and markdowns on muni trades.

The self-regulators' proposals are not currently aligned. The Securities Industry and Financial Markets Association also is urging them to allow dealers to choose between several approaches.

The groups made their comments in responding to the MSRB and FINRA markup proposals.

The MSRB, initially proposed dealers disclose on their confirmations a "reference price" of the same security traded on the same day, but changed course in late September after receiving complaints. Instead it proposed requiring dealers to disclose markups, which it defined as "the difference between the price to the customer and the prevailing market price for the security." In its proposed changes to MSRB Rule G-15 on confirmation, the MSRB also asked commenters to weigh in on whether their previous reference price idea would be a better fit for the market.

FINRA's proposal more closely resembles the MSRB's original reference price idea and would require dealers to disclose the differential between the price to the customer and the dealer's reference price.

Bond Dealers of America and SIFMA both said they appreciate the regulated efforts and support giving customers more information, but are troubled by the differing proposals from the two regulators. The MSRB and FINRA must adopt identical requirements and language for any final rule, they said. Any rule would also have to include specific guidance on acceptable ways of determining a markup or reference price under the regulation.

“As currently formulated, the proposals lack necessary specificity, present unworkable challenges in application and operation, risk misleading the very customers they are intended to protect, and have the potential to undermine bond market liquidity,” SIFMA said in a joint letter from associate general counsel and co-head of the municipal securities division Leslie Norwood and managing director of the capital markets division Sean Davy.

BDA chief executive officer Mike Nicholas said BDA “strongly urges regulators to pursue a harmonized rule that represents the least cost, least complex, and most understandable disclosure method,” which neither of the regulators’ proposals would accomplish, as written.

Under the MSRB’s markup proposal, a dealer buying or selling bonds for its own account would be required to disclose the markup or markdown on a customer’s confirmation when: it executes a transaction on the same side of the market as the customer; the transaction is greater than or equal to the size of the customer’s, and: the dealer transaction occurs within two-hours of the customer transaction.

Those markups and markdowns would have to be disclosed both as a total dollar amount and as a percentage of the principal amount of the customer transaction, according to the MSRB. Even if the markup did not have to be disclosed, a dealer would have to provide the investor a hyperlink and URL address to the “Security Details” page for the muni on EMMA, as well as a time of execution for the customer’s trade.

The MSRB would limit this proposed rule to the secondary market by excluding transactions in new issue securities executed at the list offering price by members of the underwriting group.

There are also two organizational caveats to the rule. If a dealer is executing a transaction from an affiliate’s inventory of munis, the rule would require the dealer to “look through” to the affiliate’s transactions with the “street” and other customers to see if the affiliate had a same-side of the market transaction within the two-hour window. Dealers that have independently operating trading desks would be exempt from disclosing markups if they could prove that the customer transaction occurred separately from the principal trading desk that executed the dealer’s same-side market transaction and that the desk was not aware of the retail customer transaction.

SIFMA said it agrees with the MSRB’s proposal to limit the rule to retail investors and also supports the two-hour time window, which “generally would provide pricing information that is more representative of the market at the time of the customer transaction.” The group added that the timeframe would address any concerns that firms would wait to trade outside of the two-hour limit because MSRB data shows 96% of all trades that were followed by another trade in the same municipal security on the same day had the second trade occur within two hours.

BDA said it would prefer the disclosure instead be based on a full trading day, as FINRA has proposed, because it would minimize technology costs and operational complexity that would come from a shorter time period.

Both groups agreed that the MSRB’s proposal would result in substantial costs on dealers and urged further study of the cost-benefit breakdown of implementing such a rule. SIFMA said the costs and burdens would be “enormous” because of necessary technology changes and ongoing considerations like compliance reviews, internal audits, and training of personnel.

A better solution, according to SIFMA, would be to give firms a flexible framework that would allow them to choose to adopt something either similar to FINRA’s framework, or the MSRB’s proposed standard, or a different standard that would fit into the regulators’ goal of disclosing reference

prices, subject to further guidance.

Some firms already disclose markups, whether they use a prevailing market price disclosure framework or some other method, SIFMA said. A system that gives flexibility instead of a single standard may fit better in the existing dealer community, Norwood and Davy added.

One example SIFMA suggested is to allow firms to use a Cusip-specific volume weighted average price, produced by EMMA, as a reference for customers on confirmations. Using a VWAP may also be easier to explain to customers, Norwood and Davy said. It also would lower the cost of implementation because firms would be able to use regulators' already existing systems for the information instead of having to develop their own.

Nicholas made a similar argument in his letter saying use of the centralized data on EMMA is the "least complex, lowest cost proposal" available.

"BDA recommends that regulators leverage the transaction data that they already hold to provide the type of retail confirmation disclosure the proposals are designed to create," he said. "This method represents a more efficient way of delivering a confirmation disclosure."

