Dealer Groups Want SEC to Disapprove MA Conduct Rule.

WASHINGTON – Two dealer groups are urging the Securities and Exchange Commission to disapprove the Municipal Securities Rulemaking Board's proposed municipal advisor core conduct rule, despite an amendment that would provide an exception to the rule's controversial principal transaction ban.

The Securities Industry and Financial Markets Association and Bond Dealers of America told the SEC in a comment letter that the exception to Rule G-42 is unworkable and would be overly burdensome. The Government Finance Officers Association also said in a letter to the commission that it doesn't support the rule and wants more clarification.

Leslie Norwood, associate general counsel and co-head of municipal securities for SIFMA, said the MSRB's changes to the principal transaction ban show the board "has acknowledged that it must move toward a more workable construct that will protect municipal entities while not unnecessarily increasing their costs." However, she added that, even though SIFMA wants to see the Rule G-42 rulemaking process completed, the exception is not appropriately tailored to be useful for municipal advisors and would include a number of procedural and operational burdens that will not help issuers or other municipal entities.

The SEC first published Rule G-42 for comment on May 8 and asked for an extra 90 days on Aug. 6 to make a decision. The MSRB then published revisions to the rule and responded to earlier comments on Aug. 12, before ultimately filing its second set of revisions, concerning the principal transaction ban, on Nov. 9.

Under the original and pending rule, MAs would owe a fiduciary "duty of loyalty" to their municipal issuer clients and would be 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 [their] financial or other interests."

The rule also mandates a less stringent "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.

The initial proposed rule would have prevented an MA 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.

That drew complaints from muni market groups. The MSRB then proposed an exception that would lift the ban if an MA is a registered broker-dealer under the Securities and Exchange Act of 1934 and the account it wants to use the exception for is a brokerage account subject to that act, as well as to the rules of the self-regulatory organization of which it is a member. An MA also could only employ the exception if it uses its investment discretion on a temporary or limited basis, at its clients' discretion. The exception would further only apply to sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt securities, or corporate debt securities. The MSRB crafted the exception from procedures under which investment advisors are allowed to engage in principal transactions with clients.

If an MA meets the MSRB's basic requirements for the exception, it can then choose whether to get an issuer's written consent on a transaction-by-transaction basis or it can meet six requirements and get oral consent from the issuer for an indefinite number of transactions. If the MA chooses to obtain the exception on a transaction-by-transaction basis, then it must tell its municipal client in writing the capacity in which it is acting and get the client's informed written consent, either before executing the transaction or after execution but before settlement.

The six requirements for obtaining the exception for an indefinite number of transactions include the following. Neither the MA nor any of its affiliates can be the issuer or underwriter of a security that is the subject of the principal transaction. The MA also must get an executed written, revocable consent from its municipal client that would prospectively authorize it to directly or indirectly act as principal for its own account in selling a security to, or purchasing a security from, the client. The written consent must be obtained after the MA explains to the client in writing the circumstances under which it may engage in principal transactions, the nature and significance of conflicts with the client's interests and how it will address those conflicts.

The MA must inform its client either orally or in writing of the capacity in which it may act and get the client's consent either orally or in writing before executing each subsequent principal transaction. The MA also must send a written confirmation to the client saying that it disclosed that it may be acting in a principal capacity, the client authorized the transaction, and that the MA sold or bought the security for its own account.

Finally, MAs would be, at least annually, required to send clients a list of all executed transactions in the client's account that relied on the exception, complete with the date and price. Each written disclosure would also have to include a statement about the client's ability to revoke its consent without penalty at any time by written notice.

The market groups criticized the complexity of the exception, particularly the six requirements for blanket consent. Norwood also said the exception only addresses one of SIFMA's concerns, the ban's effect on fixed income securities, while avoiding the issue of complying with the relationship documentation and conflict disclosure requirements in the proposed rule. She added other SIFMA concerns, like those over the requirement that an MA investigate the accuracy of client representations, are stilled unaddressed. The Investment Company Institute has repeatedly raised concerns about the client representations portion of the rule and also filed a comment letter on the MSRB's revisions to the exception from the principal transaction ban.

Mike Nicholas, BDA's chief executive officer, said that while BDA recognizes the MSRB used the investment advisors procedures as a base, the exceptions "do not take into consideration the vast differences between brokerage operations and investment advisory operations."

Both Norwood and Nicholas took issue with the six requirements an MA would have to meet to be able to obtain blanket consent from the issuer to escape the ban for an indefinite number of transactions.

"The blanket consent alternative's requirement to obtain additional transaction-by-transaction consent totally undermines the utility of obtaining advance written consent, and presents challenging issues of documentation and recordkeeping," Norwood said.

She also said the exception should apply beyond registered broker-dealers and brokerage accounts and include MAs as well as affiliates that are either registered or acting under an exemption from registration, such as banks. SIFMA additionally is asking that the exception be available to affiliates of MAs and include the sales of money market instruments and municipal escrow investments.

Dustin McDonald, director and federal liaison for GFOA, reiterated GFOA's concern that the transaction ban could increase the costs issuers pay to their advisors.

"All of these restrictions and added costs will make it likely that even more firms will decide simply to not handle investments of bond proceeds or require their municipal entity clients to open more expensive advisory accounts," McDonald said. He also raised several questions to assess the workability of the transaction-by-transaction option the MSRB put forward as part of its exception from the ban on principal transactions.

National Association of Municipal Advisors executive director Susan Gaffney said there is a lot of due diligence on the disclosure of relationships in the rule, which in the past, " has not worked very well" with regard to MSRB Rule G-23 on financial advisor activities. For that reason, she said NAMA would like to "make sure that those standards are as robust as possible" to ensure all parties, but especially issuers, are protected.

THE BOND BUYER

BY JACK CASEY

DEC 2, 2015 3:35pm ET

NABL: Gift Restrictions Coming in May 2016.

The MSRB has received approval from the Securities and Exchange Commission (SEC) to amend MSRB Rule G-20 to address conflicts of interest that may arise from gift-giving in connection with municipal advisory activities. Amended MSRB Rule G-20 restricts the gifts, gratuities and non-cash compensation given by municipal advisors to issuers in their professional capacities. The new regulation, which is effective on May 6, 2016, represents another important milestone in the development of a comprehensive regulatory framework for municipal advisors in accordance with the MSRB's expanded mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

View the regulatory notice.

View the new rule.

Moberly, Missouri Class-Action Highlights Underwriters' Duties in Muni Offerings.

Underwriters of municipal bonds have an obligation to perform due diligence on the issuer and any other individual or entity that may be required to make payments on the bonds as they come due. Recently, our firm was involved with *Cromeans v. Morgan Keegan, et al.*, a class-action which alleged that an underwriter and underwriter's counsel failed to perform basic due diligence to determine whether a planned processing plant in Moberly, Missouri, supported by municipal bonds was feasible prior to the bonds issuing. The bonds were issued but the project failed before construction on the factory was completed due to financial and operational issues with the company for whose benefit the bonds were issued.

Cromeans was settled favorably for the class. The class recovered approximately 86% of its out of pocket losses—around $5.2 million out of roughly $6 million in bonds held by the class.

There are only a few cases which discuss in detail an underwriter's due diligence responsibilities. In 1968, the Southern District of New York stated that underwriters are ultimately "responsible for the truth of the prospectus" in the seminal case *Escott v. BarChris Construction Corp.* The SEC has referred to the underwriter's participation in an offering as "an implied recommendation about the securities it is underwriting." An underwriter may not accept the representations of the issuer at face value and present them to potential investors as true. As the Southern District of New York held during the 2004 WorldCom litigation, "in order to make the underwriters' participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them."

An underwriter's duties in issuing municipal bonds are governed by SEC Rule 15c2-12. This rule states that underwriters must "obtain and review" an official statement that is in functionally final form before bidding on, purchasing, offering, or selling the securities. Underwriters and broker dealers must make material financial and operating data in the official statement not only for an issuer, but also for any other "obligated person" available to the investors. Rule 15c2-12 defines obligated person as any person who is or may be generally or contractually required to support payments of the obligations on the securities. Failure to include or analyze the financial data, operational data, or other representations made by an obligated person could expose an underwriter or broker/dealer to liability under federal and state securities laws if the omission proves to be material.

Underwriters must review registration statements to ensure that there is no reasonable ground to believe that the "expertised" portions contain false statements or omit material information. Expertised information includes scientific and technical information provided by experts including audited (but not unaudited or interim) financial statements. For non-expertised portions, the underwriter must conduct an investigation sufficient to allow it to come to a reasonable belief that the statements contained in the registration document are true and omit no material facts.

To meet this standard, underwriters and bankers involved in securities offerings should verify the information provided by the issuer and other obligated persons through independent sources. Underwriters should also examine the issuer and obligated persons' key business relationships, contracts, and financial statements and projections. Underwriters should familiarize themselves with the relevant industry and examine how the issuer and obligated persons' business model fits with that industry.

In most cases the underwriter is the only bulwark standing between an unscrupulous issuer and the potential investors. The underwriter must meet its obligations of impartial scrutiny of the transactions underpinning and the issuer's representations.

Finally, underwriters should take careful notes to document their due diligence activities. Prior to 2012, the industry falsely believed that opacity was a sufficient defense and retained few notes on their due diligence activities. The SEC has since made clear that underwriters need to be able to demonstrate the steps they took to determine the creditworthiness of a municipal bond offering.

THE BOND BUYER

ANDREW P. CAMPBELL AND STEPHEN D. WADSWORTH

NOV 24, 2015 10:58am ET

Andrew D. Campbell is managing partner and Stephen D. Wadsworth is associate attorney at Campbell Guin, a specialist in securities litigation and class actions

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BDA Submits Letter to SEC Regarding MSRB Amendment #2 to Proposed Rule G-42.

The BDA submitted a letter to the SEC in response to MSRB Amendment #2 in relation to proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors.

Our letter retains our previously stated request that the SEC disapprove Proposed Rule G-42 as written since the amendment has not materially changed the Proposed Rule to make it workable for issuers and dealers.

Specifically, we address the following:

- We do not believe that Amendment No. 2 provides a meaningful and useful exception to the principal transaction ban because there are too many limitations for the exception to be useful
- The consent and disclosure requirements necessary to take advantage of the exemption to the transaction ban are entirely too burdensome to be useful
- We do not believe that dealers will use this exemption in any meaningful way unless the requirements are substantially reduced or unless the MSRB creates a more encompassing exemption from the principal transaction ban for brokerage services

You can find BDA's letter here.

12-01-15

Ex-JPMorgan Bankers Settle SEC Municipal Bribery Charges.

(Reuters) – Two former JPMorgan Chase & Co bankers agreed to pay about $326,000 to settle U.S. Securities and Exchange Commission charges that they paid millions of dollars to close friends of Jefferson County, Alabama commissioners in order to win $5 billion of municipal bond and swap business.

Douglas MacFaddin and Charles LeCroy, who were JPMorgan managing directors, will pay a respective $201,224 and $125,149 to resolve the SEC civil fraud case, according to papers filed on Tuesday with the federal court in Birmingham, Alabama.

Neither defendant admitted wrongdoing. The settlement requires court approval. Lawyers for the defendants did not immediately respond on Wednesday to requests for comment.

MacFaddin and LeCroy were sued in November 2009, when New York-based JPMorgan agreed to pay more than $722 million representing fees, a fine and assistance to residents to settle related SEC claims over its dealings with Jefferson County.

The county filed for Chapter 11 protection two years later, at the time the largest municipal bankruptcy in U.S. history.

MacFaddin and LeCroy were accused of having in 2002 and 2003 directed more than $8.2 million of payments to friends of Jefferson County commissioners who owned or worked at local broker-dealers.

The SEC said they did this to ensure that county officials chose JPMorgan to arrange bond offerings and swap agreements, in which the broker-dealers had little or no role.

According to the SEC, the defendants knew the payments were shams by calling them "payoffs," "the price of doing business" and a means to keep commissioners "happy."

The SEC also said JPMorgan incorporated the cost of the payments into the bond and swap transactions, making them more costly for taxpayers.

The case is SEC v. LeCroy et al, U.S. District Court, Northern District of Alabama, No. 09-02238.

By REUTERS

DEC. 2, 2015, 10:19 A.M. E.S.T.

(Reporting by Jonathan Stempel and Nate Raymond in New York; Editing by Jonathan Oatis)

SIFMA Submits Comments to the SEC on Proposed New Rule G-42.

SIFMA provides comments to the Securities and Exchange Commission (SEC) on amendment #2 to its proposed changes to MSRB Rule G-42, on duties of non-solicitor municipal advisors.

Read the comments.

December 1, 2015

Regulators to Hold Compliance Outreach Program for Municipal Advisors.

Alexandria, VA – The Securities and Exchange Commission (SEC), the Municipal Securities Rulemaking Board (MSRB) and the Financial Industry Regulatory Authority (FINRA) today announced they will hold a compliance outreach program for municipal advisors on February 3, 2016 at the Federal Reserve Bank in Philadelphia, PA. The event also will be webcast live on the SEC website.

The program for municipal advisors is the second outreach event that is a partnership between the

MSRB, the SEC's Office of Compliance Inspections and Examinations, the SEC's Office of Municipal Securities and FINRA. The February event will provide municipal advisor professionals a forum to discuss recent exam findings, regulatory issues and compliance practices with regulators.

"This year's outreach program is designed to promote compliance with municipal advisor rules by providing municipal advisor professionals with the opportunity to interact with all three regulators and to discuss regulatory and compliance issues with their industry peers," said Jessica Kane, Director of the SEC's Office of Municipal Securities.

There is no cost to attend the program, which will be held on February 3, 2016 from 9:00 a.m. to 4:15 p.m. at the Federal Reserve Bank of Philadelphia, 10 Independence Mall, Philadelphia, PA 19106. Registration is open to all municipal advisor professionals with limited seating available and preference given to employees of registered municipal advisors on a first-come, first-served basis. Register for the event.

"This program is consistent with the MSRB's goal of providing resources to municipal advisors to help them understand their regulatory obligations," said MSRB Executive Director Lynnette Kelly. The MSRB recently published its first Compliance Advisory for Municipal Advisors to help them understand and implement the regulatory framework created by the MSRB as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. "Municipal advisors attending the compliance event will benefit from hearing first-hand from our staff."

Kevin Goodman, national Associate Director of the SEC's broker-dealer and municipal advisor examination programs, said, "The municipal advisor outreach will be extremely informative and educational for new municipal advisors as they build their compliance programs. This outreach, following the first ever in 2014, illustrates our continued commitment to foster an open dialogue among municipal advisors and regulators regarding regulatory obligations and expectations."

Mike Rufino, FINRA's head of member regulation-sales practice, said, "The discussions covering exam trends, general findings and the application of exemptions and exclusions from the municipal advisor registration rules will be valuable to municipal advisors. Any firm that is uncertain as to the full application of municipal advisor rules and regulations to its business may benefit from attending the conference."

Information on accessing the webcast will be posted on the SEC website the day of the event.

Date: December 1, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB's Kelly Highlights Concerns For Retail Muni Investors.

WASHINGTON – The Municipal Securities Rulemaking Board is helping the Securities and Exchange Commission's Investor Advocate identify products and practices in the municipal market that could hurt retail investors.

In a recent letter responding to a request from SEC Investor Advocate Rick Fleming, MSRB executive director Lynnette Kelly said the timeliness of continuing disclosures, the lack of bank loan disclosures, and trades below the minimum denomination are three main areas of concern for the board. Kelly also sent the letter to Jessica Kane and Rebecca Olsen in the SEC's office of municipal securities and Stephen Luparello in the SEC's division of trading and markets.

Fleming's office is tasked with protecting investors and works with the SEC and relevant self-regulatory organizations like the MSRB to "encourage reforms designed to benefit investors in the municipal securities markets," according to its website.

Fleming said he requested information from the MSRB as part of his research for his December report to Congress that looks back at the fiscal year and evaluates the progress of his recommendations. The letter details the most problematic products and practices for investors, based on the office's communications with officials of organizations like the MSRB, SEC, and Financial Industry Regulatory Authority. Not everyone responds with a letter like Kelly did, he said.

Kelly said an MSRB report published last May on issuers' timing of annual financial disclosures shows that for the last five years investors and the general public have had to wait an average of 200 calendar days after the end of the relevant fiscal year to see the "valuable information" in issuers' audited financial statements, submitted on EMMA. Annual financial information submissions also lagged, coming in an average of 188 days after the end of the applicable fiscal year, according to the report.

The MSRB has promoted its tools and resources to help issuers understand their disclosure obligations and to make the disclosures timelier, Kelly said. Issuers now have access to a free, automated email reminder service that helps them file periodic financial disclosures on schedule. As of Oct. 30, about 7,500 municipal entities have taken advantage of the service, she told Fleming.

The use of bank loans in the muni market has also drawn market participants' attention. The Federal Deposit Insurance Corp., in its Oct. 21 "Call and Thrift Financial Report Data" found that the issuance of bank loans to state and local governments increased to $192.3 billion in the fourth quarter of 2014, from $96.7 billion in the fourth quarter of 2012 for FDIC-regulated banks.

"Bank loan executions have far exceeded bank loan disclosures," Kelly said in her letter.

Municipal entities with bank loans do not currently have to disclose them under Rule 15c2-12 of the Securities and Exchange Act of 1934, which outlines disclosure obligations for issuers that want firms to underwrite their bonds. However, the MSRB has encouraged the practice and on Aug. 18 made it easier for entities to disclose their loans through EMMA. The board also sent a letter to the SEC in January encouraging the commission to re-examine issuers' obligations under 15c2-12, particularly regarding bank loans. Market groups, like the National Federation of Municipal Analysts, have also published best practices papers encouraging bank loan disclosure.

If such disclosures aren't made voluntarily , potential investors may not know about an issuer's total outstanding debt until they see another public offering from the issuer or audited annual financial statements, Kelly said. The EMMA website shows that only 130 bank loan disclosure documents have been submitted to the EMMA system since 2012, according to the letter.

"Delayed or undisclosed debt-like obligations could result in an investor's inability to assess in a timely manner the loan's impact on an issuer's credit profile and could inadvertently distort valuation of an issuer's bonds in both the primary and secondary markets," Kelly said. "The MSRB believes that the timely disclosure by municipal bond issuers of additional debt and debt-like obligations is essential to foster market transparency and to ensure a fair and efficient municipal market."

The final concern is making sure parties to a transaction are complying with the minimum denomination for muni offerings, which is listed in official statements and designed to prevent retail investors from buying unsuitable bonds. The minimum denomination is generally set at $5,000 but can sometimes be $100,000 or more, which is generally out of range for a retail investor. MSRB Rule G-15 in part prohibits dealers from making customer transactions below the designated denomination.

Kelly also said the MSRB is monitoring trade disclosures to see whether dealers are providing all material information about a security at the time of trade. While it is unclear whether dealers are complying with the obligation, it would "pose a significant risk to the retail investor" if they were not, "resulting in the investor possibly acting on incomplete information and executing a transaction that is unsuitable," she said.

The MSRB is pursuing initiatives to promote price transparency in the market that will benefit retail investors, the letter said. The self-regulator most recently introduced a proposal that would require dealers acting as principals to disclose markups and markdowns on transactions with retail customers. Comments on the proposal are due to be submitted by Dec. 11.

THE BOND BUYER

BY JACK CASEY

NOV 25, 2015 9:30am ET

WilmerHale: BIA Finalizes Reforms for Obtaining Rights of Way on Indian Lands.

On November 19, the Bureau of Indian Affairs (BIA) published a final rule that makes sweeping changes to the process for obtaining rights of way for proposed oil and gas pipelines, electric transmission lines, railroads, roads and other infrastructure projects on Indian lands. This is the first update of BIA's right-of-way regulations in more than 30 years. The revised rule aims to expedite and clarify the BIA right-of-way process for project developers, as well as to support the interests of Tribes and individual Indian landowners. The rule update was announced earlier this month at the 7th Annual White House Tribal Nations Conference. The rule is scheduled to go into effect on December 21, 2015.

1. Reforming the Right-of-Way Process

> The new rule includes a number of reforms intended to expedite BIA review of right-of-way applications for approximately 56 million acres of land that are held in trust for Indian Tribes and individual Indians by the Department of the Interior. The most significant changes include imposing deadlines for BIA decisions on right-of-way applications: BIA will be required to issue decisions within 60 days of receiving an application for a new right of way and within 30 days of receiving a proposed amendment, assignment or mortgage of an existing right of way. The rule also aims to improve certainty for project proponents by limiting BIA's right to disapprove a right-of-way grant only when the agency has a stated compelling reason to do so, and by clarifying when BIA approval is required.

2. Supporting Tribal and Indian Interests

> The final rule also includes a number of important reforms to support the interests of, and expand economic opportunities for, Tribes and individual Indian landowners. For example, the rule requires giving notice to Tribes and Indian landowners of any potential right-of-way actions on their land and provides that BIA will defer to Tribal and landowner decisions to the maximum extent possible. Importantly, the rule clarifies that Indian landowners have the right to negotiate the terms of rights of way across their land directly with applicants. This includes negotiating the amount and type of compensation for the grant of a right of way. Finally, a number of revisions in the final rule are intended to support Tribal self-determination and protect trust property, including: clarifying that the grant of a right of way has no effect on Tribal jurisdiction; establishing guidelines for "reasonable" durations of rights of way on Indian land; and requiring developers to provide a bond, insurance or other security as a condition of receiving a right of way on Indian lands.

The final rule implements the policy principles adopted in BIA's 2012 reform of its leasing regulations for wind, solar, business and residential leasing on Indian lands and extends the same principles to rights of way. The final publication concludes a much-anticipated update to BIA's outdated right-of-way regulations, which were originally promulgated in 1968 and were last updated in 1980.

A complete copy of the new rule is available here.

Article by Christopher E. Babbitt, Andrew L. Spielman and Raya B. Treiser

Last Updated: November 24 2015

WilmerHale

MSRB Announces Members of Investor Advisory Group.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today announced the names of the members of its 2016 Investor Advisory Group, which was created recently to provide the MSRB's Board of Directors with access to additional expertise on municipal market practices, transparency and investor protection issues.

Members of the 2016 MSRB Investor Advisory Group are:

- Joseph John Bridy, Partner, Hamlin Capital Management
- Joseph P. Darcy, Executive Vice President, Sector Head, Municipal Fixed Income, Hartford Investment Management Company
- Lyle Fitterer, Managing Director, Head of Tax-Exempt Fixed Income, Wells Capital Management
- Thalia Meehan, Portfolio Manager, Putnam Investments
- Bill Oliver, Retail Investor
- Betsy C. Shelton, Director of Research and Senior Portfolio Manager, Charles Fish Investments, Inc.
- Benjamin S. Thompson, President and Chief Executive Officer, Fiera Capital Inc.

"The Investor Advisory Group will help ensure that the Board's deliberations on key issues include the perspectives of active and knowledgeable municipal securities investors," said MSRB Chair Nat Singer. "The advisory group members each have decades of experience that will enhance the work of the MSRB to promote a fair and efficient market."

The advisory group will meet periodically throughout the year, as directed by the Board.

Date: November 30, 2015

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Why Did It Take So Long to Shut Down Brogdon?

WASHINGTON – Municipal market participants want to know why it has taken securities regulators so long to stop Christopher Brogdon from swindling investors by misusing for personal gain the proceeds of bonds and private placements that were supposed to finance the purchase and renovation of senior living facilities.

The SEC got a U.S. district court judge to freeze the assets of the Atlanta businessman on Friday and filed a lawsuit against him and his associates for misleading investors.

But sources said Brogdon's scams have been ongoing since the mid-1980s.

"It's incredible," said one lawyer who did not want to be identified but remembered a 1993 article on Brogdon in Forbes magazine entitled "Hello Sucker." The article described how Brogdon and his then-partner Edward (Gene) Lane, were still milking investors after being barred from the securities industry by regulators. Lane is now deceased.

In a complaint filed Friday against a firm involved with Brogdon's financings, the Federal Industry Regulatory Authority noted that Brogdon had twice been barred from the securities industry, once for "egregious misconduct" involving unauthorized transactions and later for a separate "scheme" involving financial misconduct. Brogdon had also been indicted for racketeering, theft, and Medicaid fraud, and had been found liable for breaching a stock repurchase guarantee agreement. In addition, several entities he controlled had filed for bankruptcy, according to FINRA.

Bondholders also contend the SEC's lawsuit against Brogdon and FINRA's complaint against the Cantone firm might be the beginning of a series of enforcement actions against Brogdon associates and accomplices.

Bernard Miskiv, a retired optometrist who lives in Kissimmee, Fla. and said he invested about $300,000 in bonds for Brogdon's projects, contends the action against Brogdon is "just the tip of the iceberg." Miskiv said he finds it hard to believe that Brogdon's alleged fraud didn't have additional help to go on for years without detection.

"How else could it go on for such a long time?" Miskiv asked. "It's impossible."

Miskiv said he and a confederation of about 40 other investors who also bought the bonds through a shared broker are currently "shopping around" for an attorney to bring a lawsuit against Bank of Oklahoma Financial, which was trustee for many of the Brogdon deals. Miskiv said he blames the bank for enabling Brogdon's conduct and wants it to make the investors whole.

"This stuff is unbelievable, what's going on," he said. "The bank has got to pay us off, has got to be forced to pay us off."

Bank of Oklahoma has filed its own suit against Brogdon and has said repeatedly that it is cooperating fully with regulators in regards to their business with him.

The SEC filed its complaint with the United States District Court for the District of New Jersey and is requesting a jury trial. It is also requesting that Brogdon return his ill-gotten gains with interest and penalties and be barred from serving as an officer or director of a public company. The SEC also wants the court to impose a receivership on the entities that Brogdon owns or controls.

The SEC found that since 1992, Christopher Brogdon raised more than $190 million for his nursing home and retirement community projects through 54 conduit municipal bond transactions and private placements. In total, the SEC alleged Brogdon committed fraud through at least 43 entities he owns or controls.

The offering documents given to investors for these projects said that the money to be raised would be used for purchasing, constructing, or renovating specific projects. The investors were supposed to receive interest from the revenues generated by the projects in which they believed they were investing. Instead, Brogdon, as early as 2000, commingled the investor funds and used the money for personal expenses and other business ventures, including restaurants and commercial real estate holdings, the SEC said.

Brogdon also consistently failed to file required financial statements and drew down on debt service reserve funds to make interest payments to his investors, without disclosing his actions or replenishing the funds. As a result, there were multiple times when interest or principal payments were due and he relied on third-party lenders to make his payments, according to the commission.

"As alleged, Brogdon deceived investors about the true nature of these investment opportunities," said Sanjay Wadhwa, senior associate director of the SEC's New York Regional Office. "Brogdon falsely promised investors they were investing in specific senior living projects when in reality they also were funding his personal expenses and other businesses, including some that are struggling financially."

Brogdon has been in the nursing home, assisted living, and retirement home community business for more than 25 years. He owns seven other real estate and restaurant business ventures throughout Georgia and the surrounding states and has been associated with retirement and healthcare companies since the early 1990s.

He was censured, fined, and barred from the securities industry by NASD, the predecessor to the Financial Industry Regulatory Authority, in 1986 when he was found to have effected transactions in securities while failing to maintain adequate net capital. NASD additionally found he had withdrawn cash and securities investments from the firm's accounts while the firm was deficient in net capital.

The SEC's complaint also names Brogdon's wife Connie Brogdon, who had a majority equity interest in many of the entities Brogdon uses to own, operate, or lease his facilities. His son Tygh Brogdon is named in the complaint as well because of his role as president of Brentwood Healthcare, which managed at least six facilities cited in the SEC's complaint. In addition to his family, the complaint also names several other business entities associated with Brogdon as defendants.

In total, Brogdon was found to have raised at least $168 million through municipal revenue bonds issued in conduit deals, or certificates of participation in the bonds. He also raised at least $22 million through private placement offerings, usually comprised of equity and debt. The SEC found that Brogdon continues to control the borrower entities in each of the offerings they cited.

The SEC cited several examples of Brogdon's misappropriation of offering proceeds.

In the spring of 2013 he raised money through two offerings for a retirement housing development referred to as the "Arcadia Project" in Conyers, Ga. The offerings included COPs in the Development Authority of Clayton County, Ga.'s revenue bonds and in the Savannah Economic Development Authority's subordinated mortgage healthcare facility revenue bonds, as well as Cherokee Financial's COPs in a 10% promissory note issued by Arcadia Partners.

The confidential disclosure memorandum given to investors, said that $1.4 million of the proceeds would be used to construct the Arcadia Project and that the private placement investors would be paid interest and principal from the revenues of the project. Instead $177,936 of the proceeds were used to make quarterly interest payments back to the investors in the Cherokee Financial private placement and $644,158 of the proceeds financed undisclosed expenses and payments, including some associated with his restaurants and his wife's personal account.

In another example, Brogdon raised $2.15 million through COPs in the Development Authority of Clayton County, Ga.'s first mortgage revenue bonds. Instead of using $425,000 of the proceeds as working capital for the facility that served as the source of payment of debt service on the bonds, Brogdon used the money to pay loans on an unrelated nursing home and commercial property owned by his Brogdon Family Company LLC. He also used the money to pay an employee's salary at one of the companies he co-founded and transferred $74,000 to his wife's personal account.

His misconduct continued through at least Oct. 8 of this year, according to the SEC. As recently as September 2015, he used commingled funds from unrelated facilities to satisfy debt service obligations on three outstanding bond offerings and as recently as November he used a personal line of credit to make debt service payments on two bond offerings that did not include that source of funding in their official statements.

"Unless the defendant is permanently restrained and enjoined, [he] will again engage in the acts, practices, transaction and courses of business set forth in this complaint," the SEC said.

The commission found Brogdon violated Section 17(a) of the Securities Act of 1933, which prohibits fraud and misrepresentations in the offer or sale of securities, and Section 10(b) of the Securities Exchange Act of 1934 as well as Rule 10b-5 in that section, which refer to manipulative and deceptive devices. He also violated Sections 20(e) of the Exchange Act, on liability of controlling persons, and Section 15(b) of the Securities Act, on registration of municipal dealers, according to the commission.

Meanwhile, FINRA charged Cantone Research majority owner Anthony Cantone, and his wife Christine, with making fraudulent misrepresentations and omissions of material facts in connection with the sales and extensions of more than $8 million of COPs in certain promissory notes that were executed on behalf of one of several entities controlled by Brogdon.

FINRA said they failed to disclose, among other things, Brogdon's past troubles with securities regulators and U.S. attorneys, as well as the bankruptcy filings of companies he controlled.

According to FINRA, four of five of the promissory notes have defaulted, resulting in about $6 million of losses to investors, while CRI and Cantone received commissions and other payments of more than $1 million from the offerings.

THE BOND BUYER

BY JACK CASEY and KYLE GLAZIER

NOV 23, 2015 4:09pm ET

White Cites Pros and Cons of Hedge Fund Disclosure Bill.

WASHINGTON – Securities and Exchange Commission chair Mary Jo White on Wednesday declined to take a position on a bill that would increase hedge fund reporting in the wake of fund purchases of Puerto Rico's debt, saying it has both pros and cons.

The bill, introduced on Nov. 5 by Rep. Nydia Velázquez, D-N.Y., would require hedge funds holding a 1% or more ownership stake in an entity's debt or equity securities to file quarterly reports with the SEC.

Current law requires hedge funds to report to the SEC within 10 days if they acquire 5% or more of an equity position, but it does not apply to derivative positions or government debt issues.

Velázquez asked White to comment on the bill, which is pending before the House Financial Services Committee, during a hearing held by the panel on the SEC's budget and operations.

White said she would have to study the precise parameters of the bill, but that it would likely provide benefits by increasing transparency and protecting private investors through more disclosure. However, she also noted it could have negative effects by exposing specific hedge fund strategies.

A day earlier, at a Capitol Hill event addressing hedge funds and private equity, Velázquez said that hedge funds holding Puerto Rico debt are using their leverage to lobby for "draconian cuts" that harm the island's residents. The commonwealth and its authorities currently have roughly $72 billion of debt.

Hedge funds hold about 30% of that debt, but the specifics of their holdings are unclear, Velázquez said.

The lawmaker said hedge funds, who invested in the island's debt as its fiscal situation deteriorated, are saying Puerto Rico can avoid defaulting on its debt by cutting spending in key areas like education. She called those suggestions "morally unacceptable" because they "will hurt working families and retirees."

She added that hedge funds are also opposing "sensible steps," like extending Chapter 9 bankruptcy protection to help Puerto Rico address its debt situation.

Hedge funds "would rather see the economic future of the island vanish than take a modest discount on the debt they bought, even though they knew the island's debt was in distress when they purchased it," Velázquez said.

She said her bill would not correct all the problems associated with hedge fund involvement in the troubled debt, but that "taking a clear-eyed look at how these funds function would be a good start."

THE BOND BUYER

BY JACK CASEY

NOV 18, 2015 1:19pm ET

MSRB Releases Long-Awaited Best Ex Guidance.

WASHINGTON – The Municipal Securities Rulemaking Board released its much-anticipated best execution guidance for dealers on Friday, providing answers to frequently asked questions about the rule as well as the exemption for sophisticated municipal market professionals.

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." The best execution standard does not necessarily mean a dealer must find the best price.

Dealers are exempted from the rule if their customer is considered an SMMP under both Rules D-15, which defines an SMMP, and Rule G-48 on transactions with SMMPs. The rule also does not apply to trades between dealers. But it covers customer trades that are cleared through another dealer.

The MSRB first filed G-18 with the Securities and Exchange Commission in August 2014 and received SEC approval later that year on Dec. 8. The rule was supposed to have been effective on Dec. 7 of this year, but dealers had questions about implementing it so the MSRB agreed to delay the effective date until after it issued the guidance. The effective date for the rule is now March 21, 2016. The MSRB has tried to ensure its rule and guidance align with the Financial Industry Regulatory Authority's rule on best execution for dealers trading corporate debt.

In its rule, the MSRB provides dealers with a non-exhaustive list of factors to take into account when using reasonable diligence to ascertain the best price for a muni, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations, and; the terms and conditions of the customer's inquiry or order.

The guidance tries to answer dealers' questions about such issues as: what constitutes reasonable diligence; how they should document their compliance; how to meet best-ex requirements in extreme market conditions, and; how brokers' brokers or alternative trading systems can be used to show reasonable diligence in determining the best market.

"The MSRB is issuing this guidance to facilitate dealers' compliance with their new obligations and ensure that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities," said MSRB executive director Lynnette Kelly.

But the MSRB makes clear that it is somewhat limited in the guidance it can give on the rule. Rule G-18 is meant to be flexible to fit the diverse nature of different dealers' businesses, the board said, so determining whether a dealer exercised reasonable diligence "necessarily involves a 'facts and circumstances' analysis, and the actions that in one instance may meet a dealer's best-execution obligation may not satisfy that obligation under another set of circumstances."