If the MSRB decides to pursue something similar to its current proposal, SIFMA asked that dealers have at least three years to implement the necessary changes because they will also be preparing for an industry-wide switch to a two-day settlement cycle.

THE BOND BUYER

BY JACK CASEY

DEC 14, 2015 4:32pm ET

Messer, GFOA Pushing HQLA Bill in Congress.

WASHINGTON – Rep. Luke Messer, R-Ind., and local finance officers plan to continue to push a bill that would treat investment grade and actively traded municipal securities as high quality liquid assets under a bank liquidity rule adopted by bank regulators in 2014.

Messer, who introduced the bill in May, spoke Friday with Government Finance Officers Association members gathered for the group's winter meeting in Washington.

The bipartisan bill, co-sponsored by Rep. Carolyn Maloney, D-N.Y., is a response to a rule from the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. The rule requires banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion to have a high enough liquidity coverage ratio – the amount of HQLA to total net cash outflows – to deal with periods of financial stress. The compliance date for the rule is Jan. 1, 2017.

But the rule does not currently count municipal securities as HQLA, even though foreign sovereign debt would receive that classification.

Messer's bill would require the three bank regulators to treat munis that are investment grade and actively traded in the secondary market as Level 2A assets, the same level as some sovereign debt

and government sponsored debt of Fannie Mae and Freddie Mac. Messer's bill would also allow for munis to account for up to 40% of a bank's HQLA.

Messer said he is "very optimistic" about the bill's chances if it is brought to a vote on the House floor. The House Financial Services Committee, where Messer sits, approved the bill by a vote of 56 to 1 on Nov. 3. Messer said Sens. Chuck Schumer, D-N.Y., and Mike Rounds, R-S.D., have both showed an interest in pursuing similar legislation in the Senate.

Spokespersons for Schumer and Rounds could not be reached for comment.

The committee vote on the bipartisan bill "is no small feat in today's partisan Washington," Messer said, but he added he and groups like GFOA still have a lot of work to do after running out of time to get it included in one of the financial packages Congress plans to pass by the end of the year.

"There are few issues that have the kind of broad consensus that this seems to be developing and you have all kinds of folks in government willing to sign on and endorse this," Messer said. The next step is to get the bill's ideas and any debate about its purpose circulating in the Senate to get some "champions" for the bill in that chamber, he said.

Messer predicted the proposed House bill will be passed in the first half of 2016, if not in the first quarter.

Dustin McDonald, director of GFOA's federal liaison center, said the group has been working to prioritize the bill in Congress by meeting with senators and coordinating with other municipal groups on letters to legislators explaining the need for it. A recent letter sent to every member of the House urging them to support the bill's passage was signed by 15 muni groups.

Bills in Congress can often "go from zero to 60" in a short amount of time, McDonald said during the meeting. He said he wants to make sure GFOA is ready with letters and other support if the HQLA bill is suddenly being considered in the full House and Senate.

Movement on the bill in the Senate was slowed by the Senate Committee on Banking, Housing, and Urban Affairs, which had been focusing on a contentious regulatory relief bill for banks that includes proposed changes to the Dodd-Frank Act, he said.

McDonald, who took part in a panel discussion that was hosted by the Municipal Bond Club of New York last week in New York City, said that there was a consensus among everyone in the room that the rule was bad and would have a negative impact on the muni market.

"I think Pat McCoy clearly laid out the concerns of issuers, which are that the failure to classify municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of our bonds during times of economic stress," said McDonald.

McCoy, the director of finance for the Metropolitan Transportation Authority in New York was on the panel along with George Friedlander from Citi, Hugh McGuirk from T. Rowe Price, and Don Winton from Crews & Associates.

The event was the club's first of its kind and was a huge success with over 120 attendees. The MBCNY has been putting together more events to go along with their annual bond school, as the goal of the club is to provide a sense of community to the municipal bond industry.

Meanwhile, McDonald told GFOA members, "While we are making great progress, this fight isn't

over and there is still a lot of work to be done to win, which presents us with an opportunity to work more closely together and engage our members of Congress to cosponsor HR 2209."

While GFOA is hopeful the bill in the House follows a timeline like the one Messer predicted during his remarks, McDonald said there is a possibility that if the bill does not gather enough momentum to be brought forward for a vote on its own, it will have to be put into a year-end financial package in 2016.

"Somewhere in between optimism and realism is when Congress is going to act," he said.

THE BOND BUYER

BY JACK CASEY and AARON WEITZMAN

DEC 14, 2015 12:34pm ET

Regulators Open to Idea of Special Issue Price Rules for Competitive Deals.

WASHINGTON – Tax regulators are open to the idea of writing special issue price rules that would treat bonds sold in competitive deals differently than those sold in negotiated deals, Treasury Department associate tax legislative counsel John Cross told issuers meeting here on Friday.

Muni market groups have asked for special treatment for competitive deals in comments on issue price rules the Treasury Department and the Internal Revenue Service proposed in June.