The guidance urges dealers to develop written policies and procedures that both fit their specific business models and ensure documentation of their compliance. Even though the rule is meant to allow a broad range of policies and procedures, the MSRB recommends that dealers consider reviewing and including the existing practices of their trading operations, existing best practices within the municipal securities market, and existing best practices in the corporate debt securities market with respect to FINRA's best execution rule.

The MSRB suggests dealers pay attention to three requirements in the rule when documenting compliance. They should: have written policies and procedures for compliance; document periodic reviews of their written policies and procedures and the results of those reviews, and; consider documenting their adherence to the policies and procedures.

In the event of extreme market conditions, the MSRB said it expects dealers to have evaluated their procedures for such situations to make sure they: still treat customer orders fairly, consistently and reasonably; disclose to customers any differences in normal order-handling procedures, and; only implement different procedures designed to respond to extreme market conditions when warranted by market conditions.

The MSRB said there is no set number of either markets or dealers a dealer should check to meet its diligence requirement. A dealer should generally check more than one market or expose customer orders to multiple offerings or bids and show the external offerings or bids to retail customers, it said.

The rule also does not require dealers to use broker's brokers or ATS' as part of their diligence. The guidance said the rule is not designed to favor a particular type of venue over another and that the "expansive interpretation" of the term "best market" is meant to allow dealers to tailor their compliance with their specific areas of business. However, the guidance notes that electronic systems are becoming more available and dealers should periodically consider whether ATSs would provide benefits for their customer transactions.

Additionally, the guidance said using only one broker's broker pricing for a security or one ATS will not categorically qualify as reasonable diligence, but a dealer's policies and procedures can establish the facts and circumstances under which a dealer could be allowed to do so.

The self-regulator also received questions about what qualifies as a similar security under the rule. While not providing an exhaustive list, the MSRB said dealers could look at the issuer, source of repayment, credit rating, coupon, maturity, or a variety of other factors to determine similarity.

Leslie Norwood, associate general counsel and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA welcomes the guidance but still needs to review it carefully with its members. She added that SIFMA will review the guidance with an eye toward differences between the MSRB's and FINRA's, as well as any implications for the market or any implementation challenges.

Jessica Giroux, general counsel and managing director of federal regulatory policy with Bond Dealers of America, said BDA also appreciates the MSRB's effort and work with FINRA and will be talking to its members about the changes.

"As always, the BDA continues to focus on the transparency and efficiency of the municipal securities market and we know the MSRB is implementing this (and other) rules for the same purposes," she said.

THE BOND BUYER

BY JACK CASEY

NOV 20, 2015 4:48pm ET

How Much Do You Pay for Muni Trades? Regulators Want You to Know.

At 2:26 p.m. one day in April, an investor bought $30,000 of bonds issued to finance a new stadium for the New York Mets at 106 cents on the dollar. Six minutes earlier, a broker paid 101 cents for the same securities.

Chances are, if the buyer was one of the individual investors who dominate the $3.7 trillion municipal market, he or she was unaware that the total markup on his or her bond could have been as high as $1,500. That will change if regulators adopt a new rule requiring brokers to disclose their profits on trade confirmations.

“A year’s of worth interest can be wiped away simply by buying or selling a bond,” Securities and Exchange Commission commissioner Michael Piwowar said in a telephone interview. “People should know what they’re paying.”

The proposal by the Municipal Securities Rulemaking Board, which is soliciting comments on it through Dec. 11, follows a push by the SEC to inject more transparency into the market for state and city debt to protect mom and pop customers. Such buyers own about 42 percent of the securities, according to the Federal Reserve’s figures. That’s six times more than their share of the Treasury market.

By requiring brokers to disclose how much they earn, regulators want to foster more competitive pricing among dealers and drive down trading costs. A study by the Securities Litigation & Consulting Group, a firm that advises on lawsuits, estimated that customers paid more than $10 billion in excessive markups and markdowns on municipal bonds between 2005 and 2013.

Little Guys Pay

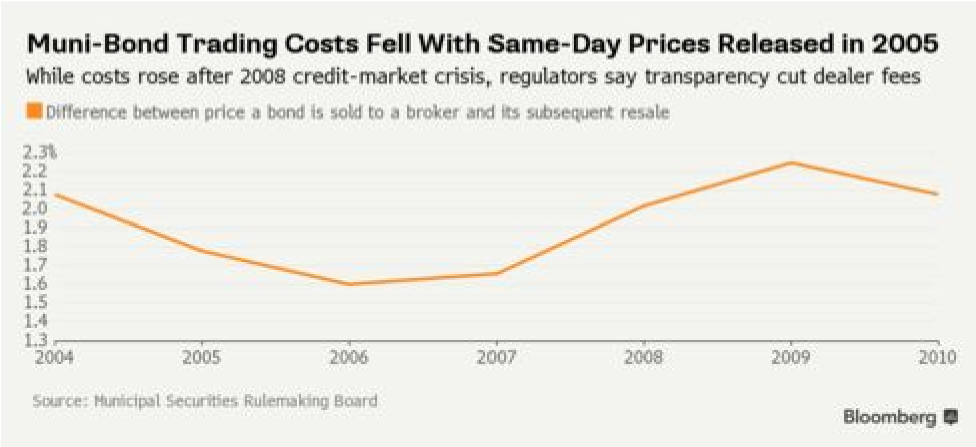
That’s mostly borne by small investors. Those who bought $100,000 or less of investment-grade muni debt in December 2013 paid brokers an average transaction cost of 1.73 percent, twice that of corporate bonds, according to a report by Standard & Poor’s.

The MSRB proposal has drawn criticism from some securities dealers, which said it would add costs and harm liquidity by driving brokers out of the market. Investors can also already find out what the markup was if they want: Since 2005 all trades have been reported within 15 minutes to a website run by the board.

“How about we spend more effort and time on other things that aren’t so transparent,” like the markup on a carton of milk at the gas station, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, a broker that also manages accounts on behalf of customers. “Should that have a label on it that says that this owner operator has marked up this gallon of milk by X amount?”

Many investors don’t know that trading prices are now disclosed, according to Piwowar, whose said the fee disclosure “is the next natural step” and won’t be costly for firms to implement. He said the same arguments were once made against the same-day trade reporting, which lowered customer costs without affecting the market’s liquidity.

“It’s the little guys who we’re talking about here,” he said. “If the argument is the information is already out there, what’s the argument against providing it?”



The MSRB proposal — similar to one the Financial Industry Regulatory Authority has proposed for the corporate market — applies to “riskless principal” transactions, which make up a large portion of muni trades. That’s when a broker buys a security only after locking in an order to resell it, instead of acquiring a bond and holding it in the hopes of selling it later. Dealers embed their fees in the purchase price but aren’t required to disclose them.

That arrangement is essentially the same as an agency trade, in which a dealer acts as matchmaker between customers but doesn’t use its capital to purchase the bond. Brokers must disclose commissions from those.

Two-Hour Window

The MSRB proposal, as currently drafted, would require dealers to disclose the markup or markdown for principal transactions if the dealer trades the same security within a two-hour window of the customer’s transaction. The dealer’s trade also has to equal or exceed the size of the customer trade to trigger disclosure.

Jessica Giroux, senior counsel at the Bond Dealers of America, said the group supports making the muni and corporate bond markets more transparent.

“We’d like to see coordination and harmonization between the two regulators,” said Giroux, whose Washington-based group represents regional firms. “What we don’t want to have is a whole other system being required, costing the dealer more — and then in turn, perhaps, passed onto the client.”

The regulators have already rolled back the scope of the proposal. When it was first introduced last year, the MSRB recommended disclosing markups for bonds that a firm traded on the same day as its client, instead of just two hours.

SEC Commissioner Piwowar said he would be “extremely disappointed,” if the MSRB keeps the narrower time frame in place. If so, he said, dealers could skirt the disclosure requirement by delaying trades. The MSRB’s rules have to be approved by the SEC.

“The two hour window is easily game-able,” he said. “The MSRB will ultimately get it right.”

Bloomberg Business

by Martin Z Braun

November 22, 2015 — 9:01 PM PST Updated on November 23, 2015 — 1:09 PM PST

BDA Submits Comment Letter: MSRB Proposal to Lengthen the Term of Board Member Service.

The BDA submitted a comment letter to the MSRB regarding their proposal to lengthen the term of service for Board members.

BDA's letter generally supports the MSRB's proposal but also asks the MSRB to consider implementing a training program during year one of service with the expectation that board members will be municipal market experts by year four thereby maximizing the benefits of the proposed fourth year of service.

You can find our final letter here.

11-19-2015

SIFMA Submits Comments to the MSRB on Regulatory Notice 2015-18 Regarding Amendments to Rule A-3.

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) on their Notice 2015-18, "Request for Comment on Draft Amendments to MSRB Rule A-3 to Lengthen the Term of Board Member Service".

Read the comments.

November 19, 2015

FINRA Publishes Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets.

Executive Summary

In light of the increasingly automated market for equity securities and standardized options, and recent advances in trading technology and communications in the fixed income markets, FINRA is issuing this Notice to reiterate the best execution obligations that apply when firms receive, handle, route or execute customer orders in equities, options and fixed income securities. FINRA is also issuing this Notice to remind firms of their obligations, as previously articulated by the Securities and Exchange Commission (SEC) and FINRA, to regularly and rigorously examine execution quality likely to be obtained from the different markets trading a security. FINRA also welcomes comments on whether there are other topics related to best execution for which additional guidance would be helpful. Any such comments can be emailed to pubcom@finra.org.

Questions concerning this Notice or FINRA Rule 5310 should be directed to:

Brant Brown, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6927 or by email; or

Andrew Madar, Associate General Counsel, OGC, at (202) 728-8056 or by email.

Read the Full Notice.

MSRB Provides Implementation Guidance on Best-Execution Rule.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today published implementation guidance to assist municipal securities dealers in complying with the MSRB's new rule on "best execution" for municipal securities transactions, taking effect March 21, 2016.

MSRB Rule G-18, approved by the Securities and Exchange Commission (SEC) in December 2014, requires dealers to seek the most favorable terms reasonably available for their retail customers' transactions. The adoption of this key investor protection provision supports existing MSRB fair-pricing rules, promotes fair competition among dealers, and aligns with recommendations in the SEC's 2012 Report on the Municipal Securities Market.

"The MSRB is issuing this guidance to facilitate dealers' compliance with their new obligations and ensure that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities," said MSRB Executive Director Lynnette Kelly.

The MSRB's guidance addresses how best-execution concepts, including the standard of "reasonable diligence," applies to municipal securities transactions. The guidance also addresses the exemption from the new obligation for transactions with sophisticated municipal market professionals (SMMPs). Read the implementation guidance.

As part of its effort to promote regulatory efficiency and consistency across the fixed income markets, the MSRB coordinated with the Financial Industry Regulatory Authority (FINRA) on the finalization of the implementation guidance.

Date: November 20, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

Progress on T+2 Settlement.

The U.S. securities industry is applauding progress by regulators in support of the move to shortening settlement cycles over the next couple of years.

The U.S. Municipal Securities Rulemaking Board (MSRB) on Wednesday issued a proposal for certain rule changes designed to facilitate the move to a T+2 (trade date plus two days) settlement cycle from T+3.

"The MSRB is supportive of transitioning to a shorter settlement cycle as a means of both reducing risk and saving costs," said MSRB executive director, Lynnette Kelly, in a statement. "To ensure we can address any areas in MSRB rules that would present challenges to a shortened settlement cycle, we encourage municipal market participants to provide input on this potential change."

The Securities Industry and Financial Markets Association (SIFMA) issued a statement endorsing the initiative. "Regulatory action is critical for the industry to achieve its goal of a two-day settlement cycle by third quarter 2017. We fully support recent actions by regulators to identify rule changes needed to facilitate the move to T2 and are committed to working with them to move this process forward," said Tom Price, managing director, technology, operations and BCP at SIFMA, and co-head of the T2 Industry Steering Committee.

Earlier this year, the Canadian Capital Markets Association (CCMA) also struck its own steering committee to help guide the Canadian industry's move to T+2 on the same timetable as the U.S.

Investment Executive

By James Langton | Thursday November 12, 2015

MSRB Issues First-of-a-Kind Compliance Advisory for MAs.

WASHINGTON — In a first-of-a-kind action, the Municipal Securities Rulemaking Board released a compliance advisory for municipal advisors on Thursday to help them understand and implement new regulations.

The MSRB said the advisory should serve as a tool for MAs to understand a number of compliance risks associated with the rules the MSRB has written in accordance with the Dodd-Frank Act.

"As the regulatory framework for municipal advisors takes shape, the MSRB believes it is important to assist [MAs] with evaluating their compliance programs in light of newly effective rules," said MSRB executive director Lynnette Kelly.

Each of the five potential risk areas the MSRB identifies in the advisory are broken down into three sections: a summary of the rule or rules that apply, a list of potential violations, and a list of points MAs should consider when evaluating their compliance.

One section tackles MSRB Rule G-44 on supervisory and compliance obligations of municipal advisors. Under the rule, MAs are required to develop a supervisory system and compliance program, as well as to designate a chief compliance officer. The CCO can either be a part of the MA firm, or the firm can outsource the job. If the MA chooses to outsource, it still maintains ultimate responsibility for meeting its obligations under the rule.

The advisory warns MAs that they can violate the rule if they do not designate a CCO or have a CCO that does not have enough knowledge, experience, or training for the position. If a firm does not keep general business records, as mandated under MSRB Rules G-8 and G-9, or does not have a process to at least annually review, test, and modify its written compliance policies and procedures, it also could violate the rule. The MSRB included ten bullet points with questions MAs should ask themselves to determine if they are meeting the G-44 standards.

Another section addresses MSRB Rule A-12 and the need to properly register with the MSRB as an MA. The board reminds MAs that they must also register with the Securities and Exchange Commission, which requires completion of SEC Form MA, as a pre-requisite to MSRB registration. The advisory also includes information about supplying the MSRB contact information for key people, such as a master account administrator, a billing contact, and a compliance contact.

Possible violations, aside from not registering before acting as an MA, include the failure to update Form A-12 within 30 days of a change in material information, not paying applicable registration fees, and failing to affirm the registration information on Form A-12 during the affirmation period that starts on Jan. 1 of each year.

The advisory also discusses Rule G-3 on professional qualifications, on which MAs will be tested through a Series 50 Pilot Exam offered from Jan. 15 to Feb. 15. The board advised MAs and firms to make sure that any person engaged in MA activities meets the professional qualification requirements in G-3. A violation of the rule would include failing to identify each individual who is directly engaged in the management, direction, or supervision of MA activities as well as not having a process that identifies those individuals.

The advisory also urged MAs to recognize if they are acting as a placement agent and may be engaging in brokerage activity in violation of several MSRB rules.

An MA that acts as a placement agent, engaging in a securities transaction with a possible investor and getting transaction-based compensation, may actually be a broker-dealer, the MSRB said. MAs could also cross over to broker-dealer activity when they help facilitate bank loans evidenced by notes and do not recognize the notes are municipal securities and the bank is actually an investor, the board added.

An MA that acts as a broker-dealer, without being registered as one, risks violations and also fails to follow other MSRB rules that are applicable to broker-dealers, the advisory warned. MAs should have controls in place that ensure that they are only conducting municipal advisor activities, the MSRB suggested. The advisory also encourages MAs to look at several MSRB notices on crossing over into broker-dealer activities, as well as the Supreme Court's "Reves test," which provides guidance for evaluating whether something is a security.

The advisory also covers MSRB Rule G-17 on fair dealing. When MAs consider fair dealing risks, they should avoid violative behavior like splitting municipal advisory fees with a third-party under a fee arrangement that is not disclosed to the client or falsely stating they are an independent registered MA (IRMA) for a municipal entity.

The MSRB's suggestions for complying with G-17 include developing a process to review advertising and other promotional materials, as well as statements found on the MA's website, to ensure the information is not false or misleading. An MA should also monitor whether everyone in the firm is fairly dealing with municipal entities and obligated persons.

The MSRB ended its advisory notice by encouraging MAs to explore past webinars and publications dealing with compliance that can be found on the MSRB's website.

THE BOND BUYER

BY JACK CASEY

NOV 12, 2015 3:30pm ET

MSRB Proposes Amendments for Move to T+2 Settlement Cycle.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing amendments to move the municipal securities market to a T+2 rather than the current T+3 settlement cycle in the wake of continued calls from across the securities industry and support from regulatory officials.

The amendments would modify MSRB Rule G-12 on uniform practice, G-15 on confirmation, clearance, settlement, and other requirements with respect to transactions with customers to allow them to be settled within two days of execution instead of three. The last time the settlement timeframe changed was in 1995, when it shifted to T+3 from T+5.

The changes to T+2, which the MSRB is asking commenters to weigh in on by Dec. 10, would be tied to the Securities and Exchange Commission making the same revision to the settlement cycle under SEC Rule 15c6-1(a), the MSRB said in its regulatory notice.

“The MSRB is supportive of transitioning to a shorter settlement cycle as a means of both reducing risk and saving costs,” said MSRB executive director Lynnette Kelly.

A spokesperson for Investment Company Institute, which along with Securities Industry and Financial Markets Association currently co-chairs the Industry Steering Committee spearheading the change, said ICI is reviewing the MSRB’s proposed amendments and that the fund industry “generally supports regulators’ efforts to adopt rules governing T+2 implementation as a necessary first step.”

The idea for a change to a T+2 settlement cycle started in 2012 when the Depository Trust and Clearing Corporation started an effort to shorten the U.S. settlement cycle and sponsored a cost-benefit analysis of shortening the settlement cycle to T+2 or T+1. It released a white paper in 2014 that gave its reasoning for a T+2 cycle.

It also formed the ISC in 2014 to lead the move to a shorter settlement timeframe. The ISC later sent a letter to the SEC laying out the necessary steps the commission and other regulatory agencies would need to take to make the changes. In the letter, the ISC recommended relevant regulatory organizations confirm their support for the transition by the third quarter of 2015 and adopt the necessary rule changes by the second quarter of 2016. That timeline allows the transition to T+2 by the third quarter of 2017, the ISC said.

The MSRB said in its regulatory notice it believes it is on schedule to meet those deadlines.

SEC Commissioners Michael Piwowar and Kara Stein released a statement in June applauding the industry’s leadership on the issue and saying they were interested in having the settlement cycle shortened “as soon as possible.” SEC chair Mary Jo White said in a September letter to SIFMA and ICI that she would work to make regulatory and other changes to support shortening the settlement cycle by 2017.

The MSRB is specifically asking commenters to discuss any additional MSRB rule changes that might be needed for the transition as well as any unique impacts the transition could have on municipal securities transactions.

THE BOND BUYER

BY JACK CASEY

NOV 10, 2015 3:05pm ET

MSRB Requests Comment on Shortening the Settlement Cycle for Municipal Securities.

The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to facilitate shortening the settlement cycle for transactions in municipal securities 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).

Read the full press release.

Comments should be submitted to the MSRB no later than December 10, 2015.

View the request for comment.

Municipal Securities Issuers to Face Enforcement Actions.

Nov. 13 — The Securities and Exchange Commission crackdown on municipal securities disclosure violations is poised to enter a new phase of enforcement cases targeting the issuers of those securities, practitioners and others told Bloomberg BNA.

The agency's Municipalities Continuing Disclosure Cooperation (MCDC) initiative encouraged municipal securities underwriters and issuers to self-report prior violations of federal securities laws by Dec. 1, 2014. In exchange, participants could expect to receive less severe, more uniform sanctions in any subsequent enforcement action. Industry observers concede underwriters and issuers often didn't fully comply with SEC rules regarding the accuracy of disclosures intended to enhance investor protections for years, and the initiative sought to address that deficiency.

After announcing a single MCDC enforcement case in 2014, the SEC launched two waves of enforcement cases in June and September against 58 underwriters participating in the initiative. Now, municipal securities lawyers said the agency is preparing its first cases against issuers.

"I had initially thought that, while the SEC came down hard on underwriters, they may not even meaningfully look at issuers who had self-reported because of the volume of issuer self-reports. But now it appears to be clear that the SEC is going to fully review all issuer self-reports too," Daniel Deaton, Nixon Peabody LLP partner and municipal finance specialist, said.

SEC spokeswoman Judith Burns declined to comment on the matter.

Report or Else

The SEC announced an enforcement action less than four months after the program was launched, alleging that the Kings Canyon Joint Unified School District in California misled investors about its failure to provide contractually required financial information and notices (148 SLD, 8/1/14).

Perhaps to spur participation in the initiative, the school district was neither fined nor required to admit wrongdoing.

In June 2015, the SEC announced a group of enforcement actions against 36 municipal-securities underwriters, alleging they sold municipal bonds between 2010 and 2014 using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations (118 SLD, 6/19/15).

In September, the SEC announced enforcement actions against an additional 22 municipal-securities underwriters for allegedly selling municipal bonds using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations. The firms also allegedly failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to customers. The firms paid a collective $4.12 million in fines.

The initiative and its resultant enforcement cases should not come as a total surprise. One of the SEC enforcement division's five specialized units, created in 2010 by former SEC enforcement division director Robert Khuzami, focuses on municipal securities and public pensions. LeeAnn Ghazil Gaunt is the unit's current chief.

Sooner or Later

If underwriters fully disclosed the information required to participate in the MCDC initiative, the SEC likely possesses data that could help construct enforcement cases against issuers, and practitioners predicted the SEC is now preparing those cases. The practitioners said the initiative was more popular with the municipal securities industry than the SEC expected, and the agency has had to spend more time than expected analyzing the mounds of data disclosed by the underwriters and issuers.

"The SEC got hit with a lot of material, so I think they just have to dig through it all," Ballard Spahr LLP partner and municipal securities enforcement specialist Norman Goldberger told Bloomberg BNA in November.

As the agency digests the MCDC disclosures, cases against issuers will be announced, Goldberger said. "Sooner or later," he said.

While there was broad agreement the SEC will launch future enforcement cases against issuers, there was dispute about additional cases being brought against underwriters.

"My view is the SEC will likely bring a third wave of settlements against underwriters prior to bringing the first wave of issuer settlements," Elaine Greenberg, Orrick, Herrington & Sutcliffe LLP partner and a former chief of the SEC enforcement division's municipal securities and public pensions specialized unit, said.

"Although I believe that the SEC has begun contacting issuers who have self-reported under MCDC, I think it probably makes sense to finish up with the underwriter settlements prior to embarking on the first wave of issuer settlements," she told Bloomberg BNA Nov. 13.

Terms of Program

Under the MCDC program, underwriters and issuers had to provide the SEC with information about past municipal securities offerings with which they were involved that contained potentially inaccurate statements, including the identities of the lead underwriter, municipal advisor, bond counsel, underwriter's counsel and disclosure counsel.

The program was launched in March 2014 and issuers had to self-report no later than Sept. 10, 2014, in order to receive the relatively less severe sanctions for any violative behavior, while issuers were required to self report by Dec. 1, 2014.

The 1933 Securities Act and the 1934 Securities Exchange Act include broad exemptions for municipal securities, but not from antifraud provisions such as Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. In 1975, Congress enacted amendments to that program, including the Tower Amendment that expressly limits the SEC authority to require municipal securities issuers to file any application or document with the agency prior to any sale of municipal securities by a municipal issuer.

Under that program, the SEC has direct regulatory supervisory authority over underwriters, but only has authority over issuers under its antifraud provisions.

SEC Endgame?

That the SEC lacks statutory authority to supervise muni-market disclosures may be another motivation behind the initiative, at least according to Ben Watkins, director of the Florida division of bond finance and a vocal critic of the MCDC initiative. The MCDC initiative is less concerned with promoting investor protections and more aimed at gathering information to argue that Congress needs to give the SEC statutory authority to oversee disclosure in the municipal securities.

"I think that's their endgame," he told Bloomberg BNA Nov. 12.

"I do not know one single issuer that intentionally set out not to file information they agreed to provide to investors. That's not the issue. The issue is, because of the composition of our markets and the diversity of issuers and their different responsibilities and their level of sophistication and all of that, that inevitably things slipped through the cracks. Now, does that rise to the level of a securities fraud? I think not," Watkins said.

The Securities Industry and Financial Markets Association also concluded that using the blunt instrument of enforcement cases instead of issuing guidance to the financial community may have been misguided.

"SIFMA members fully support the SEC's goal of improving disclosure and transparency in the municipal market. It is disappointing that the SEC chose to bring violations under authority that includes mandatory statutory disqualifications when other authority was available, especially as firms that participated in the MCDC program did so voluntarily and in good faith," Michael Decker, managing director and co-head of municipal securities at SIFMA, said in a Nov. 13 statement

BNA Bloomberg

By Stephen Joyce

November 17, 2015

To contact the reporter on this story: Stephen Joyce in New York at sjoyce@bna.com

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SIFMA Applauds Regulatory Action to Support T2 Settlement Cycle.

Washington, D.C., November 11, 2015 – SIFMA today issued the following statement after the Municipal Securities Rulemaking Board (MSRB) announced it is seeking public comment on a proposal to facilitate the industry's move to a two-day settlement cycle by modifying certain MSRB rules:

"Shortening the time it takes to settle a trade will improve the overall efficiency of securities markets, reduce risk and align the United States with other global markets. We thank the Securities and Exchange Commission for directing the self-regulatory organizations it oversees to take action to support a shortened settlement cycle and appreciate the work the MSRB is doing to help make T2 a reality by third quarter 2017," said Kenneth E. Bentsen, Jr., SIFMA president and CEO.

Tom Price, SIFMA managing director, technology, operations and BCP, and co-head of the T2 Industry Steering Committee, added, "Regulatory action is critical for the industry to achieve its goal of a two-day settlement cycle by third quarter 2017. We fully support recent actions by regulators to identify rule changes needed to facilitate the move to T2 and are committed to working with them to move this process forward."

Congress Shouldn't Provide A 'Super Chapter 9' Escape For Puerto Rico.

Puerto Rico's Governor, Alejandro García Padilla, confirmed everyone's worst fears recently when he testified before a Senate committee that "Puerto Rico will have no choice but to default. Nobody wants this, but it is a reality, and the consequences will be grave."

Indeed, with each passing week, it is looking more and more likely that Puerto Rico will run out of funds before year's end, becoming the first major U.S. jurisdiction to default on all its bonded debt. Such a widespread and indiscriminate default could have a damaging effect on the U.S. municipal bond market, given that the island is the third-largest issuer in the country after the states of California and New York. Moreover, such a default will make it extremely hard for Puerto Rico to return to the capital markets after the current financial storm eventually passes.

As someone who was involved in multiple restructurings of government debt in an earlier career on Wall Street, and as a keen academic observer of fiscal crises during the past decade, I fail to understand the governor's preemptive surrender to the forces pushing him downriver into an all-out bankruptcy.

The importance of respecting the seniority structure

In workouts involving corporate or government entities, it is standard procedure to observe the established hierarchy of creditors. Each security issued, whether debt or equity, has a specific seniority or ranking which determines the order of repayment in the event of a reorganization or bankruptcy. Everybody knows that preferred stock is higher-ranking than common stock, and that senior debt must be repaid before subordinated debt.

Even sovereign governments in financial difficulty prioritize their payments, though they do not operate under a formal bankruptcy regime. For example, governments will keep servicing debts to official multilateral agencies such as the International Monetary Fund and the World Bank, widely regarded as senior creditors, even as they stop paying their bondholders or bank creditors. This is what Greece did in 2012, and even what Argentina has done in the past dozen years in which it has been in and out of default to bondholders.

Besides, Puerto Rico's laws and bond indentures spell out exactly what is to be done should revenues ever prove insufficient to cover debt-service payments. At the top of the proverbial totem pole stand the General Obligations (GOs), which are backed by the Commonwealth's full faith and credit. As per Article VI, Section 8 of the island's Constitution, "interest on the public debt and amortization thereof shall first be paid and must be serviced by the government prior to any other government obligation."

About $13 billion of these GOs are outstanding, plus some $5.5 billion in debts guaranteed by the Commonwealth's good faith and credit, and together they account for roughly one-quarter of total obligations. The first of these payments due consists of $355 million which Puerto Rico's Government Development Bank must pay on December 1, a portion of which is guaranteed by the Commonwealth's good faith and credit.

At the bottom of the totem pole are the debts of the Public Finance Corporation, on which Puerto Rico has already defaulted, which did not constitute an obligation of the Commonwealth or any of its instrumentalities (other than the corporation itself). Low-priority debts have been racked up also by the island's Highways and Transportation Authority, Infrastructure Financing Authority and Municipal Finance Agency, among others. These have the weakest protections and thus lowest likely recovery rates in any scenario in which creditor seniority is respected.

It boggles the mind that Governor García Padilla is willing to rip up the well-worn playbook of debt restructurings and allow all obligations to go unpaid. The selfish reason why corporations and governments observe established payment priorities is because, in an eventual return to the markets, they can start out by issuing the type of obligations which were respected in the worst of moments. But who is ever going to invest in a Puerto Rico GO again—never mind in any lower-ranked obligation—if they are disrespected now? Only some risk-prone speculators, perhaps, but at usurious interest rates and short maturities, at best.

Congress should not provide a "Super Chapter 9" escape hatch

Governor García Padilla would also be violating the Constitution and laws of Puerto Rico if he were to allow for a generalized default. He could be impeached for doing so, and never make it to the end of his mandate in January 2017—and his government would certainly be inundated with lawsuits seeking to enforce the legal obligations the island previously assumed.

This is why he has proposed to the Obama Administration, and now he has appealed directly to the U.S. Congress, that he be provided with a "get out of jail free" card: He wants Congress to mandate a broad legal framework that goes well beyond the scope of Chapter 9 to allow for a comprehensive restructuring of all of Puerto Rico's outstanding debt in one fell swoop.

Since the laws passed in Washington trump those approved in San Juan, and they can even override the island's constitution, the governor would be able to disregard every now-lawful obligation and get away with it because "the devil (in Washington) told him to do it."

It is unfortunate that even the U.S. Treasury, which should know better, has endorsed a Super-Chapter 9 "solution" to the island's financial woes—a legislative overreach which would set a dreadful precedent for states, municipalities and other territories in trouble.

In essence, the Administration is asking Congress to compound the mistake it made a century ago, when Puerto Rico was allowed to sell its debt throughout all 50 U.S. states on a triple-tax-free basis, by now having Congress authorize Puerto Rico to disavow its obligations to the millions of investors who believed that the constitutional and other legal pledges made by Puerto Rico were inviolable.

The Obama Administration, instead, should be brokering a new compact with Puerto Rico: reasonable cuts in spending that reflect downward demographic and economic trends, combined with pension reforms and a new business model (to include privatizations and concessions) for the island's money-losing public utilities and agencies, in exchange for an increase in budgetary transfers on account of Medicaid, tax credits and other help to treat the island more like a state than a territory.

And this compact should be enforced by the establishment of a federal Financial Control Board, to ensure that whatever funds are provided by Congress, and debt relief is granted by bondholders, go hand-in-hand with greatly improved management of the island's public finances. At present, the Administration proposes merely "fiscal oversight in a way that respects Puerto Rico's autonomy"—namely, something completely toothless. The whole idea behind these boards is for them to be empowered to take the tough decisions on management, spending, revenues and assets for which there was no local political support. As I've argued before, the control board set up by Congress in the mid-1990s for the District of Columbia, without authority to impair creditors, is the kind that would be most helpful to Puerto Rico right now.

Forbes Opinion

Guest Post Written by Arturo C. Porzecanski

Dr. Porzecanski is a distinguished economist in residence at American University.

Nov. 6, 2015

MSRB Files Amendments to Proposed Rule G-42 to Establish Core Standards of Conduct for Municipal Advisors.

Today the Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) an amendment to proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors. If approved by the SEC, proposed Rule G-42 would establish core standards of conduct and duties of non-solicitor municipal advisors when engaging in municipal advisory activities, including their fiduciary duty to municipal entity clients. Today's amendment adds, in response to commenters, a narrow exception to the specified prohibition in the proposed rule of certain principal transactions with municipal entity clients, and also makes minor, technical amendments. The exception generally would cover transactions in particular types of fixed income securities where the municipal advisor follows a process to make disclosure and obtain client consent.

View the filing.

MSRB Files Exception to MA Conduct Rule's Principal Transaction Ban.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing a limited exception to the controversial principal transaction ban in its proposed municipal advisor core conduct rule.

The MSRB filed the proposed amendment to its Rule G-42 on core duties of municipal advisors, with the Securities and Exchange Commission on Monday and asked that it become effective six months after SEC approval. The SEC previously published the MSRB's G-42 proposal for comment on May 8, but asked for an extension of up to 90 days on Aug. 6. The MSRB then published revisions to the rule and responded to earlier comments on Aug. 12.

Commenters were most concerned about the proposed rule's ban on an MA 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. They said it would make the rule overly burdensome and anti-competitive.

The MSRB said the proposed amendment responds to concerns that, without an exception for certain transactions, "the proposed ban would restrict the access of municipal entities to trusted financial advisors, limit their ability to obtain certain financial services and products, create undue burdens on competition, and impose unjustified costs for issuers."

Under the core portion of Rule G-42, MAs would owe a fiduciary "duty of loyalty" to their municipal issuer clients and be 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."

It also mandates a less stringent "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.

The amendment filed with the SEC draws from the procedures under which investment advisors are allowed to engage in principal transactions with clients.

The changes filed Monday describe three requirements for MAs to qualify for the principal ban exception and the types of transaction that fall under the exception.

MAs can only use the exception if they are registered broker-dealers under the Securities and Exchange Act of 1934 and that the accounts they want to use it for are brokerage accounts subject to the Exchange Act, as well as the rules of self-regulatory organizations of which they are a member. MAs also can only use the exception if they use their investment discretion on a temporary or limited basis, at their clients' discretion.

The MSRB allows for the exception to carry over to future principal transactions following an original principal transaction that met the amendment's requirements. For example, if an MA uses the exception for one principal transaction with a municipal client, it can then use the exception for future principal transactions with the same municipal client that are directly related to the first transaction.

The third requirement in the amendment would limit an MA's principal transactions under the exception to sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt security, or corporate debt security.

If an MA is in compliance with those three requirements, it can then choose whether to pursue a transaction-by-transaction process or a process that is more complex but gives the MA the flexibility to obtain oral consent on a transaction-by-transaction basis instead of written consent.

If it chooses transaction-by-transaction, the MA must tell its municipal client in writing the capacity in which it is acting and get the client's informed written consent for the transaction, either before executing the transaction or after execution but before settlement.

If an MA opts not to pursue a transaction-by-transaction process, it must follow a six-step process. Neither the MA nor any of its affiliates can be the issuer or underwriter of a security that is the subject of the principal transaction and an MA also must get an executed written, revocable consent from its municipal client that would prospectively authorize the MA to directly or indirectly act as principal for its own account in selling a security to, or purchasing a security from, the client. The written consent must have been obtained after the MA explains to the client in writing the circumstances under which the MA may engage in principal transactions, the nature and significance of conflicts with the client's interests and how the MA will address those conflicts.

The process then requires the MA to inform its client either orally or in writing of the capacity in which it may act and get the client's consent either orally or in writing before executing each subsequent principal transaction. The MA would also have to send a written confirmation to the client saying that it disclosed that is may be acting in a principal capacity, the client authorized the transaction, and the MA sold or bought the security for its own account.