"We're going to take another good look at whether we can do something more on competitive sales," Cross said during a panel on issue price at the winter meeting of the Government Financial Officers Association's debt committee.

Cross said a case can be made for special rules because most of the issue price rules are based on corporate rules and competitive deals are unique to the muni market. He and debt committee members also said tax regulators should be supportive of competitive deals because the pricing is more competitive and transparent.

Cross said that, at one point, tax regulators looked at a full year of trades and the prices of more than $200 billion of bonds on EMMA, the Municipal Securities Rulemaking Board's website that contains muni trade data as well as disclosure information. The data suggested that there may not be a lot of pricing abuses, he said. But there have been enforcement cases and other examples of pricing abuses, he added.

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements, as well as whether federal subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules, the issue price of each maturity of bonds that are publicly offered is generally the first price at which a substantial amount, defined as 10%, are reasonably expected to be sold to the public.

But tax regulators became concerned that some dealers were "flipping" bonds — selling then to another dealer or institutional investor who then sold them again almost simultaneously, with the

prices continually rising before the bonds were eventually sold to retail investors.

Treasury and the IRS tried tighten the rules in 2013 by proposing new ones that replaced the "reasonable expectations" standard with actual sales and increased the definition of "substantial amount" to 25% instead of 10%.

Those rules drew many complaints so Treasury and IRS scrapped them and proposed new rules in June that said the issue price of a maturity would generally be the first price at which 10% of the bonds are actually sold to the public. If 10% of a maturity hasn't been sold by the sale date, the issue price will be the initial offering price of the bonds sold to the public, as long as the lead or sole underwriter certifies to the issue that no underwriter filled an order from the public after the sale date and before the issue date at a higher price than the initial offering price. An exception can be made if the market moved after the sale date, but the underwriter must document any market movements justifying a higher price.

Issuers say they need to know the issue price at the sale date and worry that if longer maturities of bonds take longer to sell, that can skew the issue price.

Cross also talked about rules and guidance "on the 'to do' list" or priority guidance plan that would facilitate public-private partnerships. Treasury and IRS want to liberalize the safe harbors for longer term management contracts so that the contracts would not result in too much private use that would jeopardize the tax-exempt status of bonds.

They also want to look remedial actions that could be taken with regard to leases under change of use rules so that bonds could remain tax-exempt if a bond-financed facility was leased to a private party.

THE BOND BUYER

BY LYNN HUME

DEC 11, 2015 3:35pm ET

GFOA: Urge Federal Policy Makers to Classify Municipal Securities as High Quality Liquid Assets!

Learn more at the GFOA's Liquidity Coverage Ratio Rule/HQLA Resource Center.

Nossaman: Top Public Finance Attorneys Urge Regulatory Changes to Foster More P3's.

We all know how hard it is to change federal statutes these days—you need an Act of Congress and the President to sign the bill. Last week, a group of the top public finance lawyers in the US offered an approach relating to the use of tax exempt bonds that wouldn't require a change in tax statutes but instead could be accomplished through a change in the regulations relating to the so-called "private use" test. As the group pointed out in its letter to high ranking US Treasury officials, Congress itself has made it clear that Treasury had the authority to adopt other, more flexible rules.

The US is unique in the world in its use of tax exempt financing to finance a variety of infrastructure. To benefit from this source of debt capital, a project must not have private use nor can debt service be repaid from private business revenues. The issue for P3's arises because of the long-term operation and maintenance responsibilities that are a feature of many P3 contracts. Current IRS rules limit the length and method of compensation payable to a private party in a way that makes it almost impossible to effectively transfer long-term life cycle risk to the private sector. There are notable exceptions to these rules for specific types of infrastructure, such as qualified transportation facilities, airports and ports and water/wastewater facilities but in many cases there are so many requirements applicable to issuing these "private activity bonds" tax exempt financing is not available.

The question for P3's is when do long-term operation and management services and payment for these services create "private use" for purposes of the tax exempt bond rules? In the past the IRS has published somewhat prescriptive revenue procedures that describe "safe harbor" provisions for management contracts relating to the term of the contract and the manner of compensation. The problem is these "safe harbor" provisions predate the development and growth of the P3 delivery model. Over the last several years, through published notices and private letter rulings, the IRS has indicated that strict adherence to the "safe harbor" provisions may not preclude the use of tax exempt financing. Furthermore, the IRS recently published regulations relating to the allocation and accounting of revenues from a bond financed facility that recognize merely sharing these revenues with a private entity will not adversely impact the tax exempt financing for the project. And recent private letter rulings for water/wastewater facilities, solid waste disposal facilities and electrical transmission and distribution systems recognize the need for flexibility in this area. The Treasury Department released a 2014 white paper on "Expanding our Nation's Infrastructure through Innovating Financing" describing in detail the use of an availability payment contract where the public owner makes service fee payments to a private manager subject to compliance with specific performance standards and provided the facility is available for general public use.

In addition to several specific "fixes" to the "safe harbor" provisions on the term of the contract and how compensation is paid, the attorney group is proposing a general framework that focuses on the primary purpose of the project—is the arrangement designed to transfer the benefit of the lower cost of tax exempt financing to a private party or are there sufficient controls on the activities of the private party exercised by the public owner to achieve the primarily public purpose of the project.

This simple fix to the current "safe harbor" rules relating to private management contracts could go a long way to increasing the use of the P3 delivery approach for much needed public infrastructure.

Nossaman LLP – Barney A. Allison

USA December 14 2015

MSRB to Implement Core Conduct Rule for Municipal Advisors.

Washington, DC – Beginning in June 2016, firms and individuals that advise state and local governments on municipal finance transactions and products will be subject to detailed regulations on their professional conduct, including rules furthering the federal fiduciary duty to their municipal entity clients established under Dodd-Frank Wall Street Reform and Consumer Protection Act.

"Congress charged the Municipal Securities Rulemaking Board (MSRB) with developing regulations

to protect state and local governments from the risks – and potentially costly consequences – of relying on financial advice from unaccountable and unqualified individuals," said MSRB Executive Director Lynnette Kelly. "The MSRB rule approved by the Securities and Exchange Commission, details standards of conduct that municipal advisors owe to their clients." Read the SEC approval order.

New MSRB Rule G-42 addresses the specific duties of care and loyalty that are components of the federal fiduciary duty established under the Dodd-Frank Act for municipal advisors when dealing with municipal entity clients. Certain provisions of the rule apply to municipal advisors in their work with both municipal entity clients and others obligated to support payments on municipal securities. These provisions include requirements to provide written disclosure of conflicts of interest, and conduct reasonable diligence to support the suitability of recommendations, among other duties.

The rule also includes a ban on engaging in principal transactions with a municipal entity client that are directly related to the issue of securities for which the municipal advisor is providing advice. In response to public comment, this provision was recently amended to include a narrow exception that generally covers transactions in particular types of fixed income securities where the municipal advisor follows a process to make disclosure and obtain client consent.

"The final version of this rule reflects the valuable input received from the industry and the public throughout the federal rulemaking process," Kelly said. "The MSRB carefully considers the diversity of municipal advisors and their clients as we work to implement a regulatory framework that supports municipal market integrity." Read more about the MSRB's municipal advisor rulemaking. The MSRB plans to publish a regulatory notice about the new rule soon.

To facilitate compliance, the MSRB will host a free educational webinar in advance of the effective date of the rule. The webinar will be held on Thursday, April 28, 2016 from 3:00 p.m.-4:00 p.m.

Register for the webinar.

Date: December 24, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Seeks SEC Approval of Pay-to-Play Regulations for Municipal Advisors.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) new proposed federal regulations to safeguard the municipal securities market against pay-to-play practices, and the appearance of those practices, when state and local governments hire outside financial professionals. The proposed regulations, which must be approved by the SEC to become effective, would extend the MSRB's well-established municipal securities dealer pay-to-play rule to all municipal advisors, including those acting as third-party solicitors. These would be the first MSRB rule provisions specifically tailored to the activities of those that solicit business from municipal entities on behalf of third-party municipal securities dealers, municipal advisors and investment advisors.

"For more than 20 years, the MSRB's pay-to-play rule for dealers has served as a model for other regulations to address public corruption, or the appearance of corruption," said MSRB Executive

Director Lynnette Kelly. “Applying this proven model to municipal advisors will ensure that all regulated municipal finance professionals are held to the same high standards of integrity.”

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors, whose advice to state and local governments can impact municipal finance deals in the billions of dollars. The MSRB has proposed a core slate of new or amended rules to establish standards of conduct and professional qualification for municipal advisors. Read more about the MSRB’s municipal advisor rulemaking.

The proposed amendments to MSRB Rule G-37 would curb the giving of political contributions to state and local officials in exchange for the award of municipal advisory business and provide greater transparency regarding municipal advisors’ political contributions. Consistent with the existing rule for dealers, the rule would generally prohibit municipal advisors from engaging in municipal advisory business with municipal entities for two years if certain political contributions have been made to officials of those entities who can influence the award of business.

Also like the existing rule for dealers, municipal advisors would be required to disclose their political contributions to municipal entity officials and bond ballot campaigns for posting on the MSRB’s Electronic Municipal Market Access (EMMA®) website. Public availability of this information would facilitate enforcement of the rule and promote public scrutiny of political giving and municipal advisory business.

View the filing.