Finally, MAs would be, at least annually, required to send clients a list of all executed transactions in the client's account that relied on the exception, complete with the date and price. Each written disclosure would also have to include a statement about the client's ability to revoke its consent without penalty at any time by written notice.

Jessica Giroux, general counsel and managing director of federal regulatory policy with Bond Dealers of America, said the proposal is "very encouraging" and that BDA is pleased the MSRB has responded to industry comments.

Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association, said SIFMA is very pleased with the amendment and thinks it is helpful for issuers in the marketplace.

But executive director of National Association of Municipal Advisors Susan Gaffney disagreed with BDA and SIFMA, calling the amendment "a step backwards."

"The proposed amendment is further compromised by its complexity," Gaffney said. "The disclosure and consent model has been shown not to work well in other municipal market rulemaking. It is therefore surprising that such a structure has come forward, especially this late in the game, for Rule G-42."

THE BOND BUYER

BY JACK CASEY

NOV 9, 2015 3:07pm ET

Fox Rothschild: Cong. Committee Considers Bill Limiting Eminent Domain for Power-Line Projects.

Members of the Arkansas Congressional Delegation have introduced legislation aimed to give more leverage to states faced with new interstate power-line projects. Sen. John Boozman and Rep. Steve Womack have submitted matching versions of the Assuring Private Property Rights Over Vast Access to Land, or APPROVAL, Act, which would rewrite Section 1222 of the 2005 Energy Policy Act in the House and Senate. They recently testified before a house subcommittee in support of their bills

The bill is a response to a proposal by Clean Line Energy Partners of Houston to construct a $2 billion, 700-plus-mile, 3,500 megawatt, high-voltage-direct-current power line from Great Plains wind farms to the Tennessee Valley Authority. The APPROVAL Act would require the Department of Energy to obtain approval from a governor and state public service commission prior to approval of any Section 1222 transmission project and subsequent use of federal eminent domain, as well as the approval of any tribal government for the affected lands.

"States and local communities must know their voices will be heard in the transmission siting process and that a transparent process will be followed," Boozman said Wednesday to the House Natural Resources Committee's Subcommittee on Water, Power and Oceans.

Last Updated: November 2 2015

Article by David B. Snyder

Fox Rothschild LLP

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.

Orrick: Obama Administration's Legislative Proposal to Address Puerto Rico's Fiscal Crisis.

On October 21, 2015, U.S. Treasury Secretary Jacob J. Lew, National Economic Council Director Jeff Zients, and Health and Human Services Secretary Sylvia Mathews Burwell unveiled a legislative proposal, a copy of which is attached, to help Puerto Rico address its serious fiscal challenges. The Administration has requested Congress to act promptly to amend chapter 9 of the Bankruptcy Code authorizing the troubled public corporations to file bankruptcy petitions. More than twenty Democrats have become co-sponsors of that proposed amendment, but no Republicans making passage of the proposed amendment unlikely.

The Administration's proposal has four central elements:

- Legislative amendments to provide Puerto Rico with an orderly restructuring regime to comprehensively address its financial liabilities by restructuring its debts.
- Establishing an independent fiscal oversight to certify that Puerto Rico adheres to the recovery plan it is implementing in a credible and transparent way.
- Reforming the Commonwealth's Medicaid program to ensure that the program provides better access to healthcare services.
- Providing the Commonwealth with access to the Earned Income Tax Credit (EITC).

As part of the bankruptcy proposal, the Administration has proposed a "Super Bankruptcy" for the Commonwealth itself. The Administration's proposal contemplates a "Super Bankruptcy" that would be reserved for U.S. territories to allow a comprehensive restructuring of all of the territory's liabilities. The outline states that:

The restructuring regime should provide the basic protections of bankruptcy: a stay on creditor collection actions, priority for new private short-term cash flow financing, and voting by creditor classes on any proposed restructuring. Such an approach would, among other things, provide breathing space for consensual negotiations and ensure the uninterrupted provision of essential public services.

View the proposal.

Last Updated: November 3 2015
Article by Editorial Board
Orrick

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.

MSRB to Implement Gifts Rule for Municipal Advisors.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission to limit the size and nature of gifts given by municipal advisors in their professional capacity advising state and local governments. The new restrictions seek to address conflicts of interest that may arise from gift-giving in connection with municipal advisory activities. The SEC also approved extending to municipal advisors related recordkeeping requirements. The new regulations, which are effective May 6, 2016, largely conform to existing MSRB regulations on gifts and related recordkeeping for municipal securities dealers.

"Applying the MSRB's existing gifts rule for dealers to municipal advisors will help ensure that municipal advisory business is awarded on the basis of merit and not special favors," said MSRB Executive Director Lynnette Kelly. "The changes approved today to MSRB Rule G-20 establish common standards for all municipal financial professionals and, together with MSRB's rules on fair dealing, help preserve the integrity of the municipal market."

Amended MSRB Rule G-20 will apply to municipal advisors and their associated persons: the general prohibition of gifts or gratuities in excess of $100 per person per year in relation to the municipal securities activities or municipal advisory activities of the recipient's employer; the exclusions contained in existing Rule G-20 from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and the existing exclusion relating to contracts of employment or compensation for services. In addition, Rule G-20 will explicitly prohibit both dealers and municipal advisors from receiving reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities.

The MSRB will host a webinar on the amendments to Rule G-20 on Thursday March 24, 2016 at 3:00 p.m. ET. Amended MSRB Rule G-20 is effective May 6, 2016. Register for the webinar.

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors. The MSRB has implemented supervision and compliance requirements for municipal advisors, and is continuing to develop standards of conduct, including fiduciary duties, for municipal advisors. The MSRB also plans to amend its existing rule on political contributions to address the potential for pay-to-play activities by municipal advisors. Read more about the status of the MSRB's rulemaking for municipal advisors.

Date: November 9, 2015

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Puerto Rico Crisis Spurs U.S. Bill Seeking Hedge Fund Disclosure.

Hedge funds' involvement in the Puerto Rico debt crisis is leading U.S. Representative Nydia Velazquez, a New York Democrat born on the island, to propose legislation that would force the firms to reveal more about their investments.

Velazquez, who sits on House Financial Services Committee, wants hedge funds to file with the Securities and Exchange Commission whenever they acquire at least 1 percent of a company's stock, down from the current 5 percent threshold. The bill she has drafted would apply the same disclosure requirement to debt and derivatives.

Hedge funds have drawn scrutiny for snapping up Puerto Rico bonds, whose prices have tumbled as the island's fiscal crisis escalated. Velazquez said the funds may be advocating for spending cuts that would hurt Puerto Ricans and against legislation that would let some agencies file for bankruptcy, which would allow them to cut their debts in U.S. court.

"It has become increasingly clear that hedge funds, which have purchased a sizable part of Puerto Rico's debt, are exacerbating the crisis and profiting from the island's misery," she said in an e-mailed statement. "This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy."

Hedge funds hold as much as $25 billion, or about a third, of Puerto Rico's debt, according to an estimate by Mikhail Foux, Barclays Plc's municipal-debt strategist in New York. Funds that invested in Puerto Rico debt include Brigade Capital Management, Fir Tree Partners and Monarch Alternative Capital. The funds were part of a group that in July released a study challenging Governor Alejandro Garcia Padilla's contention that the government can't afford to repay what it owes.

Velazquez's bill follows calls from Democrats on the House Natural Resources Committee for a hearing on the funds' role in Puerto Rico's crisis.

Bloomberg

by Kasia Klimasinska

November 4, 2015 — 5:00 PM PST Updated on November 5, 2015 — 4:45 AM PST

Bond Dealers of America Hires Federal Policy Advisor.

October 29, 2015 – Washington, D.C. – The Bond Dealers of America is pleased to announce the hiring of Justin Underwood to serve as Federal Policy Advisor, an internal staff position at the BDA. Justin comes to the BDA from FINRA where he served as Regulatory Analyst – Market Regulation, Trading Analysis. Justin will work in conjunction with current policy staff, Jessica Giroux and John Vahey, to advance member's interests, both among federal regulators and on Capitol Hill. In particular, Justin will be responsible for analyzing federal regulatory and legislative policy and will staff the BDA's newly formed Fixed Income Technology and Operations Committee.

Justin has analyzed trading activity and has experience in monitoring, reviewing and investigating unusual market activity for evidence of violations of relevant rules and regulations enforced by FINRA across NYSE, NASDAQ, and other U.S. stock market exchanges.

"The hiring of Justin to compliment the work Jessica and John are doing to represent our membership at the BDA simply means the BDA is better resourced and more equipped to provide the exceptional representation that we have worked hard to deliver since being founded in 2008," said BDA CEO Mike Nicholas.

About the Bond Dealers of America

Since its founding in 2008, the Bond Dealers of America has been the Washington, DC based organization that represents securities dealers and banks predominantly focused on the U.S. fixed income markets. The BDA remains the only organization representing the unique interests of national, middle-market dealers. In addition to federal advocacy and formulation of market practice guidelines, the BDA hosts a series of meetings and conferences specific to domestic fixed income, in addition to industry surveys and reports. For more information, visit www.bdamerica.org

For more information please contact Jessica Giroux at jgiroux@bdamerica.org or 202- 204-7905.

Bill Introduced to Require Hedge Funds to Disclose Holdings More Frequently.

A bill requiring hedge funds to disclose their holdings more frequently was introduced in Congress on Wednesday, a move that if signed into law would represent a seismic change for the hedge-fund industry.

Rep. Nydia Velazquez, a Democrat from New York who introduced the bill, tied the effort to the fiscal crisis in Puerto Rico, which has battled a sluggish economy and high debt load for years. Hedge funds and other investors who own the island's bonds have negotiated with island officials over a possible debt restructuring and cost-cutting measures.

"This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy," Rep. Velazquez said in a statement.

The measure would require hedge funds to disclose positions where they own 1% or greater of a company's stock within five days, compared with the current requirement of 5% within 10 days. The bill would also create a new requirement for hedge funds to disclose investments with a 1% or greater stake—in either stocks or corporate and municipal bonds—every quarter.

Labor groups like the AFL-CIO and the American Federation of State, County and Municipal Employees are supporting the bill, called the Hedge Fund Sunshine Act of 2015, according to Ms. Velazquez's office. Another supporter is Hedge Clippers, a group that seeks to "expose the mechanisms hedge funds and billionaires use to influence government and politics," according to its website.

It wasn't immediately clear whether the bill, introduced in the U.S. House of Representatives and expected to be referred to the House Financial Services Committee, would muster enough momentum to become law. Even some supporters of the bill said it could be an uphill climb.

"It's always difficult to do things that large and powerful financial institutions don't like," said Lisa Donner, executive director at Americans for Financial Reform, an advocacy group. Still, Ms. Donner said the bill is a "very valuable proposition to have on the table," given the size of the hedge-fund industry and how little is disclosed compared with other institutions.

Hedge funds will likely balk at the proposal because frequent disclosures of smaller stakes could make it more costly for managers to build their positions. With more disclosure, other investors would know sooner that a manager is buying certain stocks or bonds, allowing them to mark up the price before selling.

"Given how low the 1% threshold is, the proposal could have a chilling effect on managers employing their optimal strategy," said George Silfen, a partner at Kramer Levin Naftalis & Frankel LLP who represents hedge funds and mutual funds.

A spokesman for the Managed Funds Association, which lobbies for hedge-fund interests in Washington, didn't immediately respond to a request for comment.

Ms. Velazquez, who represents parts of Manhattan, Brooklyn and Queens, is the first Puerto Rican woman elected to Congress. In September, she introduced another bill, the Puerto Rico Investor Protection Act of 2015, that would bring federal oversight for Puerto Rico's mutual-fund industry in line with mainland funds. The bill was referred to the House Financial Services Committee.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Nov. 4, 2015 8:00 p.m. ET

— Rob Copeland contributed to this article.

Orrick: Another Round of Favorable SEC Settlements, But Only for Underwriters that Self-Reported.

The SEC has rolled out its second wave of enforcement actions against 22 municipal underwriting firms for alleged securities violations in municipal bond offerings in connection with its Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. As previously reported, the MCDC initiative was announced in March 2014 to address potential securities violations by municipal bond underwriters and issuers. Under this initiative, the SEC offered favorable settlement terms to those who self-reported by the end of 2014.

On June 23, 2015, the SEC announced that it had reached settlement agreements with 36 municipal underwriting firms in its first round of settlements under this initiative. The SEC's September 30, 2015 announcement represents its second round of settlements. The SEC found that between 2010 and 2014, the 22 firms violated federal securities laws by selling municipal bonds using offering documents containing materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations. It 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. Without admitting or denying any findings, the firms agreed to cease and desist from similar violations in the future. The firms also agreed to retain independent consultants to review their due diligence policies and procedures.

Since the MCDC Initiative sets a cap on the amount of civil penalties at $500,000, the firms' penalties ranged from $20,000 to the maximum $500,000.

The SEC has emphasized that issuers and underwriters that did not take advantage of the MCDC program (which expired in 2014) are not eligible for the favorable treatment provided under the MCDC.

October 26 2015

Article by James Grohsgal, Judy Kwan and William F. Alderman

Orrick

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.

Treasury, IRS Seem Open to Changes to Proposed Issue Price Rules.

WASHINGTON – Treasury Department and Internal Revenue Service officials appeared open to modifying the proposed issue price rules they released in June, asking muni market group representatives at a public hearing Wednesday about their concerns and recommended changes.

The speakers were members or staff of the National Association of Bond Lawyers, the Securities Industry and Financial Markets Association, Bond Dealers of America and Government Finance Officers Association.

Under existing rules, for bonds that are publicly offered, the issue price of a maturity is the first price at which 10% of the bonds are reasonably expected to be sold to the public.

But under the proposed rules, for both competitive and negotiated sales, the general rule would be that the issue price is the first price at which 10% of a maturity is actually sold to the public. If 10% of a maturity hasn't been sold by the sale date, issuers can employ an "alternative method" in which they can use the initial offering price to the public as of the sale date as the issue price if certain requirements are met. One requirement is that the underwriters fill all orders from the public on or before the sale date at the initial offering price. Another is that the lead or sole underwriter certify that no underwriter will fill an order from the public after the sale date and before the issue date at a higher price than the initial offering price unless the market moves after the sale date. Also, the issuer can't know or have reason to know that the certifications are false.

Several market groups have recommended that there be a safe harbor for competitive sales. Michael Imhoff, BDA's representative and a managing director at Stifel, Nicolaus & Co., suggested that the safe harbor be for sales awarded after a certain number of bids. GFOA debt committee chair and

Philadelphia Treasurer Nancy Winkler suggested competitive sales be allowed to use current rules, but would be open to discussing a safe harbor based on bids.

Treasury associate tax legislative counsel John Cross said “we fully appreciate the value of competitive sales.” He asked Imhoff why the alternative method would not be the right safe harbor for competitive sales. Imhoff said that bond yields would be higher under the alternative method because using it would require more risk. A safe harbor for competitive deals could save issuers money, he said.

Cross asked Winkler if it would be too difficult for issuers to comply with a safe harbor for competitive sales that required three bids. Winkler said that she’s mostly been involved in competitive sales for higher-grade and larger issuers that commonly receive three bids, but that there may be issuers that receive less. She said she wouldn’t want an issuer to receive only two bids and have to reject both of them because it wouldn’t be able to establish issue price.

Imhoff and Winkler both recommended an alternative method based on sales of at least 50% of the aggregate amount of bonds to address situations when there are unsold maturities. They argued that such a safe harbor could be helpful for small issuers. Winkler specifically recommended this approach for negotiated sales.

Johanna Som de Cerff, senior technician reviewer in the IRS chief counsel’s office, asked Winkler if a safe harbor for competitive sales could be based on sales of 50% of the total issue. Winkler said it that would not work because the percentage is too high for those types of deals.

Cross pointed out that most of the muni market is comprised of small issuers, so it would be challenging to come up with a rule specific for small issuers. Imhoff said that perhaps a 50% safe harbor should apply for the whole market.

SIFMA had not recommended a safe harbor based on sales of 50% of the total issue, but Cross asked Michael Decker, a managing director and co-head of municipal securities for the group, for his thoughts about such a rule. Decker said that this suggestion is worth looking at and that he suspects that it’s often the case that issues with unsold maturities have 50% of the overall deal sold.

Market groups have also said that it would be very difficult to document market movements under the alternative method.

Som de Cerff asked Decker what might be a more appropriate way to document market movements than using a national benchmark. Decker said that market movements is “a little bit of you know it when you see it” and is a difficult concept to define in terms of clean compliance.

Cross asked Decker if it might be better just to get rid of the market movement exception and have underwriters agree not to sell bonds at a price higher than the initial offering price after the sale date and before the issue date unless 10% of a maturity is sold during that time. Decker said that such a rule would be “workable.”

When Cross and Som de Cerff asked Imhoff similar questions, he replied that it would be hard for underwriters to hold at the initial offering price because they want to be able to respond to market changes.

Linda Schakel, a partner at Ballard Spahr who spoke on behalf of NABL, expressed concern about one of the conditions for the alternative method — that the issuer not know or have reason to know that certifications are false. She recommended that Treasury and the IRS clarify that the issuer’s due diligence obligation is that of a “prudent person.” Cross asked her why there would be less certainty under the standard in the proposed regulation than with the prudent person standard. Schakel replied that the standard in the proposal suggests the need for independent verification.

THE BOND BUYER

BY NAOMI JAGODA

OCT 28, 2015 3:47pm ET

SLGS Window to Reopen.

The U.S. Department of the Treasury has announced that it will reopen the SLGS window effective Tuesday, November 3, 2015 at 12:00 Noon EST.

The Treasury Department suspended sales of SLGS on March 13, 2015.

MSRB Mandates Regulated Entity Participation in Business Continuity Testing.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC), for immediate effectiveness, new MSRB Rule A-18 to require certain entities regulated by the MSRB to participate in its business continuity and disaster recovery plan testing.

New SEC Regulation Systems Compliance and Integrity (Regulation SCI) imposes rigorous standards for technological systems of the MSRB and other financial market entities, requiring them to maintain system backup and recovery capabilities meeting certain requirements.

The MSRB has a Business Continuity Plan that governs its response to emergency situations or significant service disruptions to its market transparency systems. The MSRB maintains multiple backup sites to support recovery measures in the event of a significant disruption to MSRB systems and services, including but not limited to, the MSRB's Electronic Municipal Market Access (EMMA®) website, the Real-Time Transaction Reporting System (RTRS) and various data and document subscription services.

As mandated by Regulation SCI, new MSRB Rule A-18 requires mandatory participation by certain MSRB-regulated entities in the MSRB's periodic business continuity and disaster recovery plan testing.

View the Regulatory Notice.

View the SEC filing.

Date: November 2, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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Foley & Lardner: Recent MCDC Settlements Provide Guidance Concerning Scope of Materiality in Continuing Disclosure Obligations.

In responding to the Securities and Exchange Commission's recent Municipalities Continuing Disclosure Cooperation (MCDC) initiative, the unanswered question for many municipalities and broker-dealers was determining whether failure to disclose certain conduct under the relevant continuing disclosure obligations of an issuer or borrower (an "obligated person") of municipal securities constituted a "material" misstatement or omission under the SEC's view of federal securities laws. Some instances, such as a complete failure to file annual financial reports with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) system, were undoubtedly material, but others, such as a filing that was late by only a few days or a failure to file a notice of a widely known rating downgrade of a bond insurer that insured an obligated party's bonds, were less clear. The SEC released the results of two rounds of settlements with broker-dealers under the MCDC initiative on June 18 and September 30, 2015. These initial settlements provide guidance concerning the SEC's views toward materiality relative to an obligated person's continuing disclosure obligations.

Each of the reported settlements between the SEC and a broker-dealer under the MCDC initiative has been identical, with two notable differences: the examples cited by the SEC and the amount of the assessed financial penalty. In each settlement, the SEC listed up to three examples of the due diligence failures that lead to the settlement — thereby helping to identify what the SEC deemed to be material omissions in disclosure. In addition, the amount of the financial penalty assessed on each firm differed depending upon several factors, including the number of violations found and the number and principal amount of the bonds underwritten by such firm over the prior five-year period. In each case, the broker-dealer settling with the SEC neither admitted nor denied the findings of the SEC. As a condition of the settlement, the SEC required each firm to hire an independent consultant to review the firm's policies and procedures regarding due diligence for continuing disclosure and adopt the recommendations of such consultant within 90 days of the report (or demonstrate to the SEC why such recommendations should not be adopted). Importantly, the terms of the settlements imposed by the SEC were fully consistent with the terms announced in the SEC's original notice of the MCDC initiative. Although there have been two rounds of announced settlements with broker-dealers, at least one more round of settlements with broker-dealers, likely followed by several rounds of settlements with obligated persons, is expected to follow.

Background and Issues Determining Materiality

Although federal law prohibits the SEC from directly regulating issuers of municipal bonds, the SEC instead has imposed certain regulations on broker dealers pursuant to Rule 15c2-12, and specifically, regulations requiring broker-dealers to obtain undertakings from obligated persons that they will provide both ongoing annual financial information and notice of certain specified events, including a failure to file required annual financial information by the deadline in the continuing disclosure undertaking. Rule 15c2-12 also provides that it is unreasonable for a broker-dealer to recommend the purchase or sale of a municipal security unless the broker-dealer has processes in place that provide reasonable assurance that it will receive prompt notice of events, including the failure to file annual disclosure. Further, Rule 15c2-12 provides that the Official Statement issued with respect to a bond issue must include, among other things, a description of all instances within the prior 5 years in which the obligated person has failed to comply, in all material respects, with previous continuing disclosure undertakings.

Responding to allegations that both obligated persons and broker-dealers were not meeting their obligations under Rule 15c2-12 to provide timely notices of the listed events and make timely filings of annual financial information, the SEC announced the MCDC initiative in the spring of 2014. The MCDC initiative provided that obligated persons and broker-dealers that self-disclosed to the SEC by stated deadlines their failures to comply with Rule 15c2-12's requirements regarding providing or monitoring ongoing disclosure within the prior 5 years would be eligible for settlements with the SEC on favorable terms. As a result, both broker-dealers dealing in municipal securities and obligated persons undertook reviews of their compliance with their continuing disclosure undertakings and many parties filed with the SEC by the September, 2014 deadline for broker-dealers and the December, 2014 deadline for obligated persons.

The primary issue that appeared to trouble participants in the market was determining whether an instance of non-compliance constituted a material failure. In general, whether a statement is material or not is determined under the standard articulated by the United States Supreme Court in Basic v. Levinson, which states that "materiality depends on the significance the reasonable investor would place on the withheld or misrepresented information." Rule 15c2-12 is only violated where an obligated person fails to comply with a continuing disclosure undertaking in all material respects. Accordingly, an immaterial failure would not be a violation of Rule 15c2-12 and would not be reportable under the MCDC initiative. Although market participants sought express guidance from the SEC on this issue, the SEC demurred. Thus, the recent settlements have provided needed guidance on the level of failures to comply with a continuing disclosure undertaking that the SEC considers to be material (and, by implication, those failures that may not be considered to be material.)

Lessons Learned From Recent Settlements

Failures Deemed Material. The first lesson learned from the SEC's settlements to date under the MCDC initiative is that the majority of the cited failures to meet the requirements of Rule 15c2-12 are significant failures and would have been considered material by most participants in the municipal market. These include, for example, a complete failure to file any annual financial information and filings of annual financial information that were months late, often consistently so. In the vast majority of the cases where an obligated person failed to file its annual financial information in a timely manner, it also failed to file a notice with EMMA of its failure to file, as required under Rule 15c2-12.

Failures Not Cited as Material. Second, however, it is notable that other than the failure to file a notice of a late or missed filing of an annual financial filing, no other failures to file event notices have been cited in the SEC settlements. Following the financial crisis in 2008, the ratings of all of the municipal bond insurers were downgraded by the rating agencies and, therefore, the ratings on the bonds that were insured were also downgraded. (Notably, since 2008 certain bond insurers have received subsequent upgrades, as well.) One of the events for which a notice must be filed is a rating change to a municipal security subject to a continuing disclosure obligation. Although many obligated persons filed such event notices when the ratings on their bonds were downgraded due to the reductions in the ratings of the insurers, other obligated persons did not make such a filing, for various reasons, generally after determining that such a filing would not be material given the widespread public knowledge of the downgrades. Although a definitive conclusion cannot be drawn from the SEC's failure to cite the lack of notices of downgrades on bond ratings due to such bond insurers' downgrades as a material omission, this omission does provide some comfort to those obligated persons that determined that failure to make such a filing was not a material omission.

The vast majority of the cited misstatements or omissions were from 2013 or before; very few were from 2014 and none were from 2015. This generally is consistent with many commentators' views that the participants in the municipal market are now highly sensitized to the importance of complying with their obligations under Rule 15c2-12 and may also indicate that the SEC's primary goal of the MCDC initiative — enhancing compliance with continuing disclosure obligations — has been realized.

Additional Guidance. One of the most hotly contested questions regarding materiality was how late a filing could be made before the lateness of the filing constituted a material failure to comply with the requirements of a continuing disclosure obligation. Although failure to file annual financial information in a timely manner constituted the majority of the cited material omissions, in no case was a late filing of less than 30 days noted (other than one instance where a filing was not only 16 days late, it was also incomplete), and in most cases, not only were the obligated person's filings much more than 30 days late, but there were multiple late filings, and notice of late filings were not made.

One trap for the unwary is that, although filings compliant with Rule 15c2-12 may be made by reference to other filed documents, a failure to make a filing with respect to each separate municipal security issue that cross references a recent filing, such as an Official Statement for a new issue that includes audited financial information and other required financial information, can constitute a failure to file. EMMA references municipal securities by the separate series or bond issue and by CUSIP number. Thus, if an obligated person wishes to use a recent filing to comply with its annual filing requirements, it must ensure that an appropriate cross-reference citing the location of the document is made with respect to each series of securities to which such requirements applies.

Another oft-cited failure was the failure to include operational data with an annual filing. Rule 15c2-12 requires that, in addition to filing audited annual financial statements, obligated persons must file annual financial information as described in the undertaking (which will typically reference certain financial and statistical information included in the Official Statement), for each obligated person for whom financial information or operating data is presented in the final Official Statement, or, for each obligated person meeting the objective criteria specified in the continuing disclosure undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final Official Statement.

Lastly, the SEC settlements make clear that a material omission is not cured unless the omitted disclosure is filed with EMMA for each municipal security subject to a continuing disclosure undertaking, a notice of the previous failure to file is also filed with EMMA, and the Official Statements for the obligated person for the ensuing five years disclose the prior failures to file.

Recommendations

By publishing examples of material omissions and misstatements in its settlements with broker-dealers under the MCDC initiative, the SEC has provided useful guidance to the municipal marketplace. Based upon these settlements, as well as other recent SEC actions relating to municipal securities, we believe that municipal issuers and borrowers of the proceeds of municipal bonds should consider taking each of the following steps:

- First, one or more officers of the obligated person should review the continuing disclosure undertaking relating to each series of outstanding municipal securities and be familiar with the information that must be provided annually, and quarterly in some cases, and the events that must be disclosed. It would likely be helpful to set up a "tickler" in the calendar of the officer responsible for making such filings – note that EMMA has recently added that capability to its system.
- Second, we believe that obligated persons should consider adopting disclosure policies and procedures that are consistent with the SEC's oft-stated recommendations. These include

designating a responsible person for preparing and making such filings, providing for regular training of the persons that will develop new issue and continuing disclosure, and outlining other relevant matters. In addition, we have noted that requiring that these policies be reviewed and, if appropriate, updated or re-authorized on a regular basis leads to enhanced compliance with and awareness of the requirements of the policies.
- Third, if a deadline for a required filing is missed, the obligated person should nevertheless make the filing as soon as possible, along with a notice of the failure to file. A slightly late filing may not constitute a material failure to comply with the requirements of Rule 15c2-12.
- Finally, the obligated person should ensure that annual filings and applicable event notices are filed with EMMA for each of the applicable series of bonds or other municipal securities, or that appropriate cross-references are filed. As noted above, using a recently filed Official Statement to provide the information required for an annual filing can be sufficient to meet the requirements of Rule 15c2-12, but only if there is an appropriate cross reference filed with EMMA for each applicable series of municipal securities.

Foley & Lardner LLP

By David Y. Bannard and Heidi H. Jeffery

Posted to The National Law Review on Thursday, October 29, 2015

Municipal Bond Regulator Pushes SEC for Direction on Bank Loans.

The municipal-bond market's regulator is pressing the U.S. Securities and Exchange Commission to respond to the fast-growing market for bank loans, saying the agency needs to clarify whether they are covered by securities rules.

The Municipal Securities Rulemaking Board wants the SEC to encourage or require disclosure of the obligations, as well as determine whether financial advisers that arrange such loans would have to register as a broker dealers. The board drafts securities rules that are enforced by the SEC.

"It's really important that investors have a full picture of an issuers' indebtedness," Lynnette Kelly, the board's executive director, said in a conference call Monday following its quarterly meeting.

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 tied to public-debt offerings. This year alone, Standard & Poor's had evaluated 109 municipal bank loans totaling $4.22 billion by early October.

Because loans aren't classified 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, credit-rating companies have said.

In a January letter the MSRB urged the SEC to consider changes to municipal-bond rules to require the disclosure of direct or off-balance sheet obligations, similar to the way corporations do.

"The availability of timely disclosure of additional debt in any form and debt-like obligations is essential to foster market transparency and to ensure a fair and efficient municipal market," the letter said.

Rebecca Olsen, deputy director of the SEC's Office of Municipal Securities, didn't immediately return a call seeking comment.

Bloomberg Business

by Martin Z Braun

October 26, 2015 — 10:38 AM PDT

Report: Muni Issuers Haven't Significantly Improved Audit Times.

WASHINGTON – Municipal bond issuers and borrowers haven't substantially improved the amount of time they take to complete their financial audits, a report from Merritt Research Services found.

The report was published on MuniNetGuide.com on Tuesday. It was written by Richard Ciccarone, president and chief executive officer of Merritt and co-publisher of MuniNet Guide.

"When it comes to improving accountability to stakeholders, access to timely audited reporting is critical to evaluate financial condition and adherence to appropriate fiscal standards," he wrote in the report. "For municipal bondholders, late or stale audits inhibit the market's ability to assign accurate pricing relative to the risk associated with the borrower, as well as the public's ability to influence outcomes."

Merritt examined more than 73,000 audited financial statements released by municipal bond issuers and borrowers for fiscal years 2008 through 2014. It focused on the audited financials in 16 primary muni credit sectors: local school districts, cities, counties, water and sewer districts, airports, community colleges, dedicated tax entities, hospitals, private higher education, public higher education, retail public power, wholesale public power, special districts, states & territories, tollways and other revenue supported borrowers.

Merritt calculated the timing by measuring the period from the end of the issuers' and borrowers' fiscal years to the dates when the audit letters were signed. It may be weeks later before the issuer discloses its audited financials, the report said.

The median audit completion time for all credits fell to 143 days for fiscal 2014 from 149 days the previous year. Several credit sectors beat their fiscal 2013 median times by at least five days, and most sectors experienced median reporting times in fiscal 2014 that were below their seven year average. "Perhaps this is an indication that the trend is moving in the right direction, albeit, at a baby steps pace," Ciccarone wrote.

Still, "we need to see more than just several days improvement," Ciccarone told The Bond Buyer. He said that he would have expected issuers to have become more timely over the years because of the desire to make the market more efficient.

The sectors that are among the fastest and the slowest have remained consistent over time. States and counties were the slowest, with each having a median time of 175 days for fiscal 2014, followed by cities, which had a median time of 169 days. The sector with the fastest median audit completion time was wholesale public power issuers, with a median time of 100 days in fiscal 2014. Nonprofit hospitals had a median completion time of 112 days and private universities had a median time of 113 days, according to the report.

If the Securities and Exchange Commission's mandated public reporting times for regulated corporate borrowers applied to muni issuers, they would not meet them, Ciccarone said. The SEC requires companies to complete audited financials from 60 to 90 days, depending on their size. Only 2% of cities, counties and states' fiscal 2014 reporting times would pass that test, and just 36% of public power wholesale electric issuers would pass, according to the report.

If the 120-day completion time that some have called for was implemented, most hospital, wholesale electric and private higher education issuers would have met it for fiscal 2014, but only 10% of cities, 5% of counties and 6% of states would have complied. The percentages of state and local government audits completed within 120 days are about the same as they were for fiscal 2011.

"The lack of progress over time solidifies the legitimacy and importance of the message that more has to be done to improve the time it takes to make municipal bond audits public," Ciccarone wrote.

Ciccarone said that a 120-day goal is "within reason," and evidence proves that the goal can be met. For example, Columbus, Ohio has finished its audits in 90 days or less four times in the last five years, and New York City has been consistently able to complete its audits around the 120 day mark.

The cities that had shortest and longest audit completion times for fiscal 2014 were both small and large. Detroit, which is coming out of bankruptcy, took 352 days, and Baltimore still hasn't reported its audited financials for its fiscal year ending June 30, 2014, according to the report.

The state with the fastest fiscal 2014 reporting median for its cities was North Carolina (118 days), and the state with the slowest reporting median for its cities was Massachusetts (214 days). For many sectors, the credits that were higher rated by Moody's Investors Service or Standard and Poor's typically had the fastest audit times, according to the report.

THE BOND BUYER

BY NAOMI JAGODA

OCT 27, 2015 6:07pm ET

MSRB Holds Quarterly Board Meeting.

Alexandria, VA – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting October 21-22, 2015 where it discussed multiple initiatives aimed at promoting a fair and efficient municipal securities market, and held annual meetings with the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

The MSRB is currently addressing several high-profile regulatory issues with significant implications for the municipal market— and securities markets generally. Among these are the manner in which dealers execute municipal trades for their retail customers; increased transparency for retail investors into their transaction costs; and standards of conduct for municipal advisors, which include a fiduciary duty.

At its meeting last week, the Board met with the SEC Office of Municipal Securities' Director Jessica Kane and Deputy Director Rebecca Olsen, and with FINRA Chairman and Chief Executive Officer Richard Ketchum and Director of Fixed Income Regulation Cynthia Friedlander regarding the current status of various rules which are awaiting final approval, new rulemaking initiatives, and coordination on cross-market initiatives.

“We are tackling major market issues that relate to certain activities in other securities markets,” said MSRB Chair Nat Singer. “Regulatory coordination is the best approach for ensuring regulatory efficiency but it also can mean that the rulemaking process can be extended.”

The MSRB is finalizing practical guidance for municipal securities dealers on the application of a new “best-execution” standard that requires them to use reasonable diligence when handling orders and executing trades for retail investors to obtain a price that is as favorable as possible under prevailing market conditions. The MSRB is coordinating with FINRA, which is also developing guidance for best-execution rule for the corporate bond market. In addition, both regulators currently have proposals out for public comment that would require confirmation disclosure of additional information relating to transaction costs for retail customers. The proposals share a comment deadline of December 11, 2015.

The Board also discussed the growing use of bank loans by state and local governments. The MSRB supports disclosure of all of a municipal security issuer’s debt so that investors have a full picture of an issuer’s indebtedness. The MSRB encouraged the SEC to provide guidance to the municipal market regarding bank loans with respect to when these “loans” are, in fact, securities subject to SEC and MSRB rules. If a “loan” is a security, the MSRB also is concerned that a non-dealer municipal advisor may be subject to registration as a broker-dealer when it engages in assisting an issuer in placing a direct “loan” with a bank.

“Multiple regulators are focused on this pressing issue right now and the MSRB looks forward to continuing to educate the market about its concerns,” Chair Singer said.

The Board approved issuing two requests for comment, one on proposed changes to MSRB Rule G-12, on dealer closeout procedures, which have not been updated since 1983. The initiative is part of the MSRB’s regulatory efficiency initiative. The Board also approved publishing a request for comment on MSRB rule changes necessary to support the industry-wide initiative to move to a T+2 settlement cycle. Both of these potential changes are designed to promote efficiency and mitigate risk.

Another major MSRB initiative is the development of professional qualifications and continuing education requirements for municipal advisors. At its meeting, the Board discussed how to design a continuing education program for municipal advisors to ensure they remain informed on an ongoing basis of issues that affect their job responsibilities and regulatory developments. The Board agreed to continue to refine its approach to continuing education requirements for municipal advisors as soon as advisors complete the MSRB Municipal Advisor Representative Qualification Exam (Series 50) next year. The MSRB plans to publish a request for comment next summer.

Date: October 26, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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Edward Jones Quits Negotiated Muni Bond Business.

CHICAGO – St. Louis-based retail stalwart Edward Jones will drop its negotiated public finance underwriting business at the end of the year, a decision the firm says is not linked to recent regulatory action on its primary pricing of bonds.

The financial services firm will continue to place competitive bids, said Jim Krekeler, general partner and head of a public finance banking team that includes seven investment bankers and seven analysts and support staff.

The move, announced internally about two weeks ago, comes two months after Edward Jones was the target of the Securities and Exchange Commission's first enforcement case on primary market municipal bond pricing. The SEC ordered the firm to pay more than $20 million for overcharging retail customers.

"This is a long-term strategic decision for the firm and it's not based on a regulatory settlement," Krekeler said. "Over time our investment banking operations have provided a much smaller percentage of firm's bond supply. Our trading systems have advanced and the firm is able to generate supply in other places," through competitive bids and the secondary market.

"We decided to focus our capital and resources elsewhere," he added in an interview Friday as word began to spread of the firm's decision, which was not yet publicly announced.

The firm's leaders caught members of its public finance group off-guard when they delivered the news about two weeks ago, according to sources. "It's a small part of the company's overall business" but it one that was profitable and supported its overall operations by originating paper for sale to retail clients, one public finance source said.

Krekeler said the public finance originations have produced an annual profit for the firm, but its revenues of $5 million to $10 million annually make up a small piece of the firm's overall $6.3 billion of net revenues.

The firm will honor its participation on deals for assignments already established that close before the end of the year and won't seek new business. "We will honor our commitments," Krekeler said.

The firm will also drop its smaller corporate investment banking originations business.

The public finance team being cut includes professionals at the managing director, director and analyst levels in its St. Louis headquarters and offices in Illinois, California, Michigan, and Texas. Krekeler, who has been with the firm for 28 years and has led the group for the last five, said his focus will be on helping those "talented" professionals land elsewhere.

The firm's banking group expanded about six years ago. At the time, the firm said the expansion was driven by demand for more product by the swelling number of local retail brokers, who are known as financial advisors.

The firm ranked 58th nationally as a senior manager on 26 issues valued at $279 million and was 61st to date this year working on 28 issues valued at $304 million, according to data from Thomson Reuters. The firm ranked 39th in the Midwest last year on 17 deals valued at $175 million and ranks 35th so far this year on 22 deals valued at $241 million.

The firm was founded in 1922 by Edward D. Jones Sr. Its focus has long been on individual investors, growing to more than 11,500 offices throughout the country and Canada with 14,000 advisors.

"There's not a lot of other firms out there like Edward Jones," said one banker who has worked at the firm. "That's the firm's pitch. It's a true mom and pop retail shop."

In its enforcement action, the commission found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, and the former head of its syndicate desk took bonds into the firm's own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began and did not monitor the reasonableness of its markups in certain secondary market trades.

It marked the commission's first case against an underwriter for pricing-related fraud in the primary market for municipal securities. The overcharges in this case occurred through the offer and sale of 156 different bonds in 75 negotiated offerings in which Edward Jones served as a co-manager between February 2009 and December 2012.

The SEC offered a stinging rebuke at the time.

"Edward Jones undermined the integrity of the bond underwriting process by overcharging retail customers by at least $4.6 million and by misleading municipal issuers," Andrew Ceresney, director of the SEC's enforcement division, said in an Aug. 13 release.

The enforcement prompted an industry debate over whether Edward Jones' actions were an aberration or a systemic problem and whether changes are needed in industry practices on the pricing of new bonds.

THE BOND BUYER

BY YVETTE SHIELDS

OCT 23, 2015 4:28pm ET

[MSRB Best-Ex Guidance Could Come in Nov.; Board Presses SEC on Bank Loans.]

WASHINGTON — The Municipal Securities Rulemaking Board may be able to publish guidance on its best execution rule as soon as next month, MSRB officials said Monday.

But possible delays could occur if the Securities and Exchange Commission decides the guidance needs to be published as rule changes or if the MSRB needs more time to coordinate with the Financial Industry Regulatory Authority, which is writing best-ex guidance for corporate debt, said Robert Fippinger, the board's chief legal officer.

Fippinger talked about the best-ex guidance in a conference call with reporters after the MSRB's Oct. 21-22 meeting in Alexandria, Va., the first meeting with the board's new chair, Nat Singer, and seven new members.

The MSRB recently informed dealers that the best-ex rule will not take effect until four months after the guidance is released. It is expected to be in a question and answer format.

MSRB executive director Lynnette Kelly told reporters that the MSRB is dealing with three high profile initiatives that have significant implications for, not just the muni market, but the securities market in general. These are: its best-ex rule; a proposed rule that would require dealers to disclose, on retail customer confirmations, markups and markdowns for principal transactions and; standards of conduct rules for municipal advisors.

The best-ex rule requires dealers 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.”

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer’s inquiry or order.

The MSRB filed the rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. But dealers have been clamoring for clarifications on a number of issues.

Under the proposed markup rule, a dealer buying or selling munis 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 a two-hour window on either side of the customer transaction.

Kelly said board members met with SEC Office of Municipal Securities director Jessica Kane and deputy director Rebecca Olsen, as well as FINRA chairman and chief executive officer Rick Ketchum and director of fixed-income regulation Cynthia Friedlander.

Kelly told reporters that board members “encouraged the SEC to provide guidance on bank loans.” The board wants the commission to: define whether, or in what circumstances, bank loans would be considered securities subject to SEC and MSRB rules; encourage or mandate the disclosure of bank loans and other types of indebtedness of muni issuers, and; clarify whether, or when, non-dealer municipal advisors need to register as broker dealers when placing bank loans.

Kelly said the MSRB has been discussing bank loans with the SEC for about three years. It asked the SEC to require disclosure of issuers’ bank loans in a letter it sent to the commission on Rule 15c2-12 on disclosure in January. Asked if the SEC officials are willing to provide the guidance, Kelly said reporters should ask them.

Kelly also told reporters that the board plans later this year to ask for public comments on proposed changes to its Rule G-12 on “closeout” procedures, which have not been updated since 1983. These are dealer procedures for completing a transaction.

The board also expects to seek public comments later this year on the proposed rule changes that would be needed to move the muni market to a T+2 settlement cycle, in which transactions would settle in two rather than the current three days after execution.

The board also discussed how to design a continuing education program for municipal advisors. It plans to publish a request for comment on a proposed program next summer after advisors complete the Series 50 municipal advisor representative qualification exam. The board will administer a pilot qualification exam early next year and a final exam after that.

THE BOND BUYER

BY LYNN HUME

OCT 26, 2015 11:44am ET

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Date: October 26, 2015

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MSRB Reminds Underwriters of October 28, 2015 Deadline for Submissions of 529 College Savings Plan Data.

The Municipal Securities Rulemaking Board (MSRB) reminds underwriters that the first semiannual submissions of data on municipal fund securities, including 529 college savings plans, are due to the MSRB no later than October 28, 2015 (see MSRB Notice 2015-09).

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.

MSRB Extends Deadline for Markup Rule Comments.

WASHINGTON – The Municipal Securities Rulemaking Board is extending the date for comments on its recently proposed markup disclosure rule while an industry group wants the board to delay the implementation deadline for its best execution rule.

The deadline for comments on the markup rule will be pushed back to Dec. 11 from Nov. 20 to align with the Financial Industry Regulatory Authority date for comments on its similar rule for corporate bonds.

“The extended comment deadline is intended to give commenters sufficient time to evaluate both proposals and provide more meaningful comment to both the MSRB and FINRA,” the MSRB said in its regulatory notice.

Both the MSRB and FINRA had previously proposed rules that would require dealers to disclose a “reference price” of the same security traded on the same day. The MSRB proposed the reference price rule in changes to its Rule G-15 on confirmation. It is now pursuing the markup disclosure rule instead, although it has included revisions to the reference price rule as another option for commenters. FINRA has only revised its reference price rule in response to comments.

The MSRB's markup rule would require a dealer buying or selling bonds for its own account 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 a two-hour window on either side of the customer transaction. The MSRB would limit the disclosures to secondary market trades.

The Securities Industry and Financial Markets Association and a number of other industry groups have said they plan to submit comments on the proposal.

Meanwhile, SIFMA said recently it might be unrealistic to allow only four months after guidance is released for implementation of changes to the MSRB's Rule G-18.

Leslie Norwood, associate general counsel and co-head of municipal securities for SIFMA, said in a comment letter filed with the Securities and Exchange Commission that if the guidance calls for broker-dealers to change any automated processes or systems, there would have to be a lead time of six months, and preferably one year.

The extended period of time would allow the dealers to build the system changes, test them, train appropriate staff, and develop appropriate compliance procedures, according to Norwood.

It also would accommodate many firms that have an operational system "lockdown" period that typically extends from mid-December to mid-January, during which time no operational changes can be made.

Budgeting for the changes and having additional time to change a third-party vendor system that may be handling the collection of sophisticated muni market professional certificates would also benefit from a timeline longer than four months, Norwood said.

The best ex rule requires dealers 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." The SEC called for the adoption of such a rule in in its 2012 Report on the Municipal Securities Market.

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer's inquiry or order.

The MSRB filed the rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. The effective date for the rule was to be Dec. 8, 2015, but the need to coordinate with the SEC and FINRA caused the MSRB's guidance on the rule to take longer than expected.

THE BOND BUYER

BY JACK CASEY

OCT 20, 2015 2:15pm ET

[MSRB Announces Regulatory Topics to be Discussed at Upcoming Board Meeting.]

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet October 21-22, 2015 where in addition to addressing corporate and governance issues, the Board will discuss the following rulemaking topics:

Mark-Up Disclosure
The Board will discuss its current proposal to require municipal securities dealers to disclose on retail customer confirmations the amount of the mark-up in a class of principal transactions.

Close-out Procedures for Dealers
The Board will discuss publication of a request for comment on proposed changes to MSRB Rule G-12, on dealer closeout procedures as part of the MSRB's regulatory efficiency initiative.

Continuing Education Requirements for Municipal Advisors
The Board will conduct a policy discussion about the development of continuing education requirements for municipal advisors.

Trade Settlement Cycle
The Board will discuss MSRB rule changes necessary to support a T+2 settlement cycle with a view toward publication of a request for comment.

This list is subject to change without notice. A summary of actions taken by the Board at the meeting will be sent to regulated entities and published on the MSRB's website following the meeting.

[NAMA: Some MSRB Gift Rule Changes Are Unclear or Could Lead to Abuse.]

WASHINGTON — The Municipal Securities Rulemaking Board's proposed changes to extend its gift rule to municipal advisors "remain unclear in crucial areas" and "do not go far enough to prevent abuses" by both MAs and broker-dealers, the National Association of Municipal Advisors said.

NAMA made the comments in a letter to the Securities and Exchange Commission on MSRB Rule G-20 on gifts, gratuities, and non-cash compensation that was signed by the group's president, Terri Heaton.

The rule already applies to dealers. The MSRB is asking the SEC to approve the proposed amendments in an effort to develop a regulatory regime for municipal advisors as mandated by the Dodd-Frank Act. The modified rule would take effect six months after SEC approval.

The rule currently prohibits dealers from giving any thing or service of value, including gratuities, that exceeds $100 per year to a person if the payments or services are related to municipal securities activities of the employer of the recipient.

The board would extend for MAs several exceptions from the $100 restriction, including "normal business dealings," like gifts of meals or tickets to entertainment if the regulated entity or associated persons host the event and the number of gifts is not "so frequent or so extensive as to raise any question of propriety," the MSRB said. Also exempted would be "legitimate business functions" that the Internal Revenue Service recognizes as deductible expenses and infrequent gifts like those for weddings and funerals.

The proposed rule changes also would prohibit MAs and dealers from getting reimbursed through bond proceeds for certain entertainment expenses related to a muni offering if the expenses were not “ordinary and reasonable.”

Heaton said in the group’s letter that several key amendments to the rule need clarification or further change.

The references to “municipal securities activities” and “employees” of municipal entities may not fit the goal of the rule Heaton said, because there are questions as to whether issuers engage in municipal activities as the MSRB defines them. In addition, people who could be swayed by gifts, such as municipal board members, may not be “employees” of the municipality.

She recommended the MSRB codify interpretive guidance into the rule and “make explicit in either a definition of municipal securities activities or in supplementary material that municipal securities activities includes the activities of issuers.”

The letter also asks that the exemption for normal business dealings be eliminated and the gift amount be raised to no more than $250 per year rather than $100 per year for both MAs and dealers.

“By exempting items such as meals and tickets to theatrical, sporting, and other entertainment events, the MSRB leaves open a plethora of opportunities for abuse,” Heaton said.

She added that the change would allow the rule to match up with MSRB Rule G-37 on political contributions, which permits municipal finance professionals to make donations of up to $250 to any candidates for whom they can vote without triggering the rule’s restrictions.

NAMA also asked the MSRB, which also sought to amend its Rule G-8 on books and records, to require a regulated entity to keep records for all gifts, whether subject to the limit or excluded. The proposed recordkeeping requirements do not require records for occasional gifts that are exempted and Heaton argued that would “not provide any effective mechanism for ensuring that” the gifts are occasional or should be exempted.

“The imposition of a recordkeeping requirement with respect to such gifts would not be an entirely new burden and, importantly, would provide meaningful protection against pay-to-play activity as well as providing a meaningful way for regulators to determine whether such gifts give rise to questions of impropriety or conflicts of interest,” Heaton wrote.

NAMA agreed with the MSRB that MAs should keep records for five years, which Heaton called the standard requirement in other MSRB recordkeeping rules. The proposed changes would require five years of records for MAs but six years for dealers.

Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association, said SIFMA supports the rule, but takes issue with the different periods for keeping records for MAs and for dealers. She said the rule should be uniform and fair for all the participants.

THE BOND BUYER

BY JACK CASEY

OCT 19, 2015 12:48pm ET

Update on the SEC's MCDC Initiative: Ice Miller

Many of you have asked for an update on the SEC's 2014 Municipalities Continuing Disclosure Cooperation Initiative (MCDC). The MCDC is a self-reporting initiative for underwriters and state and local governmental bond issuers, such as school corporations, targeting misstatements in Official Statements regarding prior compliance with Continuing Disclosure Undertaking Agreements under SEC Rule 15c2-12.

Orders Regarding Underwriters

On September 30, 2015, the SEC announced a second round of settlements with underwriters of municipal bonds under the SEC's MCDC Initiative. In this round of settlements, the SEC announced cease and desist orders for 22 municipal bond underwriting firms, finding violations of federal securities laws resulting from material misstatements and omissions in Official Statements and failures by underwriters to conduct adequate due diligence regarding past continuing disclosure compliance. The SEC's press release announcing the enforcement actions is available here.

The first round of MCDC settlements, involving 36 municipal underwriters, was announced in June, 2015. The SEC's press release announcing these enforcement actions is available here. Another round of settlements with underwriters is expected, perhaps later in 2015.

The underwriting firms neither admitted nor denied the findings but agreed to cease and desist from further violations. Settlements included payment of civil penalties to the SEC, and the promise to retain independent consultants to review policies and procedures on due diligence. It is important to note that these fines and the resulting settlement orders were exactly what was communicated in the original announcement of the MCDC.

Anticipated Orders Regarding Issuers

It is expected that further SEC announcements concerning settlements with self-reporting bond issuers will follow after the last wave of Underwriter orders. Originally, the SEC believed that all orders relating to MCDC would be complete by the end of 2015. However, it now appears more likely that they will continue into 2016. SEC representatives have also indicated that every issuer who self-reported will, at some point, receive correspondence from the SEC even if it is just to notify the issuer that the SEC has decided to take no action.

Representatives from the SEC have indicated that just because an underwriter has entered into a settlement order for a misstatement regarding a particular bond issue, it does not necessarily mean that the SEC will be asking for a settlement from that issuer. It is believed that many issuers self-reported under the MCDC in an abundance of caution not necessarily because they believe misstatements were material. **If a school corporation is contacted by the SEC, remember it is important to consult with school counsel or bond counsel before responding.**

Of the over 200 bond lawyers who were surveyed by the National Association of Bond Lawyers, 73% responded that all, most or some of their issuer and borrower clients self-reported under the MCDC. Some of the most surprising responses were related to questions regarding materiality. Roughly 93% of the lawyers that responded said their clients self-reported some or many misrepresentations about compliance with continuing disclosure obligations that were unlikely to be considered material. According to case law, information is material if an investor would want to know it before buying or selling securities.

The settlements cover Official Statements for Bonds issued between 2010 and 2014. The SEC's stated goals with MCDC include the improvement in quality and timeliness of continuing disclosure filings on EMMA (which stands for Electronic Municipal Market Access; click here for link) and improvement in underwriter review of disclosures in Official Statements regarding prior compliance.

When a School Corporation issues bonds, it is important to carefully review the Official Statement to make sure that it is accurate and does not omit any information which would be material to an investor. Even though the School Corporation may hire another party, such as a financial advisor, to assemble this information, the School Corporation is legally responsible for the content of the Official Statement. In addition, an issuer of municipal bonds should consider adopting post issuance procedures, and once adopted, the issuer must make sure that the procedures are followed.

Please feel free to contact Jane Neuhauser Herndon, Kristin McNulty McClellan, Erik Long or any member of the Municipal Finance Group with any questions or concerns or for more information about MCDC, EMMA or Post Issuance Procedures.

Jane Neuhauser Herndon, Erik B. Long, Kristin McNulty McClellan

October 12, 2015

Figure in Troubled Bond Deals Leaves a Company Board.

PHOENIX – Christopher Brogdon, who recently emerged at the center of more than a dozen problematic healthcare municipal bond deals for which at least $2 million was unaccounted for, will resign from the board of directors of a healthcare company.

Brogdon will step down from the board of AdCare Health Systems at the next shareholder meeting, the company announced Wednesday.

AdCare, which trades on the New York Stock Exchange under the symbol ADK, owns, leases or manages for third parties 39 senior living and long-term healthcare facilities. Brogdon owns more than 5% of the company's shares, according to its regulatory filings.

Brogdon is the central figure more than a dozen defaulted bond issues stretching back more than a decade that trustee Bank of Oklahoma Financial has said are missing some $2 million from debt service reserve funds.

AdCare was involved in two of those deals, according to regulatory filings.

On Tuesday, the firm filed a form 8-K disclosure with the Securities and Exchange Commission noting that two facilities controlled by entities related to AdCare and financed with municipal bonds had been the subject of default notices filed by the bond trustee.

For bonds issued by the city of Springfield, Ohio for a nursing home run by a wholly-owned affiliate of AdCare, “the Company has cured such defaults,” AdCare reported in the 8-K.

In the case of bonds issued by the Medical Clinic Board of the City of Hoover, Ala. for a facility owned by “a consolidating variable interest entity of the Company which is owned and controlled by Christopher Brogdon,” AdCare said “it is the Company’s understanding” that the entity is working to cure the bond default.

The trustee bank announced in filings over the summer on the Municipal Securities Rulemaking Board’s EMMA website that it had fired a senior vice president following a bondholder complaint she colluded with Brogdon.

The terminated employee, Marrien Neilson, denied wrongdoing, and has retained an attorney specializing in employment litigation and dispute resolution. The bank has since posted numerous EMMA notices on the statuses of the various projects, some of which it is trying to sell and others it is trying to place into receivership or forbearance. But some holders of the bonds, which have coupons in excess of 7%, aren’t satisfied.

Bernard Miskiv, a retired optometrist who lives in Kissimmee, Fla., said he has about $300,000 invested in several bonds local governments issued for several different non-profit borrowers with links to Brogdon. Miskiv said he and a confederation of about 40 other investors who also bought the bonds through a shared broker feel that the bank is largely to blame for the situation, including the case of one facility in Sumner, Ill. that was sold at a tax sale in 2008 — a fact that apparently went unnoticed by the bank until recent months.

“Without the bank enabling Brogdon, this never could have happened,” Miskiv said. “How are they protecting the bondholders? We don’t want retribution, we want restitution.”

Miskiv said he has repeatedly called and written to BOKF’s trustee department, and told the bank he would like it to buy his bonds back.

“There’s no market for them,” he said. “They’re worthless.”

A number of the bonds do continue to trade, though infrequently, according to activity listed on EMMA.

BOKF has issued numerous EMMA notices in the past two weeks, some of which raise even more questions about where the money for debt service went and how some of the money that did come in got there.

On Oct. 1, BOKF posted notices for several of the issues indicating that it had received debt service checks and that it planned to distribute the funds to bondholders as usual. However, the checks came from companies uninvolved in the deals.

“The trustee is unable to determine whether the funds received by the trustee for the debt service payment are pledged revenues under the trust indenture,” the notices say in part. “In the future, the trustee will not accept payment from any person or entity other than the borrower, a guarantor, or a person or entity tendering payment as agent for and on behalf of the borrower.”

The companies that made the mysterious payments, including St. Simons Healthcare LLC/Gordon Oaks Assisted Living, Bleckley NH LLC, and St. Simons Healthcare LLC Riverchase Village, all appear to be owned or run by Brogdon.

Joseph Crivelli, a senior vice president and director of investor relations at BOKF, said that the bank filed a lawsuit against the Brogdon-affiliated nonprofit National Assistance Bureau and Brogdon himself in the U.S. District Court for the Middle District of Georgia on Oct. 12. The National Assistance Bureau shares an Atlanta address with Global Healthcare REIT, a publically traded firm of which Brogdon is president.

On another deal, a 2000 $4.2 million issuance located in Bibb County, Ga., Crivelli said the bank filed for receivership on Oct. 9.

Miskiv said his broker had found a buyer willing to purchase the Bibb facility, which is still operational, and make bondholders whole, but that the bondholders had trouble getting the bank to consider it.

Crivelli said last month that the bank was conducting an internal investigation and had hired a forensic accountant to assist in that investigation. Crivelli said this week that the bank is continuing to cooperate with regulatory investigations into the Brogdon deals.

Brogdon has not responded to requests to be interviewed.

Brogdon has a checkered past as a securities professional. Financial Industry Regulatory Authority records show that Brogdon was a licensed broker at Dean Witter Reynolds in New York from 1978 until 1991, but was expelled from membership in FINRA's predecessor, the National Association of Securities Dealers after the NASD found that Brogdon had violated federal securities laws and Municipal Securities Rulemaking Board rules by both making unauthorized trades and preparing inaccurate records while he was working on behalf of Harbor Town Securities, where he was registered from 1982 to 1986.

THE BOND BUYER

BY KYLE GLAZIER

OCT 14, 2015 4:27pm ET

Finra Fines Santander Unit Over Puerto Rico Bond Sales.

A unit of Spain's Banco Santander SA agreed to pay roughly $6.4 million in a settlement with Wall Street's self-regulator regarding supervisory failings tied to the sale of Puerto Rican municipal bonds, which have plunged in value in recent years.

The Financial Industry Regulatory Authority on Tuesday said Santander Securities LLC would pay a $2 million fine for supervisory failures related to sales of individual Puerto Rico bonds and closed-end funds, and for failing to reasonably supervise employee trading at the firm's Puerto Rico branch.

In addition, Santander agreed to pay about $4.3 million in restitution to certain customers, as well as $121,000 in restitution and an offer to buy back the securities sold to certain customers who were affected by the firm's failure to supervise employee trading, Finra said.

The securities industry's self-regulator found that for a 10-month period starting in December 2012, Santander didn't accurately reflect the dangers associated with the Puerto Rican paper in its risk-classification tool and failed to adequately supervise its customers' use of margin and concentrated positions in their accounts.

Finra added that Santander didn't revise the risk-tool classifications following Moody's Investors Service's downgrade of some of the island's municipal bonds to a notch above junk territory in December 2012. The day after the move, Santander allegedly stopped buying Puerto Rican municipal bonds being sold by customers and accelerated efforts to dump its inventory.

As is customary, Santander neither admitted nor denied the regulator's findings, according to the Finra disciplinary document, posted on the regulator's website.

A Santander spokeswoman said the firm "is pleased to resolve this matter and will comply with the terms of the Finra letter," adding that "the firm has taken steps to enhance its controls in connection with the activities described in the Finra letter."

Tuesday's development comes as Puerto Rico's financial crisis continues to draw scrutiny from U.S. lawmakers and regulators. Last month, a measure to establish more robust federal oversight over Puerto Rico's mutual-fund industry was introduced in Congress, and a Senate committee held a hearing on Puerto Rico's financial problems.

In addition, a unit of UBS Group AG in September agreed to pay roughly $34 million in settlements with U.S. regulators for issues tied to the sale of Puerto Rico bond funds. That included $15 million to settle charges from the Securities and Exchange Commission, which said the unit failed to supervise a former broker who had customers invest borrowed money in the bond funds, and $18.5 million for a Finra fine and investor restitution.

The funds and municipal bonds sold by UBS and other brokerages were popular among island residents in part due to generous tax advantages.

But Puerto Rico has been facing a sluggish economy and high unemployment for years, and officials have been seeking to restructure the island's $72 billion debt load. Gov. Alejandro García Padilla has called the island's debt unpayable, and many Puerto Rico bonds are trading well below face value.

THE WALL STREET JOURNAL

By ANNA PRIOR And EZEQUIEL MINAYA

Updated Oct. 13, 2015 12:58 p.m. ET

Write to Anna Prior at anna.prior@wsj.com and Ezequiel Minaya at ezequiel.minaya@wsj.com

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SIFMA Submits Comments to the SEC to Delay Effective Date of Best Execution Rule Proposal and Changes to SMMP.

SIFMA provides comments to the Securities and Exchange Commission's (SEC) approval of the MSRB's filing for a revised effective date for changes to the Best Execution Rule. The new effective date of Rule G-18 and the related amendments to Rules G-48 and D-15 will be 120 days from the date of publication by the MSRB of implementation guidance on those rules, but no later than April 29, 2016. Upon publication of the implementation guidance, the MSRB will announce the resulting specific effective date.

Read the comment letter.

October 14, 2015

[SIFMA Submits Comment to the SEC on MSRB Rule G-20.]

SIFMA provides comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) proposed amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation, and Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors, and the deletion of prior interpretive guidance.

Read the letter.

October 13, 2015

SEC Official Corrects Municipal Advisor Misconceptions.

CHARLESTON, S.C. — Some municipal advisors have misconceptions about who can advise in the municipal market and who can be considered an independent registered municipal advisor, a Securities and Exchange Commission official told MAs meeting here.

Rebecca Olsen, deputy director of the SEC's office of municipal securities, made the remarks at the National Association of Municipal Advisors annual conference here on Thursday. She said that not only MAs, but also other individuals like registered investment advisors, can give advice on bonds. She also said that some MAs need to stop "telling everyone they are the IRMA" when they have not met the necessary requirements.

"While a municipal advisor may have agreed to serve in the role of an IRMA for [a] particular client, a market participant cannot rely on that municipal advisor in that capacity until all the requirements of the exemption have been satisfied," Olsen said.

The IRMA exemption allows 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 agrees to rely on that MA's advice. An underwriter who gives bond advice to a state or local government without an exemption from the rule, such as the IRMA exemption, becomes an MA that has a fiduciary duty to put the municipality's interests before its own and is precluded from underwriting any bonds in that same transaction.

Olsen said the market participant relying on the IRMA exemption is the one who has to make sure all the requirements are satisfied, but that it is "something to keep in mind" for MAs moving forward.

MAs who falsely claim to be IRMAs are not violating any specific rules at this point, aside from Municipal Securities Rulemaking Board Rule G-17 on fair dealing if the behavior is egregious, but the SEC is "a bit concerned about the miscommunications and [is] encouraging people not to make them," she said.

There are also a number of MAs that are not permanently registered with the SEC Olsen said. The Bond Buyer's comparison of the SEC and Municipal Securities Rulemaking Board's lists of registered MAs shows approximately 80 firms or individuals still need to register with the SEC.

The deadline for registration was last year. “If a municipal market participant is engaging in municipal advisor activities and not registered on a permanent form, it would at this point be considered unregistered municipal advisory activity,” Olsen said.

Later in the panel, Olsen updated the audience on a new SEC rating agency requirement that took effect in June. Paragraph “b” of the SEC’s Rule 17g-8 on credit rating agencies stems from provisions laid out in the Dodd-Frank Act and requires rating agencies to have policies and procedures that are designed to take the probability that an issuer will default or fail to make timely payments into account when assigning ratings.

The rule responds to the long-time critique that muni ratings generally are not as high as corporate bond ratings, even though muni default rates are lower. Olsen said the rule change “appeared to have resulted in an upgrade for certain municipalities including general obligation bonds.”

Dave Sanchez, an attorney at Sidley Austin in California and a former SEC muni office lawyer who moderated the panel, said rating agencies seem unaware of the rule. He also cited a study that referred to the absence of adequate default rate considerations as potentially a $2 billion problem for issuers.

Olsen said the study likely relied on data from before the rule took effect and emphasized that the rule requires rating agencies to look at the probability of default comparably with other factors they could have previously considered.

THE BOND BUYER

BY JACK CASEY

OCT 9, 2015 10:49am ET

SEC Weighs Providing Legal Guidance on Role of MAs in Bank Loans.

CHARLESTON, S.C. — The Securities and Exchange Commission’s Office of Municipal Securities is weighing whether to provide legal interpretive guidance to help municipal advisors determine if they are acting as an adviser or broker-dealer when working with an issuer on a bank loan.

Rebecca Olsen, deputy director of OMS, told those attending the National Association of Municipal Advisors annual conference here that the role an MA plays in bank loans has raised legal issues because advisors, who owe fiduciary duties to their clients, and broker-dealers, who act as intermediaries, operate in different regulatory regimes. She said her office “could consider” providing the guidance, in close coordination with the SEC’s division of trading and markets.

“We completely understand that the definition of municipal advisor contemplates advice with respect to structure, timing and terms of an offering of municipal securities that would typically require broker-dealer registration and that this is creating legal interpretive issues,” Olsen said.

The issue, she said, is whether the bank loan should be considered a security and whether an advisor dealing with the bank loan is “acting only as an advisor in providing advice in the capacity of their advisory relationship with their client” or whether they are acting as a broker by entering into the business of effecting a transaction in the securities of others. The first question fits into an ongoing discussion best answered by the 1990 case Reves v. Ernst & Young. In that case, the court ruled that notes were presumably securities, but allowed for that presumption to be overcome if the notes bore a strong resemblance to another note that was not a security. The ruling said an instrument is a security if: it is motivated by investment or commercial purpose; it is traded for speculation and investments; the public views the transaction as a security; or it falls under other federal regulations which make applying the securities laws unnecessary.

If the test shows the instrument is not a security, the need to distinguish between MA and broker-dealer is moot because the Securities Exchange Act of 1934 rules for broker-dealers and the Municipal Securities Rulemaking Board rules only apply to municipal securities, Olsen said.

She said the issue of whether an individual is acting as an advisor or a broker-dealer is "more difficult" because "there is no bright line" and any answer requires "a very factually intensive analysis."

Olsen suggested the trading and markets division's guide on broker-dealer registration may help MAs determine whether they are acting as broker-dealers and participating in important parts of the securities transaction. Key parts of a securities transaction include: solicitation, execution of the transaction, conversations about the size of the transaction, and whether the MA handles the securities of others in connection with the securities transaction.

Bank loans also have raised other questions in the market, such as whether and how often an issuer should disclose them. They do not qualify as a material event under SEC Rule 15c2-12 on continuing disclosure, meaning any effort to disclose them requires an issuer to volunteer the information.

Allen Robertson, a managing partner at Robinson, Bradshaw & Hinson, said during a later panel that issuers' or obligated persons' decisions to disclose bank loans fall outside the scope of advice a lawyer advising them should give. Robertson, a former president of the National Association of Bond Lawyers, said NABL determined a lawyer's job is to make sure issuers and borrowers understand the risks and considerations behind any type of voluntary disclosure. Armed with that information, their clients can make an informed business judgment.

The three concerns a lawyer might raise, according to Robertson, are whether voluntarily disclosing the bank loan: opens the issuer up to a continual liability to provide general updates; means the issuer is committing itself to provide information about all future bank loans; or requires the issuer to make a disclosure any time the loan is amended. While he said there are likely ways to avoid each of those concerns while still disclosing, he said that legally there is no "black and white answer."

The two rating agency officials on the panel both advocated for disclosure whenever possible because it allows for a more complete picture of an issuer's ability to pay its debt.

"I will never tell you not to disclose a bank loan," said Tom Jacobs, senior vice president and manager of Moody's municipal supported products group. "The more transparent the market is, the happier we will be."

Loans are particularly worrisome when the banks have acceleration rights that allow them to seek immediate repayment if ratings or other indicators of an issuer's ability to repay the debt diminish, Jacobs said. When acceleration rights are written into a loan, bondholders without the rights become subordinate and have to wait behind the banks for payment.

Diane Brosen, managing director for Standard & Poor's corporate and government ratings, said that a few years ago, issuers questioned why rating agencies needed information about bank loans.

"We at Standard & Poor's felt like we had to go to the issuers and let them know how important this was to the market," Brosen said.

Many issuers now more readily supply bank loan information, but Brosen said there is still an issue, especially with smaller community banks that are harder to reach. She asked any MAs in the audience who are involved in bank loans with smaller banks to spread the message of the need for disclosure.

National Federation of Municipal Analysts industry and media liaison Bill Oliver mentioned NFMA's recent white paper urging issuers to disclose bank loans. He challenged the idea that issuers will always be able to access the capital market and that there is a good level of liquidity present regardless of their disclosure practices.