Date: December 16, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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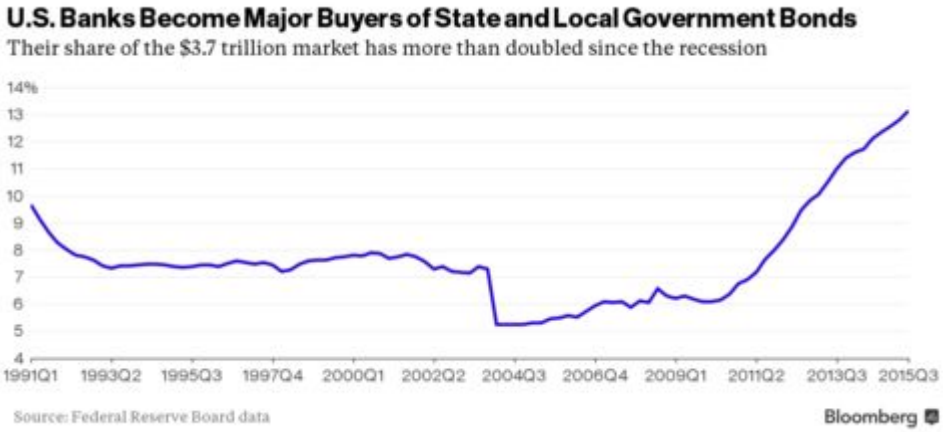
Main Street's Muni-Market Fight With Fed Gains Force in Congress.

Main Street and Wall Street are fighting the U.S. Federal Reserve over municipal bonds — and they’re gaining ground.

Local-government officials and securities-industry lobbyists turned to Congress after regulators including the Fed adopted rules that would restrict or bar banks from including munis among the assets they need to hold to weather a financial shock. The effort has borne rare fruit: Overwhelming bipartisan support in Congress, where a bill forcing regulators to classify munis as liquid assets passed a key House committee by 56-1 last month. Analysts say it may win final approval next year.

“Congress seems to be energized to actually pass the legislation,” said Bank of America Merrill Lynch’s Philip Fischer, the head of municipal research in New York. “From the Republican side it looks like a clear overreach on the regulatory front, and from the Democratic side it appears as though it will cost the states potentially an unnecessary amount of money.”

The regulations threaten to curb demand from banks in the $3.7 trillion muni market, where they’ve increased their holdings by more than any other buyers since the recession ended in 2009. State and local officials said the new rules, if not changed, will saddle them with higher borrowing costs by eliminating incentives banks have to purchase their bonds.



The regulations from the Fed, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. are part of the effort to avoid a repeat of the 2008 credit crisis, when banks ran short of cash and had to liquidate assets at fire-sale prices as markets seized up. They require lenders to hold enough assets deemed high-quality — such as Treasuries, well-rated corporate bonds and foreign-government debt — to endure 30 days of significant stress. Munis were left out because they trade less frequently than other securities.

Indiana Republican Representative Luke Messer, co-sponsor with New York Democrat Carolyn Maloney of the bill that cleared the House Financial Services committee on Nov. 4, said he's aiming to get the legislation to the floor for a full-vote early next year. In the Senate, New York Democrat Chuck Schumer, a member of banking committee, is among those who've endorsed allowing banks to use munis to meet the high-quality liquid asset rules, known by the acronym HQLA.

"U.S. municipal bonds are considered some of the safest investments in the world," said Messer, whose bill would treat munis the same as debt issued by government-sponsored enterprises including Fannie Mae. "By excluding all these municipal securities from HQLA eligibility, financial institutions are discouraged from holding municipal debt."

Eric Kollig, a Fed spokesman, Stephanie Collins, a spokeswoman for OCC, and Barbara Hagenbaugh, a spokeswoman for the FDIC, declined to comment.

Fed Proposal

State and local officials who lobbied the regulators following the approval of a 2014 rule that barred municipal debt from HQLA got some relief in May. In a split from the OCC and FDIC, the Fed proposed allowing certain investment-grade, uninsured general-obligation bonds to be counted toward as much as 5 percent of a bank's liquid assets. Barclays Plc estimated that no more than about $350 billion of munis would be acceptable under that rule, less than one-tenth of the market.

While public officials and their lobbyists acknowledge that the Fed has been more responsive, they said it wasn't sufficient. For example, it left out municipal bonds backed by dedicated tax revenue, which in many cases are more secure than general obligation debt.

Moreover, the Fed only oversees just two banks with more than $250 billion in assets that are subject to the liquidity rules, said Dustin McDonald, federal liaison for the Government Finance Officers Association.

Big Buyers

The regulations have so far done little to stop banks from buying state and local securities. Their holdings have more than doubled since June 2009 to $488 billion by the end of September, according to Fed data. That's left them with more than 13 percent of the outstanding debt, the most since 1989.

Banks typically don't buy munis to satisfy liquidity needs, said Matt Fabian, a partner at Concord, Massachusetts-based Municipal Market Analytics. Even so, the change would allow the companies to use state and local holdings to meet the new requirements, instead of shifting money elsewhere.

"It allows their muni position to work a little harder for the bank," said Fabian.