"The market does have a fragile side to it and I think disclosure and having a disclosure track record for your issuers is really important," Oliver told the audience. "This notion about disclosure being voluntary is outdated."

THE BOND BUYER

BY JACK CASEY

OCT 9, 2015 10:31am ET

MSRB Publishes Updated Documents Related to May 2016 Changes to RTRS.

On Friday, September 18, 2015, the Municipal Securities Rulemaking Board (MSRB) published updated RTRS Specifications and RTRS Web User Manual reflecting the amendments to MSRB Rule G-14 described in MSRB Notice 2015-07. The rule changes, which will become effective on May 23, 2016, will enhance the post-trade price transparency information provided through the MSRB's Real-time Transaction Reporting System (RTRS) by:

- Expanding the application of the existing list offering price and takedown indicator to include distribution participant dealers and takedown transactions that are not at a discount from the list offering price;
- Eliminating the requirement for dealers to report yield on customer trade reports and, instead, enabling the MSRB to calculate and disseminate yield on customer trades;
- Establishing a new indicator for customer trades involving non-transaction-based compensation arrangements; and
- Establishing a new indicator for inter-dealer transactions executed with or using the services of an alternative trading system (ATS).

A test environment reflecting the amendments to MSRB Rule G-14 was made available through the current RTRS BETA system on October 1, 2015. The MSRB encourages dealers to make necessary programming changes and complete testing prior to the May 23, 2016 effective date.

If you have any questions, please contact MSRB Support at 703-797-6668.

MSRB Proposes Four-Year Terms for Board Members.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing to lengthen board members' terms to four years from three, claiming this will make them more effective.

The MSRB proposed the changes to its Rule A-3 on board membership on Monday and is asking for public comments to be submitted by Nov. 19. The self-regulator had previously asked for comments on longer board terms as part of a controversial proposal earlier this summer to ease the standard of independence for the board's public investor representative. That proposal was shelved after it drew criticism, including from the Securities and Exchange Commission's Investor Advocate.

The new amendments are "primarily designed to improve the continuity and institutional knowledge of the board from year to year, while retaining the benefits of the regular addition of new members," the MSRB said in its regulatory notice. Longer terms would be especially helpful when members work on more complex or unique rules that often take multiple years to formulate and implement, it said.

"As former board members frequently attest, there is a substantial learning curve when joining the board and members typically make increasing contributions with each year they become more knowledgeable about the work of the MSRB," said the board's executive director Lynnette Kelly.

The proposed new term structure would maintain the majority-public nature of the 21-member board, but would change the number of new board members every year to either five or six, instead of the current seven. The MSRB is proposing a transition period through 2020. In 2021 there would be six new members, the next year five, the next year five, and the next year five. The cycle would be repeated every four years. The MSRB currently considers the members that come on in the same year one "class" and names the class according to the year they end their terms.

The MSRB said each new class of five or six "would continue to be as evenly divided as possible between public representatives and regulated representatives."

As part of the changes, the MSRB would eliminate a current Rule A-3 requirement that every board class have at least one municipal advisor representative not associated with a dealer. The MSRB said that keeping the requirement "would create an unintended obligation that the board always include four non-dealer municipal advisors" and thus possibly decrease representation of other regulated entities.

"Nothing in this change would reduce the representation of municipal advisors nor would it prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the board," the MSRB said.

During the transitional period, different members of the board would be eligible for board-approved extensions each year.

In fiscal year 2017, one public representative from the class of 2016 would get a one-year extension and six new members would join the board. The next year, one public and two regulated representatives from the class of 2017 would receive a one-year extension and five new members would join. Then in 2019, three public and two regulated members from the class of 2018 would get one-year extensions and five new members would join the board. And by 2020, the board would have completed the transition and welcome a class of five new members who would serve four year terms.

A committee of board members not being considered for extensions would nominate the members eligible for extensions in each of the transition years and then the board would vote on each proposed term extension. The extensions and board composition during and after the transition period "would be consistent with the statutorily-required compositional requirements of the board," the MSRB said.

While the MSRB said it recognizes there are numerous combinations of classes and members to achieve the change, it said it feels its specific recommendations would "achieve the transition expeditiously and efficiently while minimizing any disruption."

However, the board included several alternatives for commenters to consider when responding to the proposal, including whether members should serve terms longer than four years and whether the MSRB should make it easier for members to serve consecutive terms, even though the self-regulator said it believes the regular turnover every four years has benefits.

It also listed alternatives, including: a new proposed lifetime cap on the number of years a member could serve; devoting more resources to educating board members; and changing to four-year terms but keeping the rotation of seven new people every year and having no new members every fourth year.

The MSRB also posed two questions at the end of its notice asking if the proposed amendments would give the board greater continuity and institutional knowledge as well as whether the amendments would impose costs or burdens on any industry participants.

Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association, said SIFMA thinks the proposed term limit extension is "a great idea" and although the dealer group is still looking at the proposal, a longer term will "make board members more effective in decision making."

Jessica Giroux, Bond Dealers of America general counsel and managing director of federal regulatory policy, said BDA plans to discuss MSRB's suggested changes to Rule A-3 "with an eye toward flushing out any of our concerns related to proposed details surrounding adjustments to classes and how the transition process will proceed."

A spokesman for the National Association of Municipal Advisors said the group will be submitting comments. The Government Finance Officers Association could not immediately be reached for comment.

THE BOND BUYER

BY JACK CASEY

OCT 5, 2015 2:06pm ET

MSRB Requests Comment on Lengthening Board Member Terms.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to lengthen the term of Board member service to four years from three. The draft amendments to MSRB Rule A-3, on Board membership, are primarily designed to improve the continuity and institutional knowledge of the Board, while retaining the benefits of the regular addition of new members.

"As former Board members frequently attest, there is a substantial learning curve when joining the Board and members typically make increasing contributions with each year they become more knowledgeable about the work of the MSRB," said MSRB Executive Director Lynnette Kelly. "Given the complexity of many MSRB initiatives, we think a four-year Board term is more appropriate and would enhance the Board's overall effectiveness and institutional knowledge."

The MSRB Board of Directors 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. Each year, seven individuals join the Board as seven others complete their three-year terms.

The MSRB's request for comment includes a draft transition plan that would implement the proposed changes in an expeditious but minimally disruptive manner. Comments should be submitted no later than November 19, 2015.

Date: October 5, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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SEC Charges Municipal Underwriters With Making False Statements.

WASHINGTON — The Securities and Exchange Commission charged and fined 22 municipal-bond underwriting firms, including units of UBS Group AG and PNC Financial Services Group Inc., for giving investors inaccurate information. It was the second batch of penalties this year for such firms under the U.S. agency's voluntary self-reporting program.

Regulators said Wednesday that the firms paid a total of about $4.1 million for violating federal securities laws between 2010 and 2014, by selling municipal debt using offering documents that contained "materially false statements or omissions" about the borrowers' compliance with disclosure obligations.

The SEC, in a news release, also said the firms failed to conduct adequate due diligence to identify the problems before selling the bonds on behalf of states and localities.

The agency launched the crackdown—dubbed the "Municipal Continuing Disclosure Cooperation Initiative," or MCDC—last year 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.

Investors and analysts cite the missing disclosures as a factor curtailing the ability to trade securities in the vast, nearly $4 trillion municipal-debt market.

The program stems from a 2013 settlement with a southern Indiana school district and its underwriter for falsely stating to bond investors that the district had been providing investors with annual financial information and required disclosure notices. Without admitting or denying the charges, the West Clark Community Schools agreed not to repeat the violations and the district's underwriter, City Securities Corp., agreed to a $300,000 penalty.

Wednesday's announcement comes after the agency charged and fined 36 large and medium-size banks a total of about $9 million over similar violations in June. The earlier charges involved units of Bank of America Corp. and Citigroup Inc.

In the latest enforcement round, the largest firms will pay civil penalties up to $500,000 and smaller firms will pay up to $100,000, based on the number and size of the offerings. They also agreed to retain an independent consultant to review policies and procedures for underwriting municipal bonds.

The firms settled without admitting or denying the findings, and agreed to cease and desist from such actions in the future, the SEC said.

A spokeswoman for PNC, which paid the maximum $500,000, declined to comment. A spokeswoman for UBS, which paid $480,000, said in a written statement it is pleased to have resolved the matter.

"The MCDC Initiative has revealed that in recent years, a large number of municipal bond underwriters failed to conduct adequate due diligence before selling municipal bonds to their customers," Andrew Ceresney, director of the SEC's enforcement division, said in a statement. "In addition to effectively addressing this past misconduct, we believe the initiative has been effective in improving underwriter due diligence in municipal securities offerings on a going forward basis."

Robert Doty, president and proprietor of AGFS, a litigation consulting firm specializing in municipal-bond cases in Annapolis, Md., said the SEC's program is successfully motivating banks to avoid underwriting municipal bonds unless the issuers have complied with disclosure promises in prior offerings.

"The mind-set in the market has changed," Mr. Doty said.

In future enforcement actions under the MCDC, the SEC also is expected to expand the scope and bring charges against state and local borrowers, according to people familiar with the SEC's thinking.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

Updated Sept. 30, 2015 1:05 p.m. ET

—Aaron Kuriloff contributed to this article.

UBS Unit to Pay $34 Million in Settlements Over Puerto Rico Bond Funds.

A unit of UBS Group AG agreed to pay roughly $34 million in settlements with U.S. regulators regarding the sale of Puerto Rico bond funds that plunged in value in recent years.

Tuesday's settlements come as Puerto Rico's financial crisis is drawing increased scrutiny from U.S. lawmakers and regulators. A measure to establish more robust federal oversight over Puerto Rico's mutual-fund industry was introduced in Congress last week and a Senate committee held a hearing on Puerto Rico's financial problems on Tuesday.

UBS Financial Services Inc. of Puerto Rico agreed to pay $15 million to settle charges from the Securities and Exchange Commission, which said the unit failed to supervise a former broker who had customers invest borrowed money in the bond funds. The SEC said the money will be placed into a fund for investors who had losses.

The Financial Industry Regulatory Authority, which oversees securities firms, also said the UBS unit would pay a $7.5 million fine for failure to supervise, and $11 million in restitution to 165 customers who had losses on their funds.

The settlements are in line with other recent enforcement action by the SEC, which has focused on supervisory failures, said Elaine Greenberg, partner in the securities litigation, investigations and enforcement practice at Orrick Herrington & Sutcliffe LLP.

The SEC is "continuing to pursue actions against broker-dealer firms with regards to their policies and procedures, and whether or not those policies and procedures are reasonably designed to prevent and detect violations of federal securities law," Ms. Greenberg said. She previously was head of the SEC's specialized unit on municipal securities and public pensions.

A UBS spokeswoman said: "We're pleased to have resolved these matters with the SEC and Finra with respect to separate inquiries initiated in early 2014. We remain dedicated to serving our customers during this difficult economic time for the commonwealth."

Separately, the SEC said it sued the former broker, Jose Ramirez Jr., in federal court. It alleges Mr. Ramirez increased his compensation by at least $2.8 million by having customers improperly borrow money to invest in the Puerto Rico bond funds.

In addition, a former branch manager, Ramiro L. Colon III, agreed to pay a $25,000 penalty and be suspended from supervisory roles for a year. Mr. Colon is currently employed by UBS in Miami, according to his broker records.

An attorney for Mr. Ramirez, who was fired by UBS in early 2014, said he was examining the lawsuit and had no further comment.

Hundreds of investors who owned the bond funds sold by UBS have filed legal claims with Finra seeking to recoup their losses. UBS has settled some of the cases, at times for millions of dollars. In cases that made it to a hearing, Finra arbitrators have awarded damages in six of them and found in favor of UBS in two cases, according to UBS.

The funds were popular among island residents in part due to generous tax advantages. Many investors say they invested in the funds because their UBS brokers told them the funds, which were heavily invested in Puerto Rico municipal securities, were safe.

Puerto Rico has been facing a sluggish economy and high unemployment for years, and officials under Gov. Alejandro Garcia Padilla are seeking to restructure the island's $72 billion debt load. Mr. Garcia Padilla has called the island's debt unpayable, and many Puerto Rico bonds are trading well below face value.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Updated Sept. 29, 2015 6:45 p.m. ET

—Aaron Kuriloff contributed to this article.

Supreme Court Preview for Local Governments – October 2015

The Supreme Court's last term was big for local governments because the Court decided a number of important cases against them, most notably Reed v. Town of Gilbert, Arizona (2015), holding that strict scrutiny applies to content-based sign ordinances. The October 2015 term is one to watch, and not just because the Court has accepted numerous cases on controversial topics affecting local governments. Adding to the intrigue, many of the Court's decisions this term are likely to be discussed by the 2016 presidential candidates as the election heats up. Here is a preview of the most significant cases for local governments that the Court has agreed to decide so far.

Public Sector Collective Bargaining

In Friedrichs v. California Teachers Association the Court will decide whether to overrule a nearly 40-year old precedent requiring public sector employees who don't join the union to pay their "fair share" of collective bargaining costs. More than 20 states have enacted statutes authorizing "fair share."

In Abood v. Detroit Board of Education (1977) the Supreme Court held that the First Amendment does not prevent public employees who do not join the union from being required to pay their "fair share" of union dues for collective bargaining, contract administration, and grievance adjustment. The rationale is that the union may not discriminate between members and nonmembers in performing these functions. So, no free-riders are allowed.

In two recent cases, the Court's more conservative Justices, including Justice Kennedy, have criticized Abood.

If the Court doesn't overrule Abood, it may instead rule that public employees may be allowed to opt-in rather than required to opt-out of paying "nonchargeable" union expenditures, in which case presumably fewer will opt-in.

"Fair share" and opt-out are foundational principles for public sector collective bargaining in the United States. Overturning either of them would mean a major change in the law that would substantially weaken public sector unions.

Redistricting

The U.S. Constitution Equal Protection Clause "one-person one-vote" principle requires that voting districts have roughly the same population so that votes in each district count equally. But what population is relevant — total population or total voting population — and who gets to decide? The Court will answer these questions in Evenwel v. Abbott.

Over the last 25 years the Supreme Court has repeatedly refused to decide (in cases all involving local governments) whether total voter population must be equalized in state and local legislative districts.

Plaintiffs claim that total voter population must be the metric. They argue their votes are worth less than other voters because they live in districts that substantially deviate from the "ideal" in terms of number of voters or potential voters.

The lower court disagreed because the Supreme Court has never held that any particular population metric is unconstitutional. Most state legislatures use total population, not total voting population data.

Asset Forfeiture

The question in Luis v. United States* is whether not allowing a criminal defendant to use assets not traceable to a criminal offense to hire counsel of choice violates the Sixth Amendment right to counsel.

Local law enforcement often receive asset forfeitures related to drug crime.

This case comes on the heels of Kaley v. United States (2014) where the Supreme Court held 6-3 that defendants may not use frozen assets which are the fruits of criminal activities to pay for an attorney.

Luis argues that it is "inconceivable" that she may not use "her own legitimately-earned assets to retain counsel." The federal government responded that per her reasoning criminal defendants "could effectively deprive [their] victims of any opportunity for compensation simply by dissipating [their] ill-gotten gains."

The Eleventh Circuit ruled against Luis, who was indicted on charges related to $45 million in Medicare fraud.

Local Governments Sued Out-of-State

In Franchise Tax Board of California v. Hyatt* the Court will decide whether states must extend the same immunities that apply to them to foreign local governments (and states) sued in their state courts. Hyatt is important to local governments who are often sued out-of-state.

The Franchise Tax Board (FTB) of California concluded that Gilbert Hyatt didn't relocate to Nevada when his tax returns indicated he did and assessed him $10.5 million in taxes and interest. Hyatt sued FTB in Nevada for fraud among other claims.

In Franchise Tax Board of California v. Hyatt (2003) the Supreme Court held that the Constitution's Full Faith and Credit Clause does not require Nevada to offer FTB the full immunity that California law provides.

A Nevada jury ultimately awarded Hyatt nearly $400 million in damages.

The Nevada Supreme Court refused to apply Nevada's statutory cap on damages to Hyatt's fraud claim, reasoning that Nevada has a policy interest in ensuring adequate redress for Nevada citizens that overrides providing FTB the statutory cap because California operates outside the control of Nevada.

Hyatt has also asked the Supreme Court to overrule Nevada v. Hall (1979), holding that a state may be sued in another states' courts without consent. If the Court overrules this case, the question of whether the immunities a state enjoys must be offered to a foreign local government (or state) will be moot.

Affirmative Action

For the second time the Court has agreed to decide whether the University of Texas at Austin's race-conscious admissions policy is unconstitutional in Fisher v. University of Texas at Austin.

Even though this case arises in the higher education context, the Supreme Court decides relatively few affirmative action cases so all are of interest to local governments that use race as a factor in decision-making.

Per Texas's Top Ten Percent Plan, the top ten percent of Texas high school graduates are automatically admitted to UT Austin, which fills about 80 percent of the class. Most other applicants are evaluated through a holistic review where race is one of a number of factors.

Abigail Fisher claims that using race in admissions is unnecessary because, in the year she applied, UT Austin admitted 21.5 percent minority students per the Top Ten Percent Plan.

The Supreme Court has held that the use of race in college admissions is constitutional if race is used to further the compelling government interest of diversity and is narrowly tailored.

In Fisher I the Court held that the Fifth Circuit, which upheld UT Austin's admissions policy, should not have deferred to UT Austin's argument that its use of race is narrowly tailored.

When the Fifth Circuit relooked at the plan again it concluded that it is narrowly tailored.

Only time will tell whether the Court agrees.

Conclusion

The Court's docket is only about half full right now. Interestingly, the Court hasn't accepted a Fourth Amendment or qualified immunity case yet — but no term would be complete without a few such cases. Of interest to the Court may be a case involving whether cell phone location data may be obtained without a warrant.

The National League of Cities

About the Author: Lisa Soronen is the Executive Director of the State and Local Legal Center and a regular contributor to CitiesSpeak.

MSRB Amends its Continuing Education Requirements to Facilitate Web-based Delivery of Regulatory Element Training.

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission amendments to MSRB Rule G-3 to facilitate the Web-based delivery method for the Regulatory Element of the Continuing Education ("CE") requirements. The CE amendments are effective immediately and will become operative on October 1, 2015 to coincide with the launch of the first Web-based modules for the Regulatory Element.

View the regulatory notice.

NABL: SEC Announces Second Round of MCDC Enforcement Actions.

The SEC announced today the second round of MCDC enforcement actions. The enforcement actions are against 22 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.

22 MCDC Settlements With Firms to be Followed by Another Round.

WASHINGTON – The Securities and Exchange Commission's settlements ordering 22 municipal securities underwriting firms to pay $4.12 million for disclosure violations, is likely to be followed by a third round of settlements with firms under the SEC's Municipalities Continuing Disclosure Cooperation initiative, lawyers said on Wednesday.

"My understanding is that there will be another round of underwriter settlements," said National Bond Lawyers Association president Kenneth Artin, a shareholder at Bryant Miller Olive.

"I do believe that it is very likely that we will in fact see a third round of orders against underwriters," said Elaine Greenberg, a partner with Orrick, Herrington and Sutcliffe and former chief of the SEC enforcement division's municipal securities and public pensions unit.

After the underwriter settlements are completed, the SEC will release settlements with muni issuers.

In this round, PNC Capital Markets, LLC, which declined to comment on its settlement, paid the maximum penalty of $500,000 and Fifth Third Securities Inc. paid the lowest penalty of $20,000.

Each of 22 underwriting firms agreed to hire an independent consultant to review its policies and procedures on due diligence for municipal securities underwriting.

The MCDC initiative allows underwriters and issuers to receive lenient settlement terms from the SEC if they voluntarily self-reported 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 were negligent in failing to discover the misstatements. Underwriters had to voluntarily report the violations by Sept. 10, 2014 and issuers by Dec. 1, 2014

The civil penalties for each firm are assessed according to the number and size of the issuers' fraudulent offerings, up to a cap based on the firm's size. The maximum possible penalty under the MCDC initiative is $500,000.

In this round, only PNC reached the $500,000 ceiling. This is a departure from the first round of underwriter settlements on June 18, in which 10 of 36 underwriters that paid a total of $9.3 million hit the maximum penalty.

In this round, the SEC found that between 2010 and 2014 the 22 firms sold munis using offering documents that contained materially false statements or omissions about the issuers' continuing disclosure compliance and were negligent in failing to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds. Those failures violated Rule

15c2-12 of the Securities and Exchange Act of 1934 on disclosure and showed a willful violation of Section 17(a)(2) of the Securities Act of 1933, according to the commission.

The 22 firms neither admitted nor denied the findings but agreed to cease and desist from such violations in the future.

“The MCDC Initiative has revealed that in recent years, a large number of municipal bond underwriters failed to conduct adequate due diligence before selling municipal bonds to their customers,” said Andrew Ceresney, director of the SEC’s enforcement division. “In addition to effectively addressing this past misconduct, we believe the initiative has been effective in improving underwriter due diligence in municipal securities offerings on a going forward basis.”

The settlements provide more clues as to what it considers material failures to disclose compliance with continuing disclosure agreements.

In its order against Commerce Bank Capital Markets Group, the SEC the firm underwrote bonds in 2013 for an issuer that was timely in filing its annual financial report in its official statement but failed to cross-reference to its official statement on EMMA. The situation was similar to one in the first round of settlements involving Loop Capital Markets, but in that case the issuer failed to file its annual financial disclosure documents on time, as well as failed to cross-reference to its official statement on EMMA. This round shows the SEC’s belief that cross-referencing to an official statements on EMMA is materially significant.

The majority of other specific examples the SEC provided in the 22 orders involved instances where issuers and obligors were either late in providing annual financial reports or annual operating data, or failed to disclose them at all. Crews & Associates, which was ordered to pay $250,000, underwrote bonds in 2013 for an issuer that had made no statements on prior disclosure compliance and no filings of financial disclosures on EMMA since 2009. The SEC found that other firms underwrote for issuers that ran the gamut for lateness. The SEC found that Estrada Hinojosa & Co. offered and sold bonds for an issuer that was 33 days late filing its annual financial report, while Joe Jolly & Co. sold bonds for an issuer that waited four years to file an annual financial report after it was due.

The SEC granted waivers to each of the firms to prevent them from being disqualified from certain exemptions and safe harbors in SEC rules. Without those waivers, the firms charged in the settlements would probably be unable to do certain types of non-muni transactions.

The SEC’s orders and penalty amounts for the second round of 22 underwriters are:

- Ameritas Investment Corp. – $200,000
- BB&T Securities, LLC – $200,000
- Comerica Securities, Inc. – $60,000
- Commerce Bank Capital Markets Group – $40,000
- Country Club Bank – $140,000
- Crews & Associates, Inc. – $250,000
- Duncan-Williams, Inc. – $250,000
- Edward D. Jones & Co., L.P. – $100,000
- Estrada Hinojosa & Company, Inc. – $40,000
- Fifth Third Securities, Inc. – $20,000
- The Frazer Lanier Company, Incorporated – $100,000
- J.J.B. Hilliard, W.L. Lyons, LLC – $420,000
- Joe Jolly & Co., Inc. – $100,000

- Mesirow Financial, Inc. – $100,000
- Northland Securities, Inc. – $220,000
- NW Capital Markets Inc. – $100,000
- PNC Capital Markets LLC – $500,000
- Prager & Co., LLC – $100,000
- Ross, Sinclaire & Associates, LLC – $220,000
- UBS Financial Services, Inc. – $480,000
- UMB Bank, N.A. Investment Banking Division – $420,000
- U.S. Bank Municipal Securities Group, a Division of U.S. Bank National Association – $60,000

THE BOND BUYER

BY JACK CASEY

SEP 30, 2015 10:41am ET

Orrick: SEC Eliminates References to Credit Ratings in Money Market Fund Rules.

On September 16, 2015, the Securities and Exchange Commission ("SEC") adopted revisions to Rule 2a-7, the primary rule governing money market funds. The amendments implement provisions of the Dodd-Frank Act that require federal agencies to replace references to credit ratings in regulations with alternative standards of credit-worthiness, and are consistent with the SEC's goal of reducing its reliance on credit ratings.

Rule 2a-7 currently requires that money market funds may only invest in "eligible securities" that receive one of the two highest short-term credit ratings. The current rule also requires funds to invest at least 97% of their holdings in securities that receive the highest short-term credit ratings. Under the September 16 amendments, money market funds will now be required to invest in eligible securities that are determined to impose a "minimal credit risk" to the respective fund.

What is "minimal credit risk"? Funds will be required to determine "minimal credit risk" by using credit analysis factors related to the ability of the security's issuer/guarantor/demand-feature provider to meet its financial obligations. The relevant factors include, but are not limited to:

- financial condition;
- sources of liquidity;
- ability to react to future market-wide or issuer/guarantor-specific events (including the ability to repay debt in a highly adverse situation); and
- strength of the issuer/guarantor's industry within the economy and the issuer/guarantor's competitive position in the industry.

The SEC also revised Form N-MFP, a form used by money market funds to report portfolio information to the SEC on a monthly basis. Pursuant to the revisions, money market funds will now be required to disclose credit ratings they used in making their minimal credit risk determination, as well as the agency that provided the rating.

Additionally, the SEC adopted revisions to Rule 2a-7's diversification provision, which generally prohibit money market funds from investing more than 5% of their total assets in the securities of a single issuer. The current rule excludes from the diversification requirement securities that are subject to a guarantee by a "non-controlled person" (i.e. a person who does not control, is not controlled by, or under the common control of the security's issuer). Under the September 16 amendments, however, money market funds that invest in any security subject to a guarantee will be required to comply with the rule's issuer diversification requirement, regardless of whether the guarantor is a non-controlled person.

The revised rules become effective thirty days after they are published in the Federal Register and have a compliance date of October 14, 2016.

Last Updated: September 29 2015

Article by Suzette Pringle, Christin Joy Hill and Michael Tu

Orrick

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.

Key Firms Still Absent From Settlements as NABL Surveys MCDC Aspects.

WASHINGTON – At least two major Wall Street firms have not settled with the Securities and Exchange Commission under its Municipalities Continuing Disclosure Cooperation initiative, noted some lawyers who were involved with a National Association of Bond Lawyers survey on the impact of MCDC.

Carol McCoog, a partner at Hawkins, Delafield & Wood in Portland and the chair of NABL's securities law and disclosure committee, said the absence of large underwriting firms like Barclays Capital and Wells Fargo & Co. from the settlements likely means the SEC has more settlements coming.

"Maybe the SEC is just taking a little longer going through what I would anticipate would be more filings," McCoog said.

Another lawyer familiar with the enforcement process said it is not surprising that the firms have yet to be included.

The two large firms were among the top ten senior managing underwriters in the market in each of 2012 and 2013, the two years before the SEC announced the MCDC initiative. They held about 10% of the market share in each year and were also among the top ten underwriters for negotiated issues, which far outpaced the number of competitive issues that showed up in the first two rounds of MCDC settlements.

One perhaps surprising piece of information from the NABL survey was that 43% of the attorneys who responded said none of the underwriters they represented or advised self-reported under the initiative.

The survey, which included responses from 220 lawyers, was completed in January after the filing deadlines for underwriters and issuers. But it was not publicly disclosed until MCDC discussions at NABL's Bond Attorney's Workshop conference in Chicago last month and not made publicly available until Thursday.

The MCDC encouraged underwriters and issuers to voluntarily report to the SEC any time in the previous five years that they sold or underwrote bonds with offering documents that contained materially false or misleading statements or omissions. The deadline for underwriters to submit under the initiative was Sept. 10 of last year and the deadline for issuers was Dec. 1.

According to the survey, 91% of the respondents said they discussed establishing new disclosure policies and procedures with issuer clients because of MCDC. That response seems to provide evidence to back up the SEC's claims that the MCDC initiative has had a beneficial impact on continuing disclosure in the muni market. NABL added to that discussion by releasing a paper on Aug. 20 to help provide lawyers and their clients with considerations to take into account when crafting strong disclosure policies and procedures.

More issuers than underwriters seemed to self-report MCDC violations, according to the survey. Seventy-three percent of the lawyers that responded said all, most or some of their issuer and borrower clients self-reported, while only 58% said all, most or some of their underwriter clients self-reported. Lawyers said issuer clients sought approval from their governing bodies before reporting, with 44% saying the issuers did so without exception and 31% saying that they did so generally.

Some of the most surprising responses were related to questions regarding materiality. Roughly 93% of the lawyers that responded said their underwriter and issuer clients self-reported some or many misrepresentations about compliance with continuing disclosure obligations that were not material. According to case law, information is material if an investor would want to know it before buying or selling securities.

Further, 75% of respondents said their issuer or borrower clients analyzed the materiality of lapses before self-reporting and 45% said their clients felt they had to self-report lapses if underwriters had reported them, regardless of materiality.

Only 20% of lawyers who responded said they spent more than 50 hours representing or advising underwriters under the MCDC initiative and 59% said they spent less than 10 hours. In contrast, 57% of the lawyers spent more than 50 hours representing or advising issuers and borrowers on MCDC and only 5% spent less than 10 hours.

Most issuers and obligated persons declined to disclose their participation in MCDC in official statements for transactions that were taking place at that time or on EMMA. About 84% of the lawyers said clients did not include the information in an OS and 94% said clients never filed an EMMA notice on their MCDC participation.

THE BOND BUYER

BY JACK CASEY

OCT 5, 2015 4:03pm ET

Shining A Light On Municipal Bond Markups.

Transparency is an overused word that is rarely executed–especially in the bond market. Think about how long it took regulators to require that bond desks post trade prices, and amounts purchased and sold. Years. All the while bond dealers squirmed, kicked and screamed, claiming it would destroy the debt market. Today, the bond market is alive and well—even with electronic pricing.

The Municipal Securities Rulemaking Board (MSRB) is currently proposing that bond dealers acting as principals fully disclose their markup or markdown to retail customers. That's right. When you purchase or sell a municipal bond your confirmation prints the trade profit your broker took. The industry calls this the spread. Details of this proposal are still evolving.

Here's how The Bond Buyer describes it:

> "Under the markup proposal, a dealer buying or selling bonds for its own inventory 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 a two-hours window on either side of the customer transaction.
>
> Those markups and markdowns would be equal to the 'difference between the price to the customer and the prevailing market price for the security,' and would have to be disclosed both as a total dollar amount and as a percentage of the principal amount of the customer transaction."

I have one word to express my glee if this rule passes: Whoopie! That is because for years investors never knew what their broker was earning on their municipal bond trades. Certainly they could go to the emma.msrb.org Web site. And for those few who utilize the Web site, it's not clear for actively traded issues whose 25,000 or 50,000 trade actually belonged to whom. If this new rule goes into effect there will be no second-guessing—the telltale information will be right on the investor confirmation.

The SEC has said it wants more transparent markup and markdown disclosure. I couldn't agree more. Finally, investors will know if their broker or the Web site they point and click on is being fair or egregiously piggy.

Count on one thing: the brokerage industry will kick and scream, negotiate and whine, stomp and cry while trying to delay its implementation. In my opinion, the rule will be implemented. Small investors will be the biggest beneficiaries. Brokers and their firms will have no choice but to take less of your hard-earned investment dollars.

FORBES

MARILYN COHEN, CONTRIBUTOR

Marilyn Cohen is president of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

SEP 30, 2015

[Butler Snow: Fed's Proposed Treatment of Municipal Securities as High-Quality Liquid Assets.]

Fed's Proposed Treatment of Municipal Securities as High-Quality Liquid Assets

Financial Crisis and Bank Regulatory Response

In the aftermath of the financial crisis of 2008 and 2009, international banks sought to ensure sufficient liquidity for the largest banks by establishing a quantitative liquidity coverage ratio standard pursuant to the Basel III capital and liquidity reforms. United States bank regulators, including the Board of Governors of the Federal Reserve System (the "Fed"), the Office of the Comptroller of the Currency (the "OCC"), and the Federal Deposit Insurance Corporation (the "FDIC") published a joint Notice of Proposed Rulemaking (the "NPR"), adopted on September 3, 2014 [1], that established a Liquidity Coverage Ratio ("LCR") to be maintained by larger banks and holding companies [2]. The LCR would require covered institutions, during periods of non-stress, to maintain an amount of high-quality liquid assets ("HQLA") that is not less than 100% of its total net cash outflows over a prospective 30 calendar day period.

Significantly for municipal securities issuers and the municipal securities industry, securities issued by "public sector entities" (i.e., state and local government issuers) were not included as HQLAs in the original NPR.

Objections to NPR and Subsequent Fed Proposal

After predictable objections from trade groups representing municipal issuers, banks and the municipal securities industry, based upon potential harm to municipal securities issuance from exclusion of municipal securities as eligible HQLAs under the NPR, on May 28, 2014, the Fed (but without participation by the OCC or the FDIC) issued a proposal (the "Fed Proposal") that would permit covered institutions to include certain U.S. municipal securities as HQLAs under strict criteria described below.

The Fed Proposal

The Fed Proposal limits eligibility of U.S. municipal securities to investment grade general obligations that are not insured. Revenue obligations, irrespective of credit standing, would not qualify as HQLAs. [3] Additionally, the Fed Proposal imposes significant concentration risk limitations on a covered institution's holdings of HQLA-eligible U.S. municipal securities:

- No more than 25% of an individual CUSIP may be included in a bank's stock of HQLA;
- No more of a single issuer's bonds than an amount equal to two times the average daily trading volume of that issuer's bonds over the previous four quarters may be included in a bank's stock of HQLA; and
- No more than 5% of a bank's total stock of HQLA may be comprised of municipal securities. Issuer and Industry Comments

During the public comment period on the Fed Proposal, which ended July 24, 2014, the Fed received 13 comment letters from issuers and industry groups [4]. All commenters argued that the HQLA standards for municipal securities in the Fed Proposal were excessively limiting, with the exception of Better Markets, Inc., which argued that municipal securities should not be included in HQLAs at all because of the provision in the Fed Proposal that leaves the determination whether a security is "investment grade" to the covered institution itself.

A primary objection from all trade group commenters – including the Securities Industry Finance and Marketing Association ("SIFMA"), the Bond Dealers Association ("BDA") and a joint comment from 15 issuer groups that included the Government Finance Officers Association, the National Association of Counties, the National League of Cities and the U.S. Conference of Mayors – was the exclusion of investment grade revenue obligations from HQLA eligibility. Specifically, SIFMA noted that the credit quality of many revenue obligations is regarded by the market as preferable to general obligations, particularly in light of adverse treatment of general obligations in recent municipal bankruptcies such as Detroit's. Indeed, the PFM Group noted that the Fed Proposal "reduces the universe of outstanding eligible municipal securities by more than $2 trillion." Likewise, the Bond Dealers Association noted that the exclusion of revenue securities from HQLA effectively limits the municipal securities that would be eligible for inclusion as HQLA to less than 40% of securities issued in 2015.

Commenters, including municipal bond insurer Build America Mutual Assurance Company, also criticized the exclusion of insured general obligations from the HQLA eligibility, arguing that the Fed Proposal misconceived the role of bond insurance of otherwise investment grade obligations, which does not substitute for the underlying credit and actually adds liquidity to such securities.

Regarding the concentration risk limits in the Fed Proposal, commenters argued that they are based on misunderstandings of the municipal market. With regard to the limitation to 25% of a pertinent CUSIP (i.e., maturity), commenters argued that the rule would push banks to hold many smaller portions rather than large-block portions that are more liquid because of their appeal to institutional investors. SIFMA argued that the 25% limit is actually counterproductive to liquidity and that, alternatively, this rule should be dropped "in favor of reliance on the risk management systems banks already have in place."

Regarding the two-times average daily trading volume limitation, SIFMA noted that historic trading volume may not be the best indicator of liquidity in that many bonds are bought as buy-and-hold investments.

Regarding the limitation of U.S. municipal securities to not more than 5% of a bank's total HQLA, SIFMA noted that no other asset class eligible for inclusion in HQLA, including corporate securities, has an asset-specific limitation. Additionally, the LCR rule separately limits 40% of total HQLA for Levels 2A and 2B combined and has a 15% limit for Level 2B. Thus, SIFMA argued that the existing limitations are sufficient without the addition of the 5% limit.

Potential Impact of the Fed Proposal?

What, then, will be the impact of the Fed Proposal if adopted in its present form? On the one hand, indications are that the HQLA limitations will reduce demand for U.S. municipal securities for covered banks and thus result in increased interest rates for securities bought by covered banks. Also, the absence of a joint regulation that includes the OCC and the FDIC could result in differential standards that could disrupt the market even further. However, since the Fed Proposal, as finally adopted, will directly affect only a dozen or so of the largest U.S. banks, it is unknown whether the ultimate Fed HQLA standards will affect non-covered bank lenders and the bond market generally [5].

1. 79 Fed. Reg. 61440 (October 10, 2014).
2. As of March 31, 2015, the U.S. banks meeting the criteria for "covered companies" under the Basel III standards are as follows: J.P. Morgan Chase & Co., Bank of America, Citigroup, Wells Fargo & Co., Goldman Sachs Group, Morgan Stanley, U.S. Bancorp, Bank of New York Mellon, PNC Financial Services Group, Capital One, HSBC North America Holdings, State Street Corporation, and TD Bank U.S. Holdings.
3. The LCR divides HQLA into three categories of assets: Level 1, Level 2A, and Level 2B liquid assets. Specifically, Level 1 liquid assets are limited to balances held at a Federal Reserve Bank and foreign central bank withdrawable reserves, all securities issued or unconditionally guaranteed as to timely payment of principal and interest by the U.S. government, and certain

highly liquid, high credit quality sovereign, international organization and multilateral development bank debt securities. Level 1 liquid assets, which are the highest quality and most liquid assets, may be included in a covered company's HQLA amount without limit and without haircuts. Level 2A and 2B liquid assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as Level 1 liquid assets. Level 2 liquid assets include obligations issued or guaranteed by a U.S. government-sponsored enterprises (GSE) and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank that are not eligible to be treated as Level 1 liquid assets. The LCR subjects Level 2A liquid assets to a 15% haircut and limits the aggregate of Level 2A and Level 2B liquid assets to no more than 40% of the total HQLA amount. Level 2B liquid assets, which are liquid assets that generally exhibit more volatility than Level 2A liquid assets, are subject to a 50% haircut and may not exceed 15% of the total HQLA amount. Under the LCR, Level 2B liquid assets include certain corporate debt securities and certain common equity shares of publicly traded companies. Level 2 liquid assets, including all Level 2B liquid assets, must be liquid and readily marketable as defined in the LCR to be included in HQLA. Under the LCR final rule, U.S. municipal securities were not included in the definition of HQLA. However, under the Fed Proposal all U.S. municipal securities that qualify as HQLAs will constitute Level 2B liquid assets.
4. All public comments to the Fed Proposal are available on the Fed website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
5. Many thanks to Belinda Hannah at First National Banker's Bank in Birmingham, Alabama, and Alan Ganucheau, Greg Brewer, Jason Thomas and Steve Cole at Hancock Bank, for taking the time to discuss the Fed Proposal and its potential impact on the municipal securities market. However, nothing in this post is attributable to them or their employers, and, of course, any errors in this post are my own.

By E. Alston Ray
September 26, 2015

Enrollment Opens for Pilot Series 50 Exam for Municipal Advisors.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) announced today that municipal advisors may now begin enrolling to take the pilot Municipal Advisor Representative Qualification Examination (Series 50). The registration window for the pilot exam begins today, September 21, 2015 and closes on January 14, 2016.

Municipal advisor firms will need to utilize the Financial Industry Regulatory Authority's (FINRA) Form U10 to enroll their municipal advisor professionals for the Series 50 pilot exam and to remit the exam fee of $265. Once the Form U10 is accepted, individuals will be able to select a date to sit for the exam during the pilot period of January 15, 2016 – February 15, 2016.

As part of its expanded mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the MSRB amended its Rule G-3 on professional qualifications to establish the requirement that all municipal advisor professionals take and pass a qualifying exam. A municipal advisor professional who takes and passes the Series 50 pilot exam will be qualified as a municipal advisor representative and will not be required to take the permanent Series 50 exam when it is implemented in 2016. A municipal advisor professional who takes and does not pass the Series 50 pilot exam will have the exam fee waived for the first re-take of the permanent Series 50 exam.

“The MSRB encourages municipal advisor professionals to consider participating in the Series 50 pilot exam,” said MSRB Executive Director Lynnette Kelly. “Strong participation in the pilot is a good way for municipal advisors to establish their qualifications and will assist the MSRB in validating the question bank and setting the passing score for the permanent exam.”

For more information regarding the Series 50 pilot exam, see the MSRB’s Regulatory Notice 2015-15.

Access resources and information about municipal advisor professional qualifications and the Series 50 pilot exam on the MSRB’s website.

Date: September 21, 2015

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MSRB Requests Comment on Requiring Disclosure of Mark-Ups.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a 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 mark-up disclosure proposal seeks to enhance the transparency of investor transaction costs and dealer compensation in the municipal securities market and is the first proposal of its kind in over 20 years.

“Investors need a way to understand the true costs of their municipal securities transactions,” said MSRB Executive Director Lynnette Kelly. “Our new proposed approach would offer greater clarity for investors as to dealer compensation while leveraging the existing processes and systems dealers use to comply with their fair-pricing obligations.”

The draft amendments to MSRB Rule G-15, in essence, would require dealers acting as principal to disclose to retail customers their mark-up from the prevailing market price of a municipal security if the dealer makes a corresponding trade within two hours of the customer trade. To assist investors in learning more about the market for their traded security, the draft amendments also would require all retail customer confirmations to include a link to the main page for the security on the MSRB’s Electronic Municipal Market Access (EMMA®) website. The EMMA website provides free public access to official disclosures, trade data, credit ratings, educational materials and other information about virtually all municipal securities.

The MSRB’s request for comment seeks input on possible alternatives to its preferred approach, including a modified version of the MSRB’s earlier proposal to require dealers to provide on retail customer confirmations a reference price for a comparable transaction by the dealer and the difference between those prices.

The MSRB’s mark-up disclosure proposal to increase the transparency of dealer compensation and transaction costs aligns with the MSRB’s strategic priorities and is based on a recommendation in the SEC’s 2012 Report on the Municipal Securities Market. Read the request for comment.

The MSRB will host an educational webinar to review its request for comment on Thursday, October 29, 2015 at 3 p.m. Eastern Time. Register for the webinar.

Comments should be submitted no later than November 20, 2015.

Date: September 24, 2015

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Lawmakers to Introduce Bill That Subjects Puerto Rico Funds to Federal Regulations.

Legislation that would subject Puerto Rico mutual funds to the same regulations as mainland funds is expected to be introduced in Congress on Friday, the latest sign that Puerto Rico's financial crisis is drawing greater scrutiny from U.S. lawmakers.

Rep. Nydia Velazquez, a Democrat from New York, said she plans to introduce the bill, the Puerto Rico Investor Protection Act of 2015, in the House of Representatives, where it is expected to be referred to the House Committee on Financial Services for discussion. Rep. Maxine Waters of California, the top Democrat on the financial services committee, signed on as co-sponsor.

The proposed law aims to establish federal oversight for Puerto Rico's mutual-fund industry after investors in Puerto Rico municipal-bond funds sustained heavy losses as the island's fiscal crisis deepened. Puerto Rico has faced a sluggish economy and high unemployment for years, and Gov. Alejandro Garcia Padilla in June called the island's $72 billion debt load unpayable.

"It is outrageous that, when investing their hard-earned money for retirement, Puerto Ricans are not afforded the same transparency requirements and consumer protections that apply in the mainland," Ms. Velazquez said in a statement.

Ms. Velazquez, who represents parts of Manhattan, Brooklyn and Queens, is the first Puerto Rican woman elected to Congress. She's not the only official from New York state, which has the nation's largest Puerto Rican population outside the island, to make Puerto Rico's debt woes a priority. In September, New York Gov. Andrew Cuomo visited the island and said he supported allowing Puerto Rico to seek bankruptcy protection. Puerto Rico and its public agencies currently can't file for bankruptcy.

Puerto Rico is attracting broader attention as well. Presidential contenders Hillary Clinton and Sen. Marco Rubio have also visited the island in recent weeks, and Jeb Bush paid a visit in April. In Washington, the Senate Committee on Finance will hold a hearing on Puerto Rico's financial and economic problems on Tuesday.

Mutual funds in the U.S. mainland are subject to the Investment Company Act of 1940. The law, however, doesn't apply to funds located in U.S. possessions that are sold only to residents of those possessions. At the time, the thinking was that the cost of travel would make it too expensive for regulators in Washington to oversee funds in far-flung, overseas territories.

Puerto Rico passed its own fund-oversight law in 1954, but analysts say it had become less stringent than current federal regulations. In Puerto Rico, UBS Group AG—whose local brokerage unit has a dominant position on the island—was able to underwrite bonds from Puerto Rico municipal entities and then sell those bonds to funds managed by UBS, collecting fees along the way. Some of the UBS funds amassed big positions in certain bond issues that were underwritten by UBS.

That behavior wouldn't have been allowed under federal law, said Mercer Bullard, a securities law professor at University of Mississippi School of Law who has also created an investor advocacy organization called Fund Democracy. Federal regulations would have "prevented the chain of relationships that UBS had at every step of the underwriting and distribution process," Mr. Bullard said.

The losses in UBS' Puerto Rico bond funds have been so severe that investors have filed hundreds of legal claims against the Swiss giant's Puerto Rico brokerage unit. UBS says it is facing more than $1.1 billion in damages tied to its Puerto Rico activities. Many investors who filed claims are retirees who say that UBS brokers told them the funds were safe, when in fact they were heavily invested in just a few Puerto Rico bond issues and had used leverage, a risky strategy, to boost returns.

The legal claims have been filed with the Financial Industry Regulatory Authority, which uses arbitrators to adjudicate the cases. Arbitrators have ruled in favor of investors in some cases and in favor of UBS in others. The bank has also settled some cases, at times for millions of dollars.

UBS declined to comment on whether its Puerto Rico funds should be regulated under federal law. The bank has said previously that investors in the funds had received excellent returns for years, often exceeding the broader bond market.

Puerto Rico passed a new fund-oversight law in 2013, which according to Fitch Ratings aligns more closely to federal law. Still, making Puerto Rico funds subject to federal regulations "may help restore some confidence from investors that have had some difficulties," said Ian Rasmussen, senior director in the fund and asset manager group at Fitch.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Sept. 25, 2015 12:01 a.m. ET

Write to Mike Cherney at mike.cherney@wsj.com

Bill Proposed to Give Regulatory Protection to Puerto Rico Mutual Fund Investors.

Seventy-five years ago, when the federal government set out to regulate mutual funds, investment firms in Puerto Rico were deemed too far off the beaten track to merit scrutiny. So mutual funds on the island, and other United States territories, were excluded from regulation under the Investment Company Act of 1940.

Now, Puerto Rico's economy is teetering, investors in its bonds have suffered big losses and at least one member of Congress says the 75-year-old exclusion has outlasted its shelf life. On Friday, Nydia M. Velázquez, Democrat of New York, introduced an amendment to the 1940 act that would give mutual fund investors in Puerto Rico the same regulatory protection that their counterparts have on the United States mainland.

The bill, if it becomes law, will not replace the money the investors have lost, but it will bar some of the activities that led to their losses — activities that are already illegal on the mainland.

Mutual funds cater to individual investors who want professionally managed investments. The 1940 act protects them by barring those professional investors from engaging in certain kinds of transactions that suggest self-dealing, among other things. But because of the exclusion, such transactions are still legal in Puerto Rico.

A transaction from 2008 shows the repercussions. UBS, a major provider of financial services on the island, advised Puerto Rico's pension fund for government employees and was hired to take an unusual $2.9 billion bond deal to market. The pension fund had a big shortfall, and officials hoped to borrow the money and invest on behalf of the retirees. The deal was expected to be successful as long as the investment rate of return was higher than Puerto Rico's borrowing rate. That did not happen and now the pension fund shortfall is even bigger.

UBS had difficulty selling the bonds in the tough market conditions of 2008. It ended up packaging about half of the issue in its own family of closed-end mutual funds, which were marketed to wealthy Puerto Ricans as a good, tax-sheltered source of retirement income.

The interest on pension obligation bonds is not exempt from federal income taxes, because the Internal Revenue Service considers these securities speculative. But residents of Puerto Rico do not pay federal income taxes, and the Puerto Rican government exempted the bonds from its own estate and gift taxes.

On the mainland, a bank underwriting a municipal bond issue would run afoul of the 1940 act if it packaged the bonds in mutual funds and sold them. But affiliated transactions are allowed in Puerto Rico.

"This practice constitutes a flagrant conflict of interest, and it must stop," Ms. Velázquez said. Her bill is co-sponsored by Representative Maxine Waters, Democrat of California, who is the ranking member of the House Financial Services Committee. Chances of passage are unclear because of widely divergent views on what should be done to address Puerto Rico's debt crisis. The Senate Committee on Finance has scheduled a hearing for Tuesday on some of the issues.

Puerto Ricans who invested in the affected mutual funds have filed more than 800 arbitration claims against UBS with the Financial Industry Regulatory Authority, known as Finra, a self-regulatory body. They are seeking more than $1.1 billion, basing their claims on regulations that are not part of the 1940 act's exclusion for territories.

The Securities and Exchange Commission has also penalized UBS under other laws and collected a $26.6 million settlement for distribution to the harmed investors.

But Ms. Velázquez said that without an amendment, such things could happen again.

"This archaic exemption is long overdue for repeal," she said.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

SEPT. 25, 2015

SIFMA, NAMA: Pending MSRB Fee Changes Will Be Unfair, Burdensome.

WASHINGTON — The Municipal Securities Rulemaking Board's pending fee changes will be unfair and excessively burdensome, dealer and advisor groups told the Securities and Exchange Commission.

They complained about the pending fees, some of which are scheduled to take effect beginning Oct. 1, in comment letters sent to the SEC.

The proposed changes show "the MSRB has failed to address" the "disparity between dealer and non-dealer MA fees," even after the self-regulator had said over 90 percent of the MSRB's revenue comes from dealers, said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association. SIFMA is asking the SEC to temporarily suspend the rule changes and institute proceedings to disapprove them.

Terri Heaton, president of the National Association of Municipal Advisors, asked the MSRB and SEC to reevaluate the MSRB's true needs and currently available funds, because the changes "will impact small advisors on a larger scale." Small MAs will have to absorb the fee increases "on a greater proportional basis" and face an "undue burden," which would be a violation of the Dodd-Frank Act, she said.

The MSRB proposed changing its Rule A-12 on initial and annual registration fees to raise its initial fee to $1,000 from $100 and the annual fee to $1,000 from $500, starting on Oct. 1. Heaton suggested the MSRB phase in both fee increases over the next two fiscal years.

Beginning on Jan. 1, the self-regulator plans to change its Rule A-13 on underwriting and transactions fees by reducing the underwriting fee to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000, starting on Jan. 1. It also will make a previously temporary technology fee of $1.00 per transaction for each interdealer and customer sale report to the board permanent and available for use with operating expenses.

Decker, who said muni dealers "have shouldered the cost of the MSRB for 40 years," suggested the MSRB implement activity-based fees on MAs that would mimic the current underwriting transaction fee for dealers. MA regulation is a "significant reason" for increased demands on MSRB resources and "it is time for the MSRB's cost to be fairly shared," he said.

NAMA proposed the MSRB provide information about how its MA rulemaking is affecting the board's cost of operations. Without that "important piece of the puzzle," it is harder to understand the MSRB's need for fee increases, Heaton said. She also said it seems the MSRB's operating reserves "are quite healthy and appear to be in excess of what would be prudent or necessary for an entity that can impose fee increases on an immediately effective basis."

Decker raised a similar concern about the MSRB's decision to make its technology fee permanent. He said that when the fee first went into effect in 2010, the MSRB clearly said it would only be temporary and specifically used for technology-related capital expenses. But now that the MSRB is expanding its use and making it permanent, the board is damaging its credibility and the market's respect of the MSRB, he said.

The SIFMA comment letter also used the technology fee to challenge the MSRB's claim that the fee changes would be "effectively revenue neutral." Decker said that would only be the case if it was assumed the technology fee would be permanent, which is not what the market believed. The MSRB would draw an additional $8 million a year by keeping the fee, he said, adding that the MSRB is in a good financial position as proven by a $3.6 million transaction fee rebate to dealers in 2014.

The MSRB said it proposed the changes in fees after "continuous and ongoing efforts" to "reasonably distribute" them among all market participants based on level of involvement. It said the annual fee has not changed since 2009 and covers fewer total expenses recently. The initial fee has not been changed since it was first adopted in 1975 and the drop in the underwriter transaction fee was meant to more evenly distribute costs because the MSRB saw less than a dozen dealers accounting for about 52% of the payments.

THE BOND BUYER

BY JACK CASEY

SEP 21, 2015 2:46pm ET

SIFMA Submits Comments to the SEC on Increased MSRB Technology Fee.

SIFMA provides comments to the U.S. Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) adjustment of their fees, increasing them, to align revenues with operational and capital expenses. The MSRB collects technology fees from municipal securities dealers and municipal advisors. SIFMA strongly opposes the rule changes contained in Notice 2015-13 and urge the Commission to exercise its authority to temporarily suspend the Rule Changes and to institute proceedings to disapprove the MSRB's changes announced in the Notice.

Read SIFMA's letter.

MSRB: Dealers Would Have to Disclose Markups on Principal Transactions.

WASHINGTON — Dealers acting as principals would have to disclose markups and markdowns in transactions with retail customers under rule changes proposed by the Municipal Securities Rulemaking Board.

The proposed change to MSRB Rule G-15 on confirmations is the first of its kind in more than 20 years and follows what has been a nearly 40-year discussion about the need for markup disclosure in the market. The MSRB is seeking comment on the components of its markup disclosure proposal as well as on alternatives. It is asking that those comments be filed by Nov. 20.

Bond Dealers of America and Securities Industry and Financial Markets Association both said they are reviewing the changes with their members before submitting comment letters by the November deadline. Jessica Giroux, BDA's general counsel and managing director of federal regulatory policy, said BDA is "encouraged" by the MSRB's use of previous comments in drafting its new proposal, such as the exclusions of primary offerings and institutional customers.

Under the 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 a two-hour window on either side of the customer transaction.

Those markups and markdowns would be equal to the “difference between the price to the customer and the prevailing market price for the security,” and 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 security on EMMA as well as a time of execution for the customer’s trade.

The MSRB would also try to limit this proposed rule to the secondary market by excluding transactions in new issue securities effected 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.

Lynnette Kelly, the MSRB’s executive director, said the disclosure requirements would provide investors “a way to understand the true costs of their municipal securities transactions.”

“Our new proposed approach would offer greater clarity for investors as to dealer compensation while leveraging the existing processes and systems dealers use to comply with their fair-pricing obligations,” she said.

The MSRB previously proposed changing its Rule G-15 in November 2014 to require dealers to disclose on their confirmations a “reference price” of the same security traded on the same day. FINRA proposed a similar rule for corporate bonds. But muni dealers said the reference price rule was too complex and would confuse investors. They asked the MSRB to withdraw it. FINRA has said it also will modify its proposal because of criticism and solicit a second round of comments. But the authority only plans to propose a revised version of the reference price rule it floated earlier.

The MSRB also included modifications to the “reference price” rule in its regulatory notice, although the board noted it would prefer markup disclosure. The board asked commenters to weigh in on whether disclosing a reference price is a better alternative to markup disclosure.

The reference price rule modifications largely mirror the requirements laid out in the markup disclosure proposal. The MSRB is asking whether the reference price rule should: include all retail investors regardless of the trade size cap that was used in the initial proposal; apply exclusively to the secondary market; disclose a total dollar amount as well as a percentage; require a security specific link as well as the time of execution; and offer similar exceptions for inventory-affiliate dealers and independent trading desks.

Securities and Exchange Commission members have been pushing for markup disclosure, and more aggressively since the commission’s enforcement action against Edward Jones in August for overcharging retail customers for sales of new bonds and failing to adequately supervise mark-ups on secondary market trades.

Just after the SEC announced that settlement, four of the five SEC commissioners urged that broker-dealers be required to disclose markups and markdowns on munis, warning that they were ready to make the proposals themselves if self-regulators did not pursue them. SEC chair Mary Jo White did not join the other commissioners in the statement, but previously said she would work with self-regulators to develop rules requiring markup disclosure in riskless principal transactions.

THE BOND BUYER

BY JACK CASEY
SEP 25, 2015 2:09pm ET

Regulator Revises Proposed Rule on Muni Bond Pricing Disclosure.

(Reuters) – A U.S. regulator on Thursday modified a proposed rule in hopes of making it easier and less expensive for bond dealers to tell retail customers how much above wholesale they are paying to buy or sell municipal bonds.

The Municipal Securities Rulemaking Board asked for comment on a proposal that would require bond dealers to disclose on customer trade confirmations the dealer "mark-up" – how much more than market price a customer pays to buy muni bonds or how much less to sell them.

The proposal revises one made in November 2014 that would have required dealers to disclose a reference price they paid for bonds taken into inventory on the same day as the trade made with a customer. Dozens of bond dealers told the MSRB in comment letters that the difficulties of determining reference prices and of building systems to identify them made the initial plan unworkable and could lead some of them to stop sales to retail investors.

The contraction from a full day to the two-hour limit aims to ensure that dealers are not taking unnecessary risk in warehousing bonds for which they deserve to be paid. The MSRB proposal notes that since dealers are already required to ensure that their mark-ups on trades from their inventory are fair and reasonable, they should already have systems for mark-up monitoring.

Unlike the original proposal, which would have required disclosure only on bond trades valued at $100,000 par amount or less, the revised one would apply to trades for all retail accounts.

In addition to substituting a mark-up for a reference price, the revised rule would require dealers to print the time of trade execution to the nearest minute so that customers could check the prevailing market price on systems such as the MSRB's EMMA database. Dealers also would have to print a hyperlink and URL address to the Security Details page for the customer's security on EMMA.

The mark-up would be the difference between the price to the customer and the market price, and would be required to be given as a total dollar amount and as a percentage of the principal amount of the customer trade.

While the MSRB noted that it prefers its revised rule to the original one, it will continue to take comments on the original proposal. All comments are due by Nov. 20, 2015.

Sep 25, 2015

(Reporting By Jed Horowitz; Editing by David Gregorio)

NABL Submits Comments to SEC on MCDC Initiative.

On September 21, 2015, NABL sent a letter to the SEC Chair and Commissioners concerning the Municipalities Continuing Disclosure Cooperation Initiative. NABL recommended that before the SEC engaged in any similar future initiative that it devise a better way to reach issuers and that any similar future initiative be subject to a cost-benefit analysis. NABL also set out a number of steps that could be taken to further improve continuing disclosure. Many of those steps could be taken by working groups, but NABL also said that the SEC should provide guidance that issuers no longer need to file notices of ratings changes since those changes are now available on EMMA directly from the ratings agencies.

To read NABL's letter, please click here.

MSRB Reminds Regulated Entities of October 1, 2015 Implementation Date of Amendments to MSRB Rule A-12 on Registration Fees.

The Municipal Securities Rulemaking Board (MSRB) reminds brokers, dealers, municipal securities dealers and municipal advisors that amendments to MSRB Rule A-12 on initial and annual registration fees becomes operative October 1, 2015. Each regulated entity registering with the MSRB on or after October 1, 2015 shall pay to the Board an initial one-time fee of $1,000. Beginning October 1, 2015, each regulated entity shall pay $1,000 annually, based on the fiscal year of the Board, within 30 days of the invoice date.

Read the regulatory notice.

Muni Distressed Debt Firm Rosemawr Sues Over Revel Energy Bonds.

An investment firm focusing on high-yield and distressed municipal bonds sued the developer of a power plant that serves Atlantic City's shuttered Revel Casino for securities fraud.

Rosemawr Management LLC, a $1 billion fund started by Lehman Brothers Holdings Inc.'s former head of municipal-derivatives trading, alleged that ACR Energy Partners LLC concealed defaults and used almost all its assets to make improper dividend payments to its parent company. In March 2014, New York-based Rosemawr bought $35 million of bonds that financed the power plant at 92.25 cents on the dollar. The securities have since lost 70 percent of their value.

"Although it was public knowledge that the Revel facility was not performing as well as Revel had intended, there was no reason to believe that Revel was defaulting on its payment to ACR," Rosemawr said in the Sept. 16 suit, filed in federal court in Camden, New Jersey. "As a direct result of the fraudulent concealment of material information, plaintiffs purchased the bonds at artificially inflated prices."

Distressed Municipalities

Rosemawr was formed in 2008 by Greg Shlionsky, a former Lehman Brothers managing director. The firm, which bought bonds backed by revenue from Harrisburg, Pennsylvania's parking garages and has lent money to an assisted living facility in Georgia and a storm drain project in the Detroit area, also includes former Lehman municipal derivatives trader James Lister.

Greg Usry, Citigroup Inc.'s former co-head of municipal credit and financial products and Julie Morrone, who formerly managed Morgan Stanley's high yield muni funds, also work at Rosemawr, according to the firm's website.

Revel, which opened at a cost of $2.4 billion in 2012, was an attempt to bring a bit of Las Vegas to the east coast by offering more shows, restaurants and shopping. The property suffered from poor design and competition from new casinos in other states. It went bankrupt twice before closing in September 2014.

New Jersey's Economic Development Authority issued about $119 million of unrated tax-exempt and taxable municipal bonds in 2011 on behalf of ACR, which used the money to build a heating, cooling and electric plant for the Revel resort and casino.

Bond Covenants

Revel had a 20-year contract to buy power and other utility services from ACR, a joint venture between South Jersey Industries Inc. and DCO Energy LLC. Dan Lockwood, a spokesman for South Jersey Industries, didn't immediately return a call seeking comment. Frank DiCola, chairman of Mays Landing, New Jersey-based DCO also didn't return a message.

Two Rosemawr funds bought $35 million of the power plant bonds at 92.25 cents per $100 face amount in March 2014. ACR and its owners "flatly lied" about defaults under the bond covenants which, if disclosed, would have lowered the price of the securities, Rosemawr said.

ACR hid Revel's failure to make required monthly payments under the energy service agreement and entered into a "special arrangement" with the casino to extend payment terms without bondholder permission, Rosemawr said. ACR also didn't notify bondholders it failed to fully fund a required reserve account.

The account "provided crucial protection of bondholders' interests, because it provided a source of payments to bondholders until Revel became consistently profitable."

Dividend Payments

Finally, ACR made $11 million in improper and fraudulent divided payments to its sole controlling member, an entity set up by South Jersey Industries and DCO, according to the suit. Under the bond documents, dividends were restricted if there was an event of default, Rosemawr said.

The $11 million payments "represented substantially" all of ACR's liquid assets. ACR missed its June 15, 2014, debt service payment.

The offering statement for ACR's bonds warned investors that the shuttering of the Revel resort or an ownership transfer meant bondholders couldn't be assured energy produced by the plant was necessary or that new owners might get energy elsewhere.

Rosemawr said it believed financing wouldn't be jeopardized because Revel would need power, regardless of who purchased the building or its long-term use.

"Had the plaintiffs known the information that was fraudulently concealed by the defendants prior to the purchase of the bonds, the plaintiffs would either have not purchased the bonds altogether, avoiding any losses, or would have purchased the bonds only at a dramatically lower price, thereby significantly reducing their losses," Rosemawr's complaint said.

Bloomberg News

by Martin Z Braun

September 21, 2015 — 11:22 AM PDT

MSRB: Consider the Risks and Opportunities of Interest Rate Movement.

Although interest rates are staying steady for now, the Municipal Securities Rulemaking Board (MSRB) reminds investors to consider the effects of interest rate movement on the price of municipal bonds.

Read about the risks and opportunities in the MSRB's new investor resource on the impact of market interest rate movement on municipal bond prices and yields.

Should High-Risk Speculators in Puerto Rico Bonds Have a Seat at the Restructuring Table?

Summary

- Puerto Rico announced a five-year bond restructuring proposal.
- Bondholders will be forced to make concessions.
- U.S. House Democrats claim it's "unjust" for speculators to have restructuring input.

Puerto Rico last week said it had laid out a five-year plan for broadly restructuring its mammoth debt.

A significant question facing the politicians and bankers in charge of the debt reorganization is whether hedge fund investors, who recently bought the highly speculative bonds, should be treated the same as mom-and-pop retail investors. Those investors believed that they were investing in long term, safe and secure municipal bonds that their financial advisors at UBS (NYSE:UBS) and other firms recommended.

First, the plan.

> "The new plan calls for restructuring about $47 billion of Puerto Rico's $72 billion in bond debt and carrying out an ambitious package of economic changes under the eyes of an independent financial control board," reported Mary Williams Walsh of the New York Times. "Virtually every element of the plan requires either concessions negotiated from creditors or legislation enacted in San Juan or Washington, suggesting a long and difficult road ahead."
>
> "Among the most striking aspects of the plan – and likely to be one of the most contentious – is the proposal to restructure Puerto Rico's general obligation bonds, which were sold to investors with an explicit constitutional promise that timely repayment would take priority

> over all other expenditures on the island," according to the Times report.
>
> "For decades, general obligation bonds have been marketed as virtually default-proof, and a major restructuring of them now by Puerto Rico would raise unwelcome questions about the credibility of the time-honored "full faith and credit" pledge that stands behind such bonds," according to the Times. "Puerto Rico is not proposing to walk away from its bonds completely, but to pay its investors less."

Remember, Puerto Rico defaulted for the first time in August when it paid just $628,000 of $58 million due from one of its agencies. Unlike U.S. municipalities, Puerto Rico cannot seek federal bankruptcy protection.

The five-year restructuring plan will entail significant concessions from bondholders and will likely spawn much litigation over general obligation bond guarantees, according to the Times.

It's a dire situation. Puerto Rico and its agencies only have $5 billion to repay $18 billion of principal and interest over the next five years.

How will investors fare under the plan? That is one of the key questions raised by a policy paper called "Profit at Any Cost" prepared recently by U.S. House Democrats. The paper argues that it is "unjust and unrealistic" for hedge fund managers and other institutional investors to demand full repayment on what they knew to be junk bonds, according to an article by Billy House of Bloomberg.

The policy paper criticizes these investors' opposition to proposed legislation that would allow Puerto Rico to file for Chapter 9 bankruptcy to restructure its $70 billion debt that the governor claimed could not be paid.

According to Bloomberg, the policy paper states that hedge fund managers are "now pushing teacher layoffs, pension cuts and other quality-of-life reductions for Puerto Ricans as the 'solution' to the crisis in a self-serving attempt to enlarge their profits."

It seems clear that Puerto Rico bonds are heading for a massive default or restructuring that will result in pain for bondholders. While Puerto Rico is a mess and blood will flow, it seems unfair to treat all investors the same here.

We agree with the policy paper. All investors are not created equal. The little guy who bought Puerto Rico bonds as long-term investments deserves fair treatment while the institutions, hedge funds and other such big boys should take a seat at the back of the room during these negotiations.

Zamansky LLC are securities and investment fraud attorneys representing investors in federal and state litigation against financial institutions. For more information about Zamansky LLC, please visit here.

Additional Disclosure: Zamansky LLC represents investors in arbitration cases against UBS regarding Puerto Rico bonds and UBS closed end bond funds, Lehman structured products and other investments.

Jake Zamansky, Zamansky LLC

Sep. 16, 2015 6:27 PM ET

Posted on Seeking Alpha

SEC Approves Stripping Credit Rating References from MMF Rule.

WASHINGTON – The Securities and Exchange Commission adopted amendments to its money market fund rule that would remove credit ratings references funds use to comply with the rule — an action many market participants applauded but others said could pose risks.

The approved late Wednesday of changes to Rule 2a-7 and Form N-MFP, which MMFs use to provide updates to the SEC, follow a Dodd-Frank Act mandate for federal agencies to review their policies and remove "any reference to, or requirement of, reliance on credit ratings" and substitute the requirements with a "standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations."

The amendments will become effective 30 days after they are published in the Federal Register but funds won't need to comply with them until as Oct. 14, 2016. MMFs previously could only invest in securities that were in one of the two highest short-term credit ratings, or, if they were not rated, in securities that were of comparable quality. Of the total number of securities in the fund, 97% had to be rated in the highest short-term category.

The amendments change the requirements to allow funds to invest in securities that present "minimal credit risks." The SEC said a fund's board should consider the following factors when determining if a security has minimal credit risks: financial condition; sources of liquidity; ability to react to future market-wide and issuer or guarantor-specific events, including ability to repay debt in a highly adverse situation; the strength of the issuer or guarantor's industry within the economy and relative to economic trends; and issuer or guarantor's competitive position within its industry.

The SEC removed credit rating references from several of its rules in 2011 to comply with the mandate, but decided to re-propose the more controversial MMF amendments in 2014 to solicit more comments. While the majority of the comments were supportive of the commission's proposed change, there were some concerns that Dodd-Frank was forcing the SEC to trade objective portions of the rule for more subjective ones.

Jane Heinrichs, Investment Company Institute associate general counsel, said ICI is still reviewing the changes but that the revised rule "retains a similar degree of high credit quality standards."

An industry source familiar with the SEC's work on the amendments said the changes will have little effect because asset managers will not alter the way they manage the funds despite the removal of reliance on credit ratings.

Asset managers "are going to manage [an MMF] today the same way they managed it a year ago, and two years ago," said the source, who did not want to be named. "The truth is that asset managers have their own systems of reviewing credit analysis and the way in which they manage these funds."

Stephen Austin, a spokesperson for Fidelity Investments, said the company welcomes the final rules and echoed the industry source in saying the company's MMFs already do not rely on credit rating agencies to make risk determinations but instead depend on "an experienced research team to analyze the credit-worthiness of each issuer or security purchased by the funds" the company manages.