Groups representing state treasurers, budget officers and mayors argue that munis have low default rates and limited price swings, even during times of turmoil. An average of 0.02 percent of rated munis defaulted from 1970 to 2014, compared with 1.66 percent for corporate bonds, according to Moody's Investors Service.

California Loses Out

The state and local officials also point to inconsistencies: For example, securities issued by foreign governments are deemed more liquid than those from states such as Washington and California. The Securities Industry and Financial Markets Association, which represents Wall Street firms, has also lobbied against the exclusion of munis.

"It just doesn't make any sense," said Washington Treasurer Jim McIntire, who will take over next year as president of the National Association of State Treasurers. "Some of our bonds are much more liquid than a high quality AAA corporate like Microsoft."

Muni prices usually closely track Treasuries, though the relationship can be upended during financial stress. In late 2008, following the bankruptcy of Lehman Brothers Holdings Inc., some muni prices tumbled as investors plowed into the safest federal-government debt.

McIntire, the Washington treasurer, said the legislation shouldn't be difficult to pass in an election year.
"I don't like to have to see legislators brought into the regulatory environment," McIntire said. "If they're going to issue regulations affecting us they should know something about the market."

Bloomberg Business

by Martin Z Braun

December 14, 2015 — 9:01 PM PST Updated on December 15, 2015 — 9:10 AM PST

BDA Proposes Additional Issue Price Safe Harbors.

On December 9, 2015, the Bond Dealers of America (BDA) submitted an additional comment letter to the IRS and U.S. Treasury Department as a follow up to their testimony at the IRS issue price public hearing on October 28, 2015. In the letter, BDA recommends that the IRS and U.S. Treasury Department create an issue price safe harbor for competitive deals, so that the issue price is established if 25 percent of the total issue of bonds is sold at the initial offering price. In negotiated transactions, BDA proposes that the issue price would be established if 50 percent of the bonds

underwritten were sold at the initial offering price. BDA withdrew its earlier suggestion that a safe harbor for competitive bids be established for a minimum number of bids received.

A copy of the BDA comment letter is available here.

Butler Snow: MSRB's Execution Guidance Under Rule G-18 - Forward With Flexibility.

The Municipal Securities Rulemaking Board ("MSRB") recently released its best execution guidance under MSRB Rule G-18 (the "Rule" or "Rule G-18"). The Rule will be effective as of March 21, 2016. The Rule provides: "The best-execution rule requires brokers, dealers and municipal securities dealers to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions." You can find the full text of Rule G-18 here and MSRB's guidance on implementation here. This post provides a summary of the rule and offers a few observations about its impact going forward.

Who Does Rule G-18 Apply To?

The MSRB said it best: "Rule G-18 applies to any transaction in a municipal security for or with a customer or a customer of another dealer, without any exception for orders that are routed to another dealer." Rule G-18 applies to transactions both when the dealer acts as an agent and when the dealer acts as the principal.

Paragraph .08 of the Supplementary Material to the Rule also states that "[a] dealer that routes its customers' transactions to another dealer that has agreed to handle those transactions as agent or riskless principal for the customer (e.g., a clearing firm or other executing dealer) may rely on that other dealer's periodic reviews as long as the results and rationale of the review are fully disclosed to the dealer and the dealer periodically reviews how the other dealer's review is conducted and the results of the review."

Rule G-18 does not apply to transactions in municipal fund securities, nor does it apply to "inter-dealer" trades between broker-dealers. Further, amendments to Rules G-48 and D-15 exempt sophisticated municipal market professionals (defined in Rule D-15) from the requirements of Rule G-18.

Rule D-15's definition of sophisticated municipal market professionals includes banks, savings and loan associations, insurance companies, registered investment companies, investment advisers registered with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 (or like state securities commission), or another entity with over $50 million in total assets that the broker, dealer, or municipal securities dealer has a reasonable basis to believe can evaluate investment risks and market values independently.

One more note on whom Rule G-18 applies to: Dealers also cannot interject a third party between themselves and the best market for a security if the third party would subvert compliance with Rule G-18.

Reasonable Diligence

Under Rule G-18, "a dealer must use reasonable diligence to ascertain the best market for the

subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions."

What does that mean exactly? In a nutshell, the dealer does not have to find the best possible price for a security, but is instead allowed some reasonable level of judgment in determining the best price that it expects that the particular security can fetch on the bond market, so long as (a) the dealer reaches that conclusion under after satisfying the "reasonable diligence" test factors under the Rule; (b) the dealer documents its reasonable diligence via adopted policies and procedures; and (c) the dealer records and retains evidence of adhering to those policies and procedures.

The "reasonable diligence" standard is not defined explicitly within the Rule, but the MSRB has structured the Rule to include a list of factors to guide the inquiry concerning whether a dealer has acted with reasonable diligence. The listed factors are as follows:

1. the character of the market for the security (e.g., price, volatility, and relative liquidity);
2. the size and type of transaction;
3. the number of markets checked;
4. the information reviewed to determine the current market for the subject security or similar securities;
5. the accessibility of quotations; and
6. the terms and conditions of the customer's inquiry or order, including any bids or offers, that result in the transaction, as communicated to the dealer.