But Robert Plaze, a partner at Stroock & Stroock & Lavan, said the rule change gives managers an option that they did not have before. He said maintenance of the status quo "may very well happen," but noted, “There may be some funds out there who decide to attempt to reach for yield by investing a greater percentage of their assets in second-tier securities, which had heretofore been prohibited.”

He also said the SEC staff may find it harder to enforce the rules now that they are more subjective.

THE BOND BUYER

BY JACK CASEY

SEP 17, 2015 3:11pm ET

Dealers and Academics Square Off Over Data Proposal.

WASHINGTON – Dealer groups oppose a Municipal Securities Rulemaking Board proposal to provide academics with muni trade and pricing data with anonymous dealer identifiers while researchers contend the new data will add to market transparency.

The conflicting stances were taken in 12 comment letters from dealers, academics and others. Dealer groups argued the data would expose broker-dealers to business risks if the academics used the data to reverse engineer the trades.

Bond Dealers of America and Securities Industry and Financial Markets Association both said they were concerned the anonymized identifiers would open their members up to the possibility of having their identities, trading strategies and inventories discovered through reverse engineering.

“The potential impact of reverse engineering could be significant,” said David Cohen, SIFMA’s managing director and associate general counsel for municipal securities, and Sean Davy, SIFMA’s managing director of the capital markets division. ” Dealer trading strategies may be deciphered through reverse engineering of [municipal participant identifiers] and reviewing trading patterns and practices. If dealer trading strategies are publicly known they may significantly impact a dealer’s ability to provide the market with liquidity.”

Cohen and Davy said they would prefer to see dealers with similar characteristics grouped together instead of anonymized identifiers as well as an exclusion of all primary trades from the data.

Dealers currently are required to submit data from most of their trades to the MSRB’s Real-time Transaction Reporting System within 15 minutes of execution. The trade data is made available in its entirety to regulatory and enforcement officials. Post-trade information is made public without the identification of dealers or customers. The public data does not distinguish between conditional trade commitments made before the bond purchase agreement is signed and the sale of new bonds after the BPA is signed.

BDA said the currently available data sets include “a sufficient level of detail to support rigorous study.” The group said that if MSRB has to provide new data to academics, it should combine dealers into multiple groups based on size instead of applying anonymous identifiers.

Several academics disagreed with the dealer groups and argued the market would see more liquidity if they were allowed to access the proposed new data.

Larry Harris, chair of the University of Southern California’s finance department, said the anonymized identities of dealers should be included so that academics can link multiple trades by the same dealer and analyze liquidity.

"The production of information about liquidity will lead to better policy decisions by the MSRB," Harris wrote. "Liquidity ultimately will be enhanced, which will benefit investors directly through lower transaction costs, and issuers through higher offering prices."

The MSRB released the data proposal on July 16 and asked for public comments including, on a number of questions about whether its ideas to adapt the trade product to the market were sufficient. The originally proposed product would: require academics to agree not to engage in reverse engineering; cost $500 up front and then an additional $500 for each calendar-year data set requested; 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.

In addition to the debate about whether anonymous dealer identifiers should be used, academics and the dealer groups also disagreed about the right time period before data ccould be released. Academics thought the two-year wait was too long and could lead to stale data that would ultimately not be as useful in research.

"The 24 month delay for release of the data seems excessive and counter to the goal of promoting fair and efficient market practices," James Ramsey, president of the University of Louisville, wrote. "A 12 month delay would be more reasonable."

Most other academics thought 12 months was a fair amount of time to wait and would not expose dealers to significant business risks, but Harris said he thinks six months "would be optimal."

"I do not think that much value can be inferred from reverse engineering dealer strategies, and I am concerned about identifying parasitic trading strategies as quickly as possible," Harris said. Cohen and Davy recommended a four-year wait before releasing data. They said they believe that wait period "appropriately balances" their concerns "with researchers' desire to have access to the data with anonymized dealer identifiers."

Academics also raised an issue with restricting the audience for the possible new trade data to just those associated with institutions of higher education. They said higher level research requires a large number of people to review a study before it's published and limiting the distribution to such a small group would limit the effectiveness of the research.

Ramsey, the Association for Budgeting & Financial Management, and Patrick Cusatis, an associate professor of finance, also raised concerns about a portion of the proposal that would hold a recipient of the trade information "liable for any action or inaction on the part of someone whom the recipient provides any derivative works." They said it was unreasonable to hold an academic responsible for others' actions, especially when sharing work is a large part of scholarship. They recommended the MSRB lessen the section of the proposal that would impose unlimited liability on researchers if they were to breach the data agreement.

THE BOND BUYER

by Jack Casey

SEP 15, 2015 4:25pm ET

SEC Urged to Disapprove Rule on MA Core Conduct.

WASHINGTON – Dealer, issuer and investment company groups are urging the Securities and Exchange Commission to disapprove a Municipal Securities Rulemaking Board rule that would impose core duties on municipal advisors, warning it is overly burdensome and anti-competitive. The groups made the requests in comment letters sent to the SEC regarding the MSRB's Rule G-42 on core duties of municipal advisors.

"The MSRB has made important strides in making proposed Rule G-42 workable since its original draft proposal," said Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association. But "SIFMA continues to have significant concerns regarding certain aspects of [the rule], which render it unreasonably burdensome and anti-competitive in ways that do not clearly promote the fundamental policies of the municipal advisor provisions of the [Securities and] Exchange Act" of 1934.

The rule states that MAs would owe a fiduciary "duty of loyalty" to their municipal issuer clients, requiring them "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 proposal also mandates a less stringent "duty of care" for all clients. The duty of care provision 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.

The SEC previously published the proposal for comment on May 8, but asked for an extension of up to 90 days on Aug. 6. The MSRB then published revisions to the rule and responded to earlier comments on Aug. 12. But Norwood said the MSRB response "in most regards simply dismissed commenters' concerns with conclusory and superficial responses that simply restate the MSRB's view that the particular provision is appropriate" without going further.

Several groups, including SIFMA, used their comment letters to address their ongoing complaint about the rule banning an MA 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 ban is meant to prevent conflicts of interest.

Norwood said the ban is "more restrictive and inflexible than fiduciary obligations under any other financial regulatory regime." She added that the MSRB rejected proposed modifications to the ban, like limiting it to principal transactions that are directly related to the advice provided by the MA, including a separate registered municipal advisor exception, and allowing for incidental advice related to brokerage services.

Mike Nicholas, chief executive officer of Bond Dealers of America, suggested in BDA's comment letter the MSRB and commission would be better off addressing conflicts of interest through a disclosure and consent process, as is done with investment advisors and attorneys. Government Finance Officers Association Director Dustin McDonald agreed with Nicholas, saying the proposed rule removes issuers from the conflict review process. McDonald also reiterated an earlier concern that the ban would force small issuers to enter into more expensive arrangements with outside advisors.

GFOA, SIFMA, BDA, and the Investment Company Institute each urged the SEC to disapprove the rule.

SIFMA also said that the ban on principal transactions is already leading to a decrease in competition in the market as some firms associated with broker-dealers have stopped providing muni advisory services because they believe “the inability to enter into other business with the client makes the cost of providing municipal advisory services too high.”

BDA and SIFMA also said they are concerned about a lack of clarity in the rule’s documentation requirements, specifically those on documenting an advisor’s work to ensure a recommendation is suitable for its client. SIFMA said the rule does not make clear what constitutes a recommendation and thus what documents an advisor would need to retain to prove to a regulator that its recommendations were suitable for its client.

Nicholas said the MSRB should “state exactly what is expected of firms in the way of documentation” to help advisors engaged in deals that take multiple years to conclude. The suitability standard and documentation of recommendations is also one of multiple areas the National Association of Municipal Advisors requested additional clarity on from the MSRB and SEC, saying the clarifications “are essential for MAs to abide by the law because of the potential differences in interpretation that could occur between MAs and SEC examiners.”

NAMA did not ask the SEC to disapprove the rule, but said the rule should not go into effect until the MSRB gives additional guidance.

The group asked the MSRB to offer supplementary material, interpretive guidance and/or non-exclusive examples to help advisors understand the way they are expected to conduct and document reasonable due diligence, as well as alternative financings, and the duty of care provision. It also asked for clarification on any overlap between G-42 and Rule G-23, which prohibits firms from acting as advisors and underwriters on the same muni transactions. Without those clarifications, NAMA said the MSRB would place an undue burden on small advisors and violate the Exchange Act.

The Investment Company Institute also took issue with the documentation requirements, saying the requirement that an MA “affirmatively investigate the veracity of information provided to it” by its clients would be burdensome and “completely disruptive” to the long-term relationships that MAs advising on 529 college savings plans have with their clients.

THE BOND BUYER

by Jack Casey

SEP 14, 2015 3:42pm ET

MSRB to Create Investor Advisory Group.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today announced that it will establish an investor advisory group to provide the MSRB’s Board of Directors with additional expertise on municipal market practices, transparency and investor protection issues.

“The creation of an investor advisory group will provide the Board of Directors with a formal mechanism for accessing the expertise of active municipal investors,” said MSRB Board Chair Kym

Arnone. “As the Board considers significant market structure proposals, we can ensure that our deliberations include the perspectives of a broad investor group.”

The MSRB Board earlier requested comment on a proposal to modify the application of the standard of independence for the one public member of the board designated to represent institutional or retail investors in municipal securities. The goal of the proposal was to allow the MSRB to identify an investor representative with significant knowledge of the municipal securities market from a broader group of applicants. The Board determined not to pursue changes to the rule regarding the standard of independence at this time.

“We are satisfied that the creation of the advisory group will address our current concerns and provide an excellent way for us to access the knowledge of experienced municipal securities investors,” Arnone said.

Names of members of the investor advisory group will be announced at a later date.

Date: September 17, 2015

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SEC Asks: Should Muni Bond Pricing Change in Wake of Edward Jones?

CHICAGO – Securities and Exchange Commission lawyers pushed municipal market participants meeting here on Thursday to consider whether industry practices on the pricing of new bonds should change in the wake of the SEC’s enforcement case against Edward Jones.

“It’s a legitimate, open question as to whether industry practices need to change here,” Mark Zehner, the deputy director of the SEC enforcement division’s municipal securities and public pensions unit, said after a panel discussion of hot topics in municipal securities law at the National Association of Bond Lawyers’ Bond Attorney’s Workshop. “Is Edward Jones an aberration or is it a symptom of a larger problem in the municipal market?” he asked.

In its first enforcement case on primary market pricing of bonds, the SEC last month ordered the St. Louis based, retail-oriented dealer Edward Jones to pay more than $20 million for overcharging retail customers for new munis. The commission found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, and the former head of its syndicate desk, took bonds into the firm’s own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

Zehner said this is “a very important case” that shows the levels to which some underwriters will go to make money. Before the case, there was an assumption that underwriting syndicate members would adhere to both the bond purchase agreement and agreement among underwriters requirements to sell bonds at the “initial offering price” negotiated with the issuer. But after the case, Zehner said he is “not sure that is a good assumption moving forward.”

He encouraged bond and tax counsel to think through what they want to see in issue price certificates, in which the senior managing underwriter certifies the issue price – the price at which at least 10% of a maturity is sold to the public in a bona fide public offering.

Stressing that these are his personal views and not necessarily those of the SEC, Zehner said he is just posing the question of what changes the Edward Jones case might lead to, not answering it.

Rebecca Olsen, deputy director of the SEC's office of municipal securities, raised the same question in an earlier underwriters' counsel roundtable. She asked if the senior managing underwriter can continue to rely on co-managers to comply with their obligations under both the BPA and AAU. Olsen also asked whether bond counsel can continue to rely on issue price certificates executed by the senior managing underwriter on behalf of syndicate members without making inquiries about the pricing of those members' bond sales.

She also asked whether the senior underwriter in a syndicate should start asking co-underwriters to sign the issue price certificate and whether bond counsel should be getting on the Municipal Securities Rulemaking Board's EMMA system and looking at prices at which new bonds were sold. The other panelists, who included a lawyer for a broker-dealer, said a strong no to both questions.

Ernesto Lanza, a panelist and shareholder with Greenberg Traurig in Washington D.C., said the Internal Revenue Service has learned that EMMA is not designed to capture information for purposes of determining the issue price or whether bonds are initially being sold at the issue price.

Lanza said it would be "inefficient" and "ultimately ineffective" to have all syndicate members sign the issue price certificate. Leon Bijou, senior vice president and municipal general counsel with Jefferies in New York, said the likelihood of that happening "seems remote." Bijou noted that the SEC did not go after the senior managing underwriters in the bond issues where Edward Jones committed pricing abuses.

Lanza said, "everyone should be aware that there is significant evolution going on" following the Edward Jones case, but added it won't be clear for many months what, if any, changes will occur.

"Expect change in the next year or two in terms of the degree to which syndicate members can trust each other, the degree to which issuers can trust members of the syndicate, and the degree to which lawyers will be pulled into the process," Lanza said.

Bijou said that underwriters do not have the resources to check what other syndicate members are doing and they assume that the other underwriters are complying with regulations.

"It would be very difficult for us to tap a co-manager on the shoulder and say, 'By the way, did you comply?'" Bijou said. "We get their signature on the AAU and to go beyond that in the industry process would be considered inappropriate and highly intrusive."

At least one panelist said syndicate members may be more closely scrutinized by the lead underwriter, but Bijou and others pointed out that issuers sometimes put firms in the syndicate and that lead underwriters do not have the capability or desire to kick them or other firms out.

Paul Maco, a partner with Bracewell & Giuliani, said the senior managing underwriter that signs the issuer certificate can only do so much and that the Edward Jones case showed the SEC looks at each member of the syndicate as being responsible for its own compliance.

An audience member later asked Zehner whether the SEC was concerned that issuers, not just investors, were hurt by Edward Jones. Zehner said the SEC focused on investors, who were clearly hurt by Edward Jones' actions, in part because the issuers got the deal they thought they were getting. They helped negotiate the initial offering price. "I'm not saying they weren't victims," Zehner said, referring to the issuers.

In the earlier session, Maco made the point that when Edward Jones was violating the MSRB's syndicate rules, it was also violating the securities laws.

"The sea change here" is that the SEC now has a large group of enforcement staff that understand how muni bond pricing and trading desks work and they will be watching this area of the market, Maco said. In addition, the Financial Industry Regulatory Authority will start paying attention to these issues and will probably start looking at syndicate practices and pricing in their examinations of broker-dealers, he said.

THE BOND BUYER

BY JACK CASEY

SEP 10, 2015 4:02pm ET

MSRB: Best-Ex Rule Will Not Be Implemented Before Release of Guidance.

WASHINGTON – Implementation of the Municipal Securities Rulemaking Board's best-execution rule will start four months after the board releases guidance on the rule, instead of Dec. 7 as originally planned.

The MSRB announced the later date on Thursday in an effort to give dealers adequate time to review the guidance before the rule becomes effective. The guidance will be a collection of answers to frequently-asked-questions.

"Linking the effective date of the best-execution rule to the publication of the guidance will establish a clear implementation period and ensure that dealers have adequate time to review and make use of the guidance as they continue to prepare to comply with the new rule," the MSRB said in a news release.

Rule G-18, on best execution, requires dealers 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." The Securities and Exchange Commission called for the adoption of such a rule in in its 2012 Report on the Municipal Securities Market.

Dealers would have to take into account a list of factors to meet the diligence requirement under the rule, including: the character of the market for the security; the size and type of transaction; the number of markets checked; the information reviewed to determine the current market for the subject security or similar securities; the accessibility of quotations; and the terms and conditions of the customer's inquiry or order.

The MSRB filed the best-ex rule with the SEC in August 2014 and the commission approved it later that year on Dec. 8. The effective date for the rule was to be one year from the SEC's approval, but the need to coordinate between the MSRB, SEC and the Financial Industry Regulatory Authority, which has its own best ex rule for corporate bonds, caused the guidance process to take longer than expected.

“The MSRB is continuing to coordinate with the SEC and FINRA with the goal of publishing best-ex implementation guidance in short order,” said MSRB executive director Lynnette Kelly. “Facilitating dealers’ compliance with their new obligations and ensuring that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities is a top priority for the MSRB.”

Dealers had expressed concern that the implementation date for the rule was looming and the MSRB still had not provided them with answers to questions they felt they needed to know to for compliance. There had been questions about how dealers could prove they had used “reasonable diligence” or had found a price that was “as favorable as possible.”

Jessica Giroux, senior counsel and senior vice president of federal regulatory policy for Bond Dealers of America, said BDA was concerned about the short period of time that remained before the previous implementation date. But she added that, “since the MSRB has announced it will delay the implementation date to coincide with the delay in anticipated guidance, we are pleased that our members will have additional time to read, comprehend and put in place processes and systems to ensure compliance with the rule.”

David Cohen, a managing director and associate general counsel with the Securities Industry and Financial Markets Association, said, “SIFMA welcomes the delay, as it will allow dealers time to amend and further refine the implementation of policies and procedures that have been under development. We also welcome the coordination with FINRA. SIFMA has concerns, however, that four months is not a sufficient amount of time for dealers to design, test, and implement any changes to their systems as a result of the guidance.”

THE BOND BUYER

BY JACK CASEY

SEP 3, 2015 4:48pm ET

Nerd-vana: Giving Fellow Reporters Tips on School Bond Sales Statements.

On Tuesday I tried to pass along everything I know about reporting on school bonds to education reporters around the country as a panelist on an Education Writers Association webinar.

The session focused on the wonky topic of official statements, those compendiums of financial information and legal jargon that come with every public bond issue. Those, plus annual financial updates on the debtor agency, are free and available on the Electronic Municipal Market Access portal.

I discovered this treasure trove of source documents while staring at a 2-inch thick stack of spreadsheets I had been given by a school district that seemingly did not want any clear information on its debt to surface. Burying data in bullpucky appeared to be the strategy – and it was working.

But then I found EMMA and, eventually, the district’s debt schedule showing year-by-year what it owed on all its bonds. Clarity had arrived.

EMMA expert Leah Szarek, communications manager for the Municipal Securities Rulemaking Board, was a fellow panelist Tuesday. I learned a lot from her presentation, and hope reporters did not get lost in mine as I went down a rapid-fire list of potential stories. Nichole Dobo of The Hechinger Report moderated.

School bond stories are back in the news in this area. First, after the recession wreaked havoc on normal bond financing, those who can are restructuring their debt to take advantage of lower rates.

The Yosemite Community College District has saved taxpayers $12.5 million with a new issue to restructure $120.2 million in debt from its Measure E bonds. That comes on top of $4.5 million it trimmed from its debt obligations with a 2012 sale.

Checking the statement, I see that property owners will still pay another $800.5 million through 2042 on the district's total debt. But, checking their property-valuation schedule, I can also see that is spread over nearly $54 billion (note the "b") worth of real estate over the far-flung district covering part or all of six counties.

Taxpayers pay roughly $25 per $100,000 valuation each year for the bond, which has remade Modesto Junior College with cutting-edge classroom space in its health sciences building, the Community Science Center and its newly opened Center for Advanced Technologies.

Another upcoming story will be Turlock Unified making plans to float a bond in 2016.

Turlock trustees will hold a special meeting at 6:30 p.m. Wednesday to talk over the idea of a school bond measure. They will meet in the school district main office at 1574 E. Canal Drive, Room 102.

After years of declining enrollment, Turlock schools are growing again and proposed development in the south area of town would overcrowd its existing schools there. With the state no longer offering to provide half the funding for new schools, Turlock must figure out how to raise all the money on its own if it wants to create a new school for those new neighborhoods.

The district has also recently refinanced its debt. That should lower its annual debt payment, which in fiscal year 2014-15 cost property owners $4.2 million, according to its bond statement on EMMA. That money went toward outstanding debt for the work finishing at Turlock High School, upgrades the district made to older elementary schools, and the bond to build Pitman High.

Expect to see other school districts weighing bond measures by next year as the rebounding economy brings more families to the area. If you want to know what they already owe or how their finances are doing, check out EMMA.

THE MODESTO BEE

SEPTEMBER 8, 2015

BY NAN AUSTIN

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SEC Won't Be Pinned Down on MCDC Continuing Disclosure Violations.

CHICAGO – Securities and Exchange Commission officials repeatedly rebuffed bond lawyers' attempts to pin them down on the specific parameters of continuing disclosure violations based on the commission's settlements in June with 36 underwriters under the Municipalities Continuing

Disclosure Cooperation initiative.

The initiative allows underwriters and issuers to receive lenient settlement terms from the SEC if they voluntarily self-reported any instances during the past five years in which they falsely claimed in official statements to be in compliance with their self-imposed continuing disclosure agreements.

Panelists at the National Association of Bond Lawyers' Bond Attorneys' Workshop here persistently questioned commission officials about whether an issuer who said it had complied with its continuing disclosure obligations materially violated those obligations if it was 14 days late in filing its annual financial disclosures. They also asked about whether the lack of violations involving the failure to file material event notices means the SEC does not consider these to be material to investors.

But LeeAnn Gaunt, chief of the SEC enforcement division's municipal securities and public pensions unit, told conference attendees that the commission described examples of violations in its settlements with underwriters to provide market participants with broad guidance, especially after they complained the earlier Kings Canyon Unified School District case failed to do so.

"We were genuinely in good faith trying to make these orders something that would be useful to you," Gaunt said during one of the panels on hot topics in municipal securities law. "Hearing the concerns expressed about the opacity of the Kings Canyon order and understanding that people genuinely in good faith were wanting to have a bit more texture on the nature of the violations that were reported and that were independently determined," the muni enforcement unit worked to ensure the order provided some guidance, she said.

But she said the examples cited reflect a range of conduct that fit the submissions the SEC received and that nobody should be "trying to find a bright line" in the order.

"What we tried to do in part in the spirit of the MCDC initiative, which was voluntary and cooperative, was not to necessarily lay bare every failure everybody reported," Gaunt said. "We wanted this to be a set of orders that were helpful to the industry, helpful to the market but didn't unduly [and] unnecessarily belabor failures, some of which were very repetitive in nature."

Elaine Greenberg, a panelist, partner with Orrick, Herrington and Sutcliffe, and predecessor to Gaunt at the SEC, sat on one of three hot topics securities law panels and tried to get more clarification on the SEC considers to be material violations under the initiative. Alexandra MacLennan, a partner with Squire Patton Boggs, similarly sought clarification from Mark Zehner, deputy chief of the SEC's muni enforcement office, during a different hot topics panel, but neither Greenberg and MacLennan made much headway with the SEC officials.

In response to Greenberg's questions on materiality examples, Gaunt said each example bullet point in each order is considered material, but she cautioned that if multiple events are mentioned in one bullet point, only the cumulative actions mentioned in the one point should be considered material.

Gaunt also said the absence of any examples involving failures to file material event notices does not mean they will not show up in future settlements.

"Nobody should take from that fact that we have decided that the failure to file material event notices is absolutely never actionable," Gaunt said. "We're not setting a floor, we're not setting a ceiling."

The examples are "not the universe of everything that could be," Rebecca Olsen, deputy director of the SEC's Office of Municipal Securities, said during another panel.

Zehner echoed Gaunt during his panel: “Those are only examples. They are not floors, they are not ceilings,” he said, adding, there is no “magic line drawing.”

Both Zehner and Olsen separately stressed that market participants should not be looking at the SEC to determine whether disclosure failures are material. They said materiality is always a facts and circumstances determination of what a reasonable investor would want to know when buying or selling bonds. “The market should not be looking to the SEC … to say what is material,” said Olsen.

Gaunt did not rule out the possibility that there could me more than one more set of underwriter settlements, saying “there will be at least one more group” of underwriter settlements but that she could not “say for sure if there will be another one after that.”

Some sources have said issuer settlements will not be released until next year. Asked about that by a reporter, Gaunt said she could not say.

Both Olsen and Jessica Kane, director of the SEC’s OMS, said that the MCDC initiative has served an important purpose in focusing market participants’ attention on the commission’s Rule 15c2-12, on disclosure. Kane said the initiative has provided “valuable insight into how 15c2-12 is working.” Both she and Olsen suggested that the settlements will allow them to determine whether further changes to the rule or other actions are needed.

One bond lawyer in the audience noted that most continuing disclosure agreements provide remedies for bondholders if issuers fail to meet their obligations. Zehner replied the SEC’s focus during the investigation was not on issuers’ failure to file disclosures but rather on whether they made false or misleading statements when they said they were meeting their obligations. Zehner added, however, “I think one of the issues that the industry has to wrestle with is whether current remedies on disclosure failures are adequate.” Continuing disclosure agreements are essentially contracts between the issuer and the bondholders subject to state contract law. In theory, if the bondholders are upset that an issuer has failed to meet its continuing disclosure obligations and want to force the issue to remedy the situation, they can sue the issuer under state law. But in reality, a bondholder typically does not know the identities of other holders of the bonds and small holders do not have the financial resources to file a lawsuit.

Zehner said after the panel that if bondholders had an adequate enforcement mechanism to force issuers to comply with their disclosure obligations, the SEC would not need to bring enforcement cases in this area.

“In a perfect world, we should never have to show up,” he said.

The MCDC also may already be changing some market practices. Until the initiative, most offering documents contained language saying the issuer had complied in all material respects with its continuing disclosure undertakings. If this language was included in an official statement and the issuer did not meet its undertakings, then the SEC could easily show the issuer made a false representation. As a result, many of the lawyers on panels said issuers may no longer include these statements in their offering documents.

“MCDC made issuers aware that those statements have risk,” said Barron Wallace, a partner at Bracewell & Guiliani and a panelist on an underwriter’s counsel roundtable. Paul Maco, a former OMS director from the same firm who was also a panelist, pointed out that these statements are not required by Rule 15c2-12 but rather have been a “construct that was developed by the bar.”

Another member of the audience asked Zehner what trends or patterns he sees in the market that bond counsel and underwriter's counsel should pay attention to. Zehner said there are so many areas that it is hard to think of a list, but responded to the question by warning that "if you are participating in a higher risk, higher yield transaction, you need to be more careful."

After the panel he explained that issuers need to be sure they are disclosing all of the risks in these kinds of deals. The SEC for example brought 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 SEC found that offering documents contained false and misleading statements about the scope and the viability of a questionable movie studio project as well as Allen Park's overall financial condition and its ability to pay debt service.

THE BOND BUYER

BY JACK CASEY

SEP 11, 2015 11:15am ET

UBS wins Puerto Rico Bond Fund Arbitration After Spate of Losses.

UBS AG has prevailed against an investor's multi-million-dollar arbitration claim for losses tied to the firm's Puerto Rico bond funds, following a string of investor victories.

A Financial Industry Regulatory Authority (FINRA) arbitration panel ruled that investor Berta Ganapolsky relied on advice from her family's "outside counsel" and an accountant, instead of her UBS broker, when she chose to remain invested in a bond fund that was underwritten and sold by UBS's Puerto Rico arm. The ruling, dated Wednesday, was posted to FINRA's website on Friday.

"We believe that justice was not done here," said Charles Lichtman, a lawyer in Boca Raton, Florida, who represented Ganapolsky. "Our client is a 78-year-old widow, whose UBS broker put all of her money into one investment," Lichtman said in a statement.

Ganapolsky, who filed the case last year, had sought a total of $9.1 million in relief.

Many of the Puerto Rico funds sold by UBS were highly concentrated in the debt of the Caribbean island's government and related entities. UBS is defending against hundreds of arbitration claims filed with FINRA, which collectively seeking more than $900 million in damages.

Some of the funds lost half to nearly two-thirds of their value between March 2011 and October 2013, amid fears about the size of Puerto Rico's debt burden and the weakness of its economy. They have failed since to recover.

"UBS is pleased with the arbitrators' decision in this matter," a spokesman said.

The panel's decision follows a series of recent UBS losses. On Aug.31, arbitrators ordered UBS to pay $2.9 million to two Puerto Rican investors. And Aug. 11 arbitrators ordered UBS to pay two investors $2.5 million.

In May, arbitrators ordered UBS to buy back an investor's Puerto Rico bond fund portfolio for $1 million. As the value of the investor's portfolio plunged, a UBS manager told him that "even a skinny cow could give milk," the ruling said.

The panel, in reaching its decision on Wednesday, also recommended removing details about Ganapolsky's complaint from the public record of her broker at the time, David Jose Lugo.

FINRA rules require that summaries of investors' arbitration complaints appear in the public records of brokers who are either named in a case or facilitated a transaction.

Lugo's public record reflects dozens of such complaints about the funds and also notes that he left UBS in May. Lugo's lawyer was not immediately available to comment.

REUTERS

SEPT 11 | BY SUZANNE BARLYN

(Reporting by Suzanne Barlyn; Editing by Leslie Adler)

Orrick: SEC Expands its Focus in the Municipal Bond Market, Bringing First-Ever Charges Against an Underwriter for Pricing Violations Related to Primary Offerings.

Coming on the heels of the SEC's first wave of settlements with underwriters as part of its Municipalities Continuing Disclosure Cooperation ("MCDC") initiative, the agency has brought yet another precedent-setting enforcement action against an underwriter in the municipal bond market. On August 13, 2015, the SEC brought a settled enforcement action against the brokerage firm Edward Jones, in which the firm agreed to pay more than $20 million to settle charges that it overcharged customers in connection with the sale of municipal bonds in the primary market. Edward Jones settled without admitting or denying the SEC's findings.

According to the SEC, Edward Jones regularly underwrote—usually as part of an underwriting "syndicate" or group—and sold municipal bonds to the public through negotiated offerings. Underwriters of municipal bond offerings are generally required (as part of an agreement between the members of an underwriting syndicate) to offer municipal bonds to the public at the "initial offering price," which is the price negotiated between the issuer and underwriter. To compensate the underwriter for its services, the issuer typically sells the bonds to the underwriter at a price below the initial offering price.

The SEC charged that, on numerous occasions, Edward Jones violated its agreements with both bond issuers and its fellow underwriters by improperly reselling municipal bonds to its customers at prices above the initial offering price. The SEC found that between 2009 and 2012, Edward Jones overcharged its customers in 75 different negotiated offerings, netting the Firm more than $4.6 million in additional revenue.

The SEC also found that Edward Jones regularly purchased bonds without disclosing to the underwriting syndicate that the purchases were for Edward Jones' own inventory. While underwriters are permitted to make orders for their own inventories, the SEC contended that they are required to disclose that fact, as customer orders are given priority over orders for an underwriter's own account. Consequently, the SEC found that Edward Jones' failure to disclose this information enabled it to purchase bonds that it otherwise may not have been able to purchase.

In addition, with respect to Edward Jones' trading of municipal bonds in the secondary market, the SEC separately charged the firm with failing to establish an adequate supervisory system to determine whether the markups it charged on certain transactions were reasonable.

The SEC ordered Edward Jones to cease and desist from future violations of Sections 17(a)(2) and (3) of the Securities Act, Section 15B(c)(1) of the Exchange Act, and a number of rules promulgated by the Municipal Securities Rulemaking Board ("MSRB"), which regulates dealers of municipal securities. Edward Jones agreed to pay $5.2 million in disgorgement, as well as a $15 million penalty. It also undertook a number of remedial measures, including: (i) hiring a dedicated compliance officer for its fixed income desk; (ii) adopting new procedures for the sale of municipal bonds, including a requirement that bonds acquired in new issuances may only be sold at the initial offering price; (iii) disclosing in writing the amount of any markup or markdown on all fixed income trades; and (iv) making restitution to affected customers.

This action sends a signal to municipal market participants that the SEC continues to be on the lookout for violations of securities laws or MSRB regulations in connection with both disclosure and pricing. Indeed, as Andrew Ceresney, the SEC's Director of Enforcement, stated in the SEC's press release announcing the Edward Jones case, the enforcement action "reflects [the Commission's] commitment to addressing abuses in all areas of the municipal bond market." Moreover, in the aftermath of the case, four SEC commissioners took the unusual step of issuing a separate statement calling for the completion of clear rules requiring dealers to disclose markups and markdowns on municipal securities trades.

Article by William J. Foley Jr, Kevin M. Askew and Elaine Greenberg

Last Updated: September 8 2015

Incoming NABL President Kenneth Artin Discusses Group's Agenda.

WASHINGTON — Secondary market disclosure, issue price, the tax exemption for municipal bonds and private placements with banks are some of the topics the National Association of Bond Lawyers will focus on in the coming year, according to the group's incoming president, Kenneth Artin.

Artin, a shareholder at Bryant Miller Olive who splits his time between Orlando, Fla. and here, talked about the organization's agenda in a recent interview with The Bond Buyer. He will become the new NABL president on Wednesday at the group's annual meeting in Chicago, succeeding Antonio Martini, a partner at Hinckley Allen & Snyder in Boston.

Artin said he expects it "to be a busy year as the years in the past have been." NABL will continue reacting to situations that develop as part of the group's larger goal of confronting the challenges facing the muni market.

"I feel like the market itself is evolving and so, as an organization, we have to basically assist our members in understanding these changes and trying to help them work through some of the issues," Artin said. "As the market evolves, so do the lawyers."

A large portion of NABL's securities law efforts in the upcoming year will be devoted to improving secondary market disclosure, which Artin said “has been a mantra” for buyside participants.

The disclosure efforts will include monitoring of the Municipalities Continuing Disclosure Cooperation initiative and the lessons learned from it, he said.

The MCDC initiative allowed issuers and underwriters to receive favorable settlements if they voluntarily alerted the Securities and Exchange Commission to instances during the past five years when they sold or underwrote bonds with materially misleading official statements about meeting their continuing disclosure obligations. The SEC released the first round of settlements on June 18, in which 36 underwriters agreed to pay a combined $9.3 million. Commission enforcement officials have said the market should expect another round of underwriter settlements by the end of the year. After all of those are finished, the agency will then start releasing settlements with issuers.

Artin said he is waiting for the issuer round of MCDC settlements to draw further conclusions on how the enforcement action may be helping issuers and underwriters improve their continuing disclosures. The settlements should give a better idea of what the SEC deems materially significant, he said.

“The awareness of the responsibility to file secondary market disclosures and at least focus on it at the time [issuers and underwriters] go to market has improved” with MCDC, Artin said. But he added later that, “there’s got to be a better way” to address key areas of disclosure than through an enforcement initiative.

Continuing disclosure practices can also be improved by ongoing talks NABL has planned with market participants and regulators over the upcoming year, Artin said. There will be a special focus on the time period between bond issues, where he said he believes there is room to “heighten [issuers’] awareness” of their responsibilities.

Artin noted that NABL’s most recent disclosure project was a paper designed to help its members assist clients in drafting policies and procedures for continuing disclosures. It did not focus on MCDC, but instead drew conclusions from past cases discussing disclosure lapses, like those in Stockton, Calif., Vallejo, Calif., and Jefferson County, Ala.

The incoming president said he wants NABL to revisit a paper written on voluntary market disclosure in 2000 by updating the advice it provided on investor inquiries, such as when an analyst calls an issuer official for information.

“The forces have changed” since 2000 and the group wants to be able to educate its members so they can help their clients when investor calls come in, with emphasis on how the calls need to be handled and the fact that issuers can talk to analysts who call.