No one factor is determinative in the inquiry and the aim of the list is to set a group of six factors in a "reasonable inquiry" test that allows dealers the flexibility to operate in the marketplace, but provides guidelines on how to document their compliance with Rule G-18 with examples of what information should be reviewed to determine the market for subject or similar securities.

Accordingly, determining whether a dealer acted with "reasonable diligence" is a "facts and circumstances" analysis. That's good and bad news for dealers, as the standard has some flexibility, but also does not provide a hardline rule for compliance.

While the fact and factor-based inquiry does create some ambiguity, the MSRB again provides some useful guidelines to help dealers know whether they're on the right track. Paragraph .08 of the Supplementary Materials is particularly instructive. Paragraph .08 states that dealers must "at a minimum, conduct annual reviews of its policies and procedures for determining the best available market for the executions of its customers' transactions."

The MSRB's implementation guidance further suggests that those reviews should consider the quality of the dealer's recent transactions, new market entrants, available data, implementing new technologies to assist in best execution, and developing procedures to implement changes identified by the dealer's review. Dealers are also instructed to document their compliance with their best execution procedures.

One more point worth noting from the implementation guidance is that provision should be made for "extreme market conditions" in adopted policies and procedures to ensure that the best execution obligations are complied with, though recognizing that the dealers have a need to limit exposure due to market risk.

Conclusion

As the title of this post states, Rule G-18 represents a step forward in terms of defining steps dealers

should take to be reasonably diligent in facilitating transactions for their clients. However, Rule G-18 keeps a level of flexibility that accounts for marketplace uncertainty and allows dealers to design policies and procedures that fit their areas of business.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Last Updated: December 7 2015

Article by Adam C. Parker and Dee P. Wisor

Butler Snow LLP

U.S. State Treasurers to Seek Banks' Help on Muni Bond Liquidity Rules.

U.S. state treasurers will ask banks and private equity firms to help lobby federal policymakers in their push to categorize municipal bonds as high quality liquid assets under new banking rules, Washington State Treasurer James McIntire said on Thursday.

Federal rules approved in September 2014 aim to ensure that big banks will be able to access enough cash during a financial crisis. But the rules excluded muni bonds from the types of securities that count as high quality liquid assets, or HQLAs.

States, cities and investors fear that the exclusion would deter banks from buying muni debt, hurting municipalities' ability to fund everything from schools and bridges to water treatment plants and hospitals.

The National Association of State Treasurers (NAST) and several other organizations have been pushing for inclusion of munis. The rule, due to take effect in January 2017, requires that large banks hold high-quality assets that can be quickly and easily converted into cash within 30 days of a financial stress period.

NAST plans to ask for help from its corporate partners, including financial institutions, in its ongoing effort to secure muni bonds a place at the table, said McIntire, the group's incoming president.

"They might bring a little bit more firepower to the table," McIntire said of the banks in an interview.

The decision by the regulators has been "very challenging," McIntire said. "It's been hard to get their attention."

Congressional action has begun to help, McIntire said. Last month the House Committee on Financial Services passed a bill that would qualify muni bonds as HQLA.

Some studies have shown munis, especially general obligation bonds issued by states, to be at least as liquid as their corporate counterparts.

Cumberland Advisors wrote in a commentary last month that yields on muni bonds rose 20 percent in the second half of 2008, while investment-grade corporate yields shot up by 50 percent.

A study last year by Washington State compared its own general obligation bonds to senior

unsecured bonds from Microsoft Corp, one of the state's most well known companies.

During the bond market selloff in mid-2013, more than $3.2 billion of Washington State's bonds traded, compared to about $2.14 billion of Microsoft's bonds, the study said.

Reuters

Fri Dec 11, 2015

NEW YORK | BY HILARY RUSS

Fifteen Groups Urge House to Vote on Pending HQLA Bill.

WASHINGTON – Fifteen muni market groups are urging House members to vote on a bill that would treat investment grade and actively-traded municipal securities as high quality liquid assets under a bank liquidity rule adopted by bank regulators in September 2014.

The organizations, including Government Finance Officers Association and National Association of State Treasurers, each signed on to identical letters sent to every member of the House, as well as a similar one that went to Speaker Paul Ryan, R-Wis., asking for action on the bill before Congress adjourns this month.

The current bank liquidity rule, which banks will have to comply with by Jan. 1, 2017, requires banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion to have a high enough liquidity coverage ratio – the amount of HQLA to total net cash outflows – to deal with periods of financial stress. Assets are considered HQLA if they can easily be converted into cash with no loss of value during a period of liquidity stress.