“I think one of the big issues with respect to secondary market disclosure is increasing the transparency of the market so the market is much more liquid and it can react to changes quicker,” Artin said. He also warned that the amount of information released has to be balanced. “The analysts and the buyside want more and more information, but I think there has to be a focus on what it is they need rather than what they want,” he said.

Tax Law Projects

On the tax law front, the big issue right now is the issue price regulations that the Treasury Department and the Internal Revenue Service proposed in June. NABL’s tax law committee is currently working on providing comments on the proposal to Treasury and the IRS, Artin said. The comments are due Sept. 22.

“The issue price regs have their plusses and their minuses,” he said.

The general proposed rule is that the issue price of a maturity is the first price at which 10% is sold to the public. The public would be anyone other than the underwriters or a related party, with underwriters defined as the underwriting syndicate and anyone who enters into a contract or other arrangement to sell the bonds with any of the syndicate members.

If 10% of a maturity hasn’t been sold by the sale date, an issuer could use the initial offering price to the public as of the sale date as the issue price if certain criteria are met. The criteria includes that the lead or sole underwriter certifies that no underwriter will fill an order from the public after the sale date and before the issue date at a higher price than the initial offering price unless the market moves after the sale date. Another condition is that the issuer can’t have reason to know, after exercising due diligence, that the underwriter’s certification is false. Artin said a benefit of the proposed rules is the definition of the public that they provide. However, underwriters have to try to figure out how to document market moves, and issuers aren’t sure how to perform the due diligence. “I think part of our comments will be focused on those issues in order to provide guidance in that area,” he said.

NABL also has a group that is looking at the rules for when management contracts do not give rise to private business use. One of the projects on the Treasury and IRS 2015-2016 guidance plan is to update guidance on management contracts issued in 1997. The group is “doing a rather deep dive, going back and taking a look at some of the underlying assumptions that were used in preparing the [1997] management contract rules and seeing if they’re still valid,” Artin said. The management contract rules are important due to the increased use of public-private partnerships. P3s are increasingly being used to finance transportation projects, particularly because the popularity of the Transportation Infrastructure Finance and Innovation Act federal loan program among issuers, he said.

“You have these governmental projects that have increased private use by large concessionaires and there might be a way where the portion of the project that’s used and operated by the governmental unit can be financed tax-exempt [bonds] and the private portion of it [can] be financed through the private concessionaire,” Artin said. “All of that is sort of wrapped up in that project.”

NABL is continuing to monitor the definition of a political subdivision for tax-exempt bond purposes, another project on the priority guidance plan, Artin said. The project was added to the guidance plan after the IRS issued a controversial technical advice memorandum in 2013 that concluded the Village Center Community Development District in Florida was not a political subdivision when it issued bonds from 1993 to 2004 on grounds that its board was and always will be controlled by the developer rather than publicly elected officials.

In June, the IRS issued another ruling that prevents the TAM from being applied retroactively. However, Artin pointed out there are many other special districts out there that aren’t transitioning to control by residents.

Another item on the guidance plan is finalizing rules proposed in 2008 about public approval requirements for private-activity bonds. NABL would like to see these rules finalized given that the proposed rules were published a while ago. The final rules should update the public-approval requirements to take new technologies into account, Artin said.

NABL is engaged in an ongoing dialogue with the IRS tax-exempt bond office about revisions to the Internal Revenue Manual used by TEB staff. NABL and the Government Finance Officers Association are discussing a joint project on post-issuance tax compliance, Artin said.

Tax Exemption

Artin vowed that, during his term, NABL "will remain vigilant with respect to monitoring tax exemption."

"Part of our mission is to continue to educate Congress with respect to the importance of tax exemption," he said. "We just have to keep driving that home and make sure that they understand this is how most of the local governments finance the infrastructure that is needed for this country."

While Artin does not think that Congress will put forth a comprehensive tax-reform package next year, he said that NABL has to monitor two legislative areas where the muni exemption could be at risk.

One is the transportation bill. The current extension of transportation funding expires Oct. 29, and if Congress decides to move forward with a long-term transportation bill, it could consider paying for it by doing some form of limited tax reform, Artin said.

The other area is the debt limit, which will likely need to be raised or suspended by the end of the year. Congress could look to some type of tax reform to pay for an increase in the debt limit, he said.

NABL will also monitor proposals from the 2016 presidential candidates to see if and how they could affect munis.

"You can't get too excited because it's a campaign proposal, a campaign promise," Artin said. "And so the best you can do is monitor them, and if something were to become real serious, try to educate whoever's proposing it as to the true benefit of tax exemption and the purpose of tax-exempt bonds."

General Law Projects

Artin also discussed several projects that NABL's general law and practice committee is tackling.

One will explore the specific elements of issuers' private placements of bonds with banks and how they relate to the issuers' financial conditions or credit ratings. "[The paper] is going to give our membership some guidance or issues to consider when they are doing the private placements," Artin said.

Direct placements occur when securities are not offered publicly but are instead privately sold to a single or small number of institutional investors who are usually considered sophisticated, such as large banks, mutual funds, and insurance companies. Typically the sales do not have to be registered with the SEC because of the investors' institutional status.

"Ratings agencies are concerned about this," Artin said. "What are the provisions being granted to the banks that aren't being granted to the bonds being sold to regular retail investors? What special event is a default or [what] remedies [are] being granted to the banks versus regular bondholders? There are a lot of issues you have to take into concern with banks buying the debt versus a bondholder."

Another project is on disaster-relief bonds, Artin said. NABL is preparing a list of federal- and state-level recommendations that would be helpful in the wake of disasters. In the past, Congress has responded to disasters on a piecemeal basis, and NABL intends to make recommendations that could apply across the board, regardless of the type of disaster.

The general-law committee is also working on a project that explains the role of the Depository Trust

Company in the municipal bond market.

The DTC, a subsidiary of the Depository Trust & Clearing Corp., is a registration system for muni bonds that has been used for years. All of the bonds in an issue can be registered in the name of DTC, which has broker-dealer participants that have customers. DTC is essentially the sole bondholder of the issue and the individuals or businesses that paid money to buy the bonds are the beneficial owners. The question is, when bondholder consent is needed, how does information gets from the DTC to the beneficial owners of the bonds, Artin said.

"We thought it was an important enough topic to basically demystify it," and explain how the DTC is supposed to work, he said.

A Career in Public Finance

Artin went directly into public finance after completing his education.

He earned undergraduate and law degrees at the State University of New York at Buffalo in 1979 and 1982, respectively, and a master of laws in taxation from Southern Methodist University in 1983. He was recruited out of SMU to work as a junior tax lawyer with McCall, Parkhurst & Horton in Dallas and while there, rounded out his knowledge by training on bond law at the senior partners' urging, he said.

Artin left Texas and worked at Cobb, Cole and Bell in Florida for about nine years, practicing on both the bond and tax sides of public finance law. While he was at that firm, he started to pick up some securities law work, he said. Artin opened Bryant Miller Olive's Orlando, Fla., office in 2000 and has worked at the firm since, but has split his time between Florida and running the firm's Washington office for the last three years.

Artin said he primarily works as bond counsel but also does some disclosure work. His time with NABL has largely been devoted to working on the securities side of the group. He has been a speaker on various securities law panels during conferences and has served on and chaired the group's securities law committee.

"I think of myself as a bond lawyer with a heavy tilt toward securities law," Artin said. Artin said his work has been "a very interesting practice over the years" and although he has spent his entire career in public finance, he has "never looked back."

His family is also well aware of his extensive work in the industry. Every time they pass by a bridge or airport that he has financed, he said his children are quick to say: "Yes Dad, we know you financed it Dad."

The Bond Buyer

by Naomi Jagoda and Jack Casey

SEP 8, 2015 12:45pm ET

[Bryant Miller Olive Attorney Kenneth Artin Elected President of the National Association of Bond Lawyers.]

ORLANDO, Fla., Sept. 9, 2015 /PRNewswire/ — Kenneth Artin, a Shareholder in the law firm of Bryant Miller Olive, is being sworn in today as President of the National Association of Bond Lawyers.

The National Association of Bond Lawyers is comprised of nearly 3,000 lawyers from around the United States. As President of the NABL, Artin will serve as its main spokesperson, representing the collective interests of his fellow public finance professionals in matters affecting the legal and regulatory frameworks of the public finance industry.

This includes important interface with the Securities and Exchange Commission and the Internal Revenue Service on issues such as the possible elimination of tax-exempt bonds and concerns related to the issue price of bonds.

NABL is the premier organization of public finance attorneys in the United States and promotes the integrity of the municipal market by advancing the understanding of and compliance with laws affecting public finance.

Some of the current issues that Artin will face during his year as President include:

- Several national-level proposals that could either limit or even eliminate tax-exempt bonds. Tax-exempt bonds allow municipalities to borrow money at a lower interest rate, resulting in lower costs on construction projects and other infrastructure needs. By limiting or even eliminating these tax-exempt bonds, local governments would have to pay more for these infrastructure projects, and the people who would feel the greatest negative impact are the taxpayers themselves.
- The renewal of the Federal Transportation Bill, which could have an impact on the tax code and tax-exempt bonds.
- Issue Price Regulation – NABL will testify before the Treasury in late October on new IRS regulations related to the issue price of bonds.
- Several municipalities have declared bankruptcy during the last few years – the city of Detroit and Jefferson County, Alabama being two examples. What happens to the bonds issued by those municipalities? NABL recently issued the 3rd edition of its Municipal Bankruptcy: A Guide for Public Finance Attorneys to discuss this issue.

“Ken has been an important leader and contributor to the NABL Board and our seminars, teleconferences and projects for years,” said Allen Robertson, NABL’s 2013-14 President. “We are certain Ken will make an excellent 37th President of the NABL.”

Artin has been practicing public finance law since 1986 and has been an active participant in NABL since 1996. In recent years, his practice has primarily focused on major public-private partnership and public finance transactions in connection with transportation facilities across the United States, and with higher education institutions throughout Florida.

“Ken is known for innovation and hard work. The team at Bryant Miller Olive is proud that he will be able to dedicate his immense talents to representing public finance lawyers across the country over the next year,” said Grace Dunlap, managing shareholder of the firm. “Ken has a real passion for the continued enhancement of the public finance legal profession.”

Artin is a Managing Shareholder in the Washington, D.C. office of Bryant Miller Olive. He splits his time between the Washington, D.C. office and BMO’s office in Orlando, which he calls home.

About Bryant Miller Olive: With a distinguished 45-year history of serving its clients’ needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tampa, Tallahassee, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

BDA Submits Letter to SEC on MSRB Proposed Rule G-42 Regarding the Core Duties of Municipal Advisors.

The BDA submitted a comment letter to the SEC in response to their request seeking approval or disapproval of MSRB Proposed Rule G-42 which would establish the core duties of municipal advisors when providing municipal advisory services to state and local governments and other clients.

In its letter to the SEC, the BDA reiterates our concern with the Proposed Rule's absolute ban of related principal transactions and urges the Commission to disapprove the Proposed Rule so that the MSRB can redesign a more reasonable conflicts of interest regime.

Specifically, the BDA believes:

- The proposal that certain principal transactions be banned is out of step with how the duty of loyalty is managed with other fiduciaries.
- A different approach should be considered by the MSRB and this approach should involve and engage the client and require appropriate disclosures and informed consents.

You can read our full letter here.

09-11-2015

Justice's Antitrust Division Conducting Inquiry Into Muni Bond Pricing.

WASHINGTON – The U.S. Justice Department's antitrust division is conducting a general inquiry into whether certain broker's brokers have engaged in anti-competitive practices with regard to pricing for secondary market and other municipal bond trades, according to industry officials.

Broker's brokers act as intermediaries between bidding and selling dealers and typically provide secondary market liquidity for retail investors in the muni market.

The antitrust division has asked for general information about Jersey City. N.J.- based MuniBrokers.com, a company that provides a software platform for brokers' brokers to conduct and/or manage their business, according to Edward Smith, the company's general counsel, and Jay Caldas, the company's president.

The antitrust division appears to have received a complaint about alleged anti-competitive practices and is looking into it, but has not launched a formal investigation and has not requested documents or subpoenaed any information, said Smith and Caldas.

“We’ve been completely open in sharing information with them,” said Smith. “This is a very light process. It’s an inquiry not an investigation.” Justice Department lawyers just want to know about the company’s business, how it operates, he said.

“We periodically have inquiries from regulators,” said Smith. “We know we operate within the compliance of the law.”

The remarks by Smith and Caldas follow an article posted Wednesday night by the news outlet Law360 that said the Justice Department’s networks and technology section opened an investigation in April into allegations that the brokers’ brokers have colluded to limit information about pricing of bonds traded in the secondary market. The article cited MuniBrokers as the center of the examination.

“I was completely surprised by that article,” said Caldas. “Our goal and objective is improved transparency and disclosure in the secondary market.”

Caldas said MuniBrokers, a wholly owned subsidiary of HTD, formerly Hartfield Titus & Donnelly that was created in 2014, is not a regulated entity and does not trade municipal securities. It is a software platform that, among other things, allows brokers’ brokers to post bid-wanteds and offering information. In a bid-wanted, a selling dealer asks a broker’s broker to obtain the best bid that it can find for certain munis, without specifying a desired price or yield.

The MuniBrokers.com platform does not disclose the counterparties of trades, Caldas said.

“It’s like a billboard,” Caldas said. “We’re not a regulated broker-dealer or an alternative trading system,” he said. “We’re an unregulated software company.” The firm is not involved in executing transactions, but rather provides the software that supports trading.

The company serves nine brokers’ brokers, including HTD, all of which are competitors, and is connected either directly or through third parties to about 50 broker-dealers, Caldas said.

Besides HTD, the other brokers’ brokers that use the platform are: Butler Muni LLC; Chapdelaine Tullet Prebon, LLC; Clayton, Lowell & Conger, Inc.; Regional Brokers, Inc.; RW Smith; Sentinel Brokers Company, Stark Municipal Brokers; and Wolfe & Hurst Bond Brokers, Inc., a division of BGC Brokers.

MuniBrokers provides subscriptions to anyone who requests them. “It’s open to anyone,” Caldas said.

Peter Carr, a spokesman for the Justice Department’s antitrust division, declined to comment on the matter. Executives for the broker’s brokers with MuniBrokers.com either were not aware of the inquiry or were unavailable for comment.

The Municipal Securities Rulemaking Board adopted a specific rule for broker’s brokers in 2012. Rule G-43, which took effect in December 2012 and is posted on MuniBrokers.com, affirms a broker’s broker’s duty to make a reasonable effort to obtain a fair and reasonable price for municipal securities and also reminds selling and bidding dealers of their pricing obligations. The rule, which was adopted after several enforcement cases had been filed against certain broker’s brokers for unfair pricing practices, provides a series of safeguards designed to promote fairer results from bid-wanteds.

The rule also cautions dealers against “screening” other dealers from their transactions for anti-competitive reasons. It prohibits dealers placing bids to purchase munis in a bid-wanted from submitting “throw away” bids or from attempting to profit by “picking off” other dealers at off-market prices.

THE BOND BUYER

BY LYNN HUME

SEP 3, 2015 4:07pm ET

DC Circuit Court Rejects Challenge To SEC Pay-To-Play Rule: Womble Carlyle

The DC Circuit Court has rejected an effort by the New York and Tennessee Republican Parties to set aside Securities and Exchange Commission Rule 206(4)-5. The 2010 SEC rule prohibits investment advisers from providing services for compensation to a government entity within two years after a political contribution to a government official has been made by the investment adviser or its covered associates. The plaintiffs contend that the rule exceeds the Commission’s statutory authority, and violates the Administrative Procedures Act and the First Amendment.

The plaintiffs in New York Republican State Committee and Tennessee Republican Party v. SEC had originally filed their challenge in federal district court. That court dismissed the suit for lack of jurisdiction, concluding that the federal courts of appeals have exclusive jurisdiction to hear challenges to rules adopted under the Investment Advisers Act of 1940. The plaintiffs subsequently appealed that decision to the Circuit Court and, in the alternative, asked the Circuit Court for direct review of the rule. The Circuit Court denied both requests in its August 25th ruling.

According to the Circuit Court, longstanding precedent supports the view that challenges to orders and rules under the Investment Advisers Act must be brought to the courts of appeals. In addition, a direct review by the Circuit Court is now time-barred because the Investment Advisers Act requires challenges to be brought within 60 days of the promulgation of a rule. In short, the plaintiffs were four years too late in bringing their case to the right court.

The Court noted that the plaintiffs still may petition the SEC to repeal or amend the rule. And, if the agency denies the petition, they can petition the Circuit Court for review of the SEC decision.

While the Circuit Court never got to the merits of the plaintiffs’ challenge, this case is one of many in recent years in which pay-to-play laws and rules have been upheld by state and federal courts. Just last month a unanimous 11-member panel of the same court upheld the long-standing ban on federal political contributions by federal government contractors.

Financial services public contractors face significant compliance challenges from federal and state restrictions on political giving. The SEC pay-to-play rule is both complicated and confusing, and the Commission has stepped up its enforcement of the rule over the past two years. In addition, similar restrictions may apply to financial services firms under Municipal Securities Rulemaking Board Rule G-37 if they engage in municipal securities work. Many states and localities also limit political giving by investment advisers and municipal bond brokers/dealers through laws, rules promulgated by State Treasurers and Comptrollers, and policies adopted by state and municipal pension funds.

Financial services providers that do work for public entities would be wise to consult counsel to ascertain their risk exposure to federal and state pay-to-play laws. Non-compliance – even through inadvertent violations – can result in substantial penalties, loss of business, and reputational harm.

Last Updated: August 27 2015
Article by James A. Kahl
Womble Carlyle

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.

SEC Asked to Approve Extension of Gift Rule to Non-Dealer MAs.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve proposed rule changes that would address potential conflicts of interest by limiting the gifts and non-cash benefits that non-dealer municipal advisors can give to issuers and others in connection with their activities.

The board filed the proposed changes to its Rule G-20 on gifts, gratuities and non-cash compensation with the SEC on Wednesday. The rule already imposes these kinds of restrictions on dealer advisors. The amendments are part of a larger effort from the MSRB to develop a regulatory regime for municipal advisors as mandated by the Dodd-Frank Act.

The MSRB first proposed the rule changes last October and has now updated them based on feedback from market participants.

The modified rule would take effect six months after SEC approval.

"Amending the MSRB's existing gifts rule would ensure common standards for dealers and municipal advisors that all operate in the municipal securities market," said MSRB executive director Lynnette Kelly. "The principles of Rule G-20, together with the MSRB's rules on fair dealing, help preserve the integrity of the municipal market."

G-20 currently prohibits a dealer from giving any thing or service of value, including gratuities, that exceeds $100 per year to a person if the payments or services are related to municipal securities activities of the employer of the recipient.

Terri Heaton, president of the National Association of Municipal Advisors, had urged the MSRB set the limit for MAs at $250 per year and an anonymous commenter had suggested a $50 limit per year in comment letters sent last October, but the MSRB rejected both ideas. Heaton had raised concerns about MSRB statements that various Financial Industry Regulatory Authority rules were not codified into the proposed changes, but would still be applicable. She argued in her letter that since FINRA does not regulate non-dealer MAs, they would be at a disadvantage because they do not have easy access or direct knowledge of the rules.

The MSRB agreed with Heaton's concerns and has codified the applicable FINRA rules into its amendments.

The board's proposal also lists a number of exceptions to the $100 per year limit. The limit would not apply to "normal business dealings," like gifts of meals or tickets to entertainment such as sporting and theatrical events if the regulated entity or associated persons host the event and the number of gifts is not "so frequent or so extensive as to raise any question of propriety," the MSRB said. It would also not apply to "legitimate business functions" that the Internal Revenue Service would recognize as deductible business expenses or infrequent gifts like those for weddings or funerals.

Several commenters worried the exceptions may leave too many opportunities for abuse, but the MSRB said that specifying conditions, such as that gifts be infrequent to fall outside the limit, are sufficient to address these concerns.

The proposal also would prohibit MAs and dealer-advisors from receiving reimbursement of certain entertainment expenses related to a muni offering from the bond proceeds. The October version said "reasonable and necessary" expenses for meals hosted in connection with the offering would be exempted under the section. But after negative feedback from several groups about the wording of the exception, the MSRB changed the language to "ordinary and reasonable" expenses, citing a standard taken from tax law.

The entertainment provision harkens back to a FINRA case from April 2013 where Alabama-based Gardnyr Michael Capital, Inc. used bond proceeds to pay itself back for three trips to New York where employees spent thousands of dollars unrelated to the firm's business. FINRA fined the firm $20,000 for violations of fair dealing and supervision rules but noted there was no specific prohibition on the firm's actions.

The MSRB also filed revisions to its Rules G-8 on books and records, and G-9 on preservation of records, with the SEC to align the requirements for maintaining records documenting compliance with G-20 for MAs.

Jessica Giroux, senior counsel and senior vice president of federal regulatory policy for Bond Dealers of America, said she believes the changes will not be controversial and that BDA has previously said the amendments would "promote a level playing field in the marketplace."

David Cohen, managing director and associate general counsel with Securities Industry and Financial Markets Association, similarly said SIFMA is happy the MSRB is moving toward a "level regulatory playing field among dealer and non-dealer municipal advisors." But he added SIFMA is disappointed the MSRB did not follow some of the group's suggestions.

BDA, SIFMA, NAMA and the Investment Company Institute all filed comment letters on the MSRB's first version and each plans to file comment letters with the SEC.

THE BOND BUYER

BY JACK CASEY

SEP 3, 2015 3:37pm ET

DOJ Investigating Competition In Muni Bond Listing Market.

Law360, New York (September 2, 2015, 6:21 PM ET) — The U.S. Department of Justice is investigating whether several inter-dealer brokers have colluded to thwart competition from rival trading and price-listing services for pricing data on secondary sales of municipal bonds, according to sources close to the probe.

The Antitrust Division's networks and technology section opened an investigation into allegations that the dealers, that handle second-hand trades of municipal bonds between banks and other investors, have agreed to limit information about their buying and selling rates to a site owned by the same group as at least two of the major firms called MuniBrokers.com, two sources close to the investigation told Law360.

The investigation began in April, and the watchdog has been reaching out to industry players, including brokers and price-listing sites, the sources said.

The probe focuses on the market for trading municipal bonds between investors after they have been issued by states, cities and the like.

Unlike stocks and similar types of securities that trade on public exchanges, fixed-income derivatives such as muni bonds trade in an extremely fragmented market with limited transparency about pricing.

Inter-dealer brokers handle large wholesale trades for banks and other institutions looking to move blocks of bonds anonymously, and have historically posted the rates at which they’re willing to buy or sell a certain number of bonds on their own websites without charge as well with some price aggregators, such as Fabkom Inc.

At the same time, platforms like KCG BondPoint, TradeWeb Direct and former market leader Bond Desk, which is now part of TradeWeb, have allowed dealers and others to post information about bonds for sale to the retail market.

MuniBrokers.com launched in early 2014 as a platform for the inter-dealer brokers to share their pricing information, and there are now nine firms using the service, according to the website.

The DOJ is investigating whether firms using MuniBrokers.com’s trading system have agreed, or have been forced, not to advertise their rates on other platforms, effectively boycotting rival services, the sources said. The agency is also questioning whether the inter-dealer brokers have colluded to keep other platforms that list the prices at which brokers want to buy and sell bonds from sharing that data from one another.

MuniBrokers.com is owned by the same group as inter-dealer broker Hartfield Titus & Donnelly LLC, and both companies are run out of the same Jersey City, New Jersey, offices, according to their websites. Hartfield and another major inter-broker dealer, RW Smith & Associates LLC, are also owned by the same holding company, Town Square Holding LLC.

It is unclear whether the other inter-broker dealers have any stake in the MuniBrokers.com platform.

Jay Caldas, president of MuniBrokers.com and a partner at Hartfield, declined to comment on the matter.

RWS President and CEO Paige Pierce said “until the investigation is concluded, we are unable to comment.”

The other inter-dealer brokers that use MuniBrokers.com are Butler Muni LLC, Regional Brokers Inc., Stark Municipal Brokers, Clayton Lowell & Conger Inc., Tullett Prebon unit Chapdelaine, BGC Brokers division Wolfe & Hurst, Bond Brokers Inc. and Sentinel Brokers Co. Inc.

RBI President Joe Hemphill declined to comment on the matter. A representatives for Clayton Lowell declined to comment on the matter.

Stark President and CEO Stephen Stark said he was not aware of the investigation and had not been contacted by the DOJ.

Representatives for Butler, Chapdelaine and BGC did not immediately return requests for comment. People at Wolfe and Sentinel declined to provide representatives for comment.

A representative for the DOJ did not respond to requests for comment Wednesday.

By Melissa Lipman

–Editing by Chris Yates.

U.S. Municipal-Bond Probe Tied to MuniBrokers Said Set to Close.

The U.S. is poised to close an antitrust investigation in the municipal-bond market involving the operator of an Internet-based trading platform that distributes offerings for brokers, according to a person familiar with the matter.

MuniBrokers.com was contacted by the Justice Department's antitrust division in April as part of a general inquiry, said Ed Smith, general counsel at Hartfield, Titus & Donnelly LLC, which owns the service. Justice Department lawyers have since recommended closing the probe, according to the person, who declined to be named because the matter isn't public.

Trading in the $3.6 trillion state and local debt market is handled over-the-counter by dealers, rather than exchanges. Investors looking to trade in the secondary market must buy or sell exclusively through dealers. These dealers can turn to inter-dealer brokers to facilitate trades.

Law360, a legal-news service, reported Wednesday that the Justice Department was investigating whether firms using MuniBrokers.com's trading system have agreed or have been forced to boycott competing services, citing unnamed sources close to the probe.

Smith said MuniBrokers.com doesn't restrict people from using the service and said they are not a target of an investigation. Jay Caldas, MuniBrokers.com president, said the trading system hasn't restricted the nine inter-dealer brokers that use it from using other systems, nor has there been any agreement among them to shun other systems.

"We distribute to other platforms, we enhance transparency," said Caldas. "We in no way restrict any of the participants in MuniBrokers."

MuniBrokers.com's website distributes bid lists to 1,400 users at 250 firms and to third-parties, including Bloomberg LP, which provides the information to clients. Brokers that use other software to circulate information can join MuniBrokers.com if they choose, Smith said.

Jersey City, New Jersey-based MuniBrokers.com began operations in 2014. Smith said he hasn't heard much from the government in the last few months.

"It's been very quiet," he said. "They're trying to figure out how we operate. They're trying to figure out what you guys do, what's your business model, what's your marketplace."
Peter Carr, a Justice Department spokesman, declined to comment.

About 35,000 offerings and 2,500 to 3,000 bids-wanted are displayed daily, said Caldas. It competes with Fabkom, another trading-system for brokers founded in 1990.

"They were in this space alone for 20 years until we entered in," Caldas said.

The nine firms that use MuniBrokers.com are: Butler Muni LLC; Chapdelaine & Co.; Clayton, Lowell & Conger; Hartfield Titus; Regional Brokers Inc.; RW Smith & Associates Inc.; Sentinel Brokers Co.; Stark Municipal Brokers; and Wolfe & Hurst Bond Brokers Inc.

In a February 2015 speech, U.S. Securities and Exchange Commission member Luis Aguilar said there's evidence that dealers have refused to disclose to clients quotes they get through electronic platforms or contacts with other dealers.

"These factors have conspired to create a market that is more illiquid, opaque, costly, and unfair that it should be," Aguilar said.

Bloomberg News

by Martin Z Braun and David McLaughlin

September 3, 2015 — 1:36 PM PDT

BDA Submits Letter to SEC on TRACE 'No Remuneration' Indicator.

Bond Dealers of America submitted a letter to the SEC in response to a request for comment on a proposal to require a 'No Remuneration' indicator for TRACE trade reports when trade prices do not include a commission or markup, markdown.

This SEC-filed proposal would harmonize TRACE reporting with the previously approved amendments to G-14 for municipal securities trade reporting. The Commission approved those amendments in May. The BDA comment letters to SEC and MSRB on those proposed amendments to G-14 can be read here.

BDA's letter to the SEC focuses on concerns with increasing operational and TRACE reporting complexity for smaller dealers in more complex taxable securities.

Regulatory Notice Summary

SR-FINRA-2015-026: Proposed Rule Change to FINRA 6730 to Require an 'No Remuneration' Indicator When a TRACE Report Does Not Reflect a Commission or Mark-up/Mark-down

Proposed Rule Change to FINRA 6730: Currently, the prices reported to TRACE for agency and principal trades include markups, markdowns, and commissions. There is no indicator for a trade that is reported to TRACE and publicly displayed when the price does not include a markup, markdown, or commission that may be applied after the required TRACE reporting timeframe (based on a fee-based account or when markup, markdown is based on a customer's monthly trading volume).

The proposal would require: a 'No Remuneration' indicator for trades that do not include a commission or markup, markdown where one is not assessed on a trade-by-trade basis or when the amount is not known at the time the trade is required to be reported. The rule change will be effective upon SEC approval. The implementation date will be May 23, 2016.

Harmonizing with G-14: In May, SEC approved a similar change (for customer trades only) to G-14.

We hope this information is helpful. Please reach out to the BDA with any questions or comments.

Jessica Giroux at jgiroux@bdamerica.org

John Vahey at jvahey@bdamerica.org

MSRB Links Effective Date for Best-Execution Rule to Publication of Guidance.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) announced today it is linking the effective date of its new "best-execution" rule for retail investor transactions to the publication of implementation guidance so that municipal securities dealers will have sufficient time to review the forthcoming guidance. The MSRB filed documents with the Securities and Exchange Commission (SEC) to establish the effective date of the new rule four months from the publication date of the MSRB's implementation guidance. MSRB Rule G-18, on best execution, with related amendments to MSRB Rules G-48 and D-15, requires dealers to seek the most favorable terms reasonably available for their retail customers' transactions.

The MSRB is coordinating with the SEC and the Financial Industry Regulatory Authority (FINRA) to achieve substantive consistency, as appropriate, in the guidance on best execution for the municipal and corporate bond markets, with the goal of promoting regulatory efficiency across the fixed income markets. Linking the effective date of the best-execution rule to the publication of the guidance will establish a clear implementation period and ensure that dealers have adequate time to review and make use of the guidance as they continue to prepare to comply with the new rule. The MSRB will announce the specific effective date of the rule upon publication of the implementation guidance.

"The MSRB is continuing to coordinate with the SEC and FINRA with the goal of publishing best-ex implementation guidance in short order," said MSRB Executive Director Lynnette Kelly. "Facilitating dealers' compliance with their new obligations and ensuring that retail investors consistently receive the benefit of fair handling of their orders to buy or sell municipal securities is a top priority for the MSRB."

The MSRB's adoption of the best-execution rule—a key investor protection provision—supports existing MSRB fair-pricing rules, promotes fair competition among dealers and aligns with a recommendation in the SEC's 2012 Report on the Municipal Securities Market. The SEC report also recommended that the MSRB provide guidance on how best-execution concepts would be applied to municipal securities transactions.

Date: September 3, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Seeks Approval to Apply its Gifts Rule to Municipal Advisors.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today sought approval from the Securities and Exchange Commission (SEC) to apply to municipal advisors the limitations on business-related gift-giving that currently apply to municipal securities dealers. The proposed amendments to MSRB Rule G-20 aim to address conflicts of interest that may arise from the giving of gifts or gratuities in connection with municipal advisory activities.

"Amending the MSRB's existing gifts rule would ensure common standards for dealers and municipal advisors that all operate in the municipal securities market," said MSRB Executive Director Lynnette Kelly. "The principles of Rule G-20, together with the MSRB's rules on fair dealing, help preserve the integrity of the municipal market."

The proposed amendments also would add a new provision to specifically prohibit both dealers and municipal advisors from seeking reimbursement for certain entertainment expenses from the proceeds of an offering of municipal securities. In addition, the MSRB is seeking to extend to municipal advisors related books and records requirements through proposed amendments to MSRB Rule G-8. Read the rule filing.

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors. In addition to today's proposal on gift limitations, the MSRB has implemented new supervision and compliance requirements for municipal advisors and has proposed a core rule to establish standards of conduct, including fiduciary duties. The MSRB also plans to amend its existing rule on political contributions to address the potential for pay-to-play activities by municipal advisors.

Read more about the status of the MSRB's rulemaking for municipal advisors.

Date: September 2, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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UBS Unit to Pay More Than $2.9 Million to Investors in Puerto Rico.

UBS AG's wealth-management unit was ordered to pay more than $2.9 million to two investors in Puerto Rico for losses tied to funds holding the island's municipal bonds.

Ana Teresa Lopez-Gonzalez and Andres Ricardo Gomez were part of a family of investors that filed an arbitration claim with the Financial Industry Regulatory Authority claiming fraud, breach of fiduciary duty, negligence, breach of contract and unsuitability, among other things. The claims related to investments in UBS-managed closed-end funds and other Puerto Rican municipal bonds, and the use of these investments as collateral for borrowing.

The other family members listed as claimants settled for an undisclosed amount. Before any settlements, the group had sought $10 million in damages, plus other amounts.

Puerto Rico bonds and bond funds plummeted in value as the island commonwealth's financial crisis deepened in mid-2013.

The arbitration panel awarded the investors a combined $2.4 million in damages, plus interest, along with more than $534,000 in legal and other costs, according to the award posted on Finra's website. The panel also denied a counterclaim UBS brought against Mr. Gomez tied to a failure to pay money allegedly owed under the terms of certain credit-line agreements.

As is customary, the Finra arbitrators didn't provide details on the reasoning for their decision, which was dated Monday.

"My clients are gratified by the Finra arbitration award and believe justice was served," said the investors' attorney, Jacob Zamansky. Mr. Zamansky is a principal at securities law firm Zamansky LLC in New York.

A spokesman for UBS said that "although the arbitrators awarded less than the full damages claimants requested, UBS is disappointed with the decision to award any damages, with which we respectfully disagree."

He also noted that the decision in this case isn't indicative of how other panels may rule with regard to other customers who invested in similar products.

Still, this case is one of the latest in a string of legal victories for individual investors facing steep losses in Puerto Rico municipal-bond funds. UBS and other brokerage firms operating in Puerto Rico currently face hundreds of arbitration claims from clients who invested in closed-end funds which mostly invested in bonds issued by the Puerto Rican government and its agencies.

Last month, UBS was ordered to pay about $2.5 million to a San Juan couple. The investors had requested up to $6 million in damages.

And earlier this year, UBS was ordered to pay nearly $1.5 million, out of about $5.8 million requested, to investors in three other cases regarding the Puerto Rico bond funds.

The UBS spokesman on Tuesday said that for more than two decades, "investors in UBS's Puerto Rico municipal bonds and closed-end funds received excellent returns that frequently exceeded the returns available through investments in other bonds or bond funds."

THE WALL STREET JOURNAL

By ANNA PRIOR

Sept. 1, 2015 1:51 p.m. ET

Write to Anna Prior at anna.prior@wsj.com

What Happened to Edward Jones and Does it Impact Issue Price?

A few weeks ago, the Securities and Exchange Commission ("SEC") issued