When the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. first adopted the rule, they did not include munis as HQLA because of concerns they are not liquid or easily marketable.

The Fed proposed amendments to the rule in May that would allow a limited number of munis to be treated as HQLA as long as they are, at a minimum, uninsured investment grade general obligation bonds. Munis would be considered Level 2B, the same as corporate bonds that are liquid and readily marketable, but could only make up 5% of a bank's HQLA.

Muni dealer groups welcomed the Fed's changes, but said they were narrow and that without agreement from the FDIC and OCC, which regulate a majority of larger institutions, they would not help.

Rep. Luke Messer, R-Ind., proposed a bill that same month that would apply to all bank regulators and treat munis that are investment grade and actively-traded in the secondary market as Level 2A assets, the same level as some sovereign debt and debt of U.S. government entities like Fannie Mae and Freddie Mac. Munis could also make up 40% of a bank's HQLA under Messer's bill.

The bill passed the House Financial Services Committee by a vote of 56 to 1 on Nov. 4 and now the groups are asking that Paul Ryan bring it to a vote in the full House and that House members urge him to take action.

“Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities,” the groups said. “With the American Society of Civil Engineers estimating a $3.6 trillion cost to state and local governments over the next five years to meet our nation’s infrastructure needs, the ability of states and localities to finance infrastructure at the lowest possible cost is critical.”

The groups that signed the letter include: GFOA; NAST; International City/County Management Association; National League of Cities; National Governors Association; National Association of State Auditors, Comptrollers and Treasurers; National Association of Counties; U.S. Conference of Mayors; American Public Power Association; Council of Infrastructure Financing Authorities; National Association of Health and Higher Education Facilities Authorities; National Council of State Housing Agencies; American Public Gas Association; Large Public Power Council; and National Association of Local Housing Finance Agencies.

THE BOND BUYER

BY JACK CASEY

DEC 7, 2015 3:31pm ET

BDA Submits Comment Letter to MSRB Regarding Proposed Amendments to Shorten the Settlement Cycle.

The BDA submitted a comment letter to the MSRB in response to its request for comment on proposed amendments to MSRB Rules to facilitate the shortening of the municipal securities settlement cycle.

The BDA’s comment letter focused on concerns regarding the potential impact a T+2 settlement cycle would have on middle market securities dealers.

Specifically, we address the following:

- BDA believes the proposed rule will make clearing and settling transactions more efficient, reducing risk in the marketplace, but concerns remain with regard to the implementation aspect of the Proposed Amendments
- Transactions occurring in the secondary market for municipal securities should follow the proposed T+2 settlement cycle as opposed to a “blanket” requirement for all transactions, including those for new issue markets
- We caution that the impact of shortening the settlement cycle will filter through other regulations tied to the settlement date of a municipal security, potentially resulting in new regulatory burdens for dealersYou can find our final letter here.

12-10-2015

BDA Submits Comment Letter to FINRA and MSRB on Proposed Retail Markup Disclosure and Pricing Reference Rules.

Today, BDA submitted a comment letter in response to the MSRB/FINRA proposed retail confirmation disclosure rules. BDA will continue to advocate for a simpler, less confusing, and less costly solution on this high-priority issue, including scheduling in-person meetings with all the relevant regulators in the near future. We will keep BDA membership informed on next steps on this issue.

The letter is structured in the following way based on the feedback we have received in conversations with BDA membership:

- BDA urges regulators to harmonize the rules
- We emphasize the complexity and costs associated with the proposals:
  - Operational and technology cost concerns with proposed FINRA rule
  - Issues with ambiguous MSRB rule, but MSRB rule is step in right direction
- Suggestions for alternative solutions in order of preference include:
  - Suggest a purely "riskless principal" rule
  - BDA requests that MSRB and FINRA leveraging TRACE/EMMA data to compute average daily inter-dealer cost and for the use of data display as the differential to retail trade on the confirm
  - BDA favors the MSRB's approach contingent on guidance around inter-dealer cost

FINRA's proposal can be read here.

MSRB's proposal can be read here.

12-11-15

SIFMA Submits Comments to the MSRB on Notice 2015-22.

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) on changes to MSRB rules to facilitate shortening the securities settlement cycle. The draft amendments are in response to a financial services industry-led initiative to shorten the regular way settlement for equities, corporate bonds, municipal bonds, and unit investment trusts from T+3 to T+2.

Read the comments.

December 10, 2015

SIFMA Submits Comments to Congress on CRT.

SIFMA provides comments to congress in strengthening the Federal Housing Finance Agency's (FHFA) efforts to implement private-sector credit risk transfer transactions (CRT) involving Fannie Mae and Freddie Mac.

SIFMA and its member firms strongly support Congress in their effort to restore significant levels of

private capital participation in the extension of mortgage credit. Like many stakeholders, our industry seeks a mortgage market that balances access to credit with systemic stability and prudent underwriting.

Read the comments.

December 7, 2015

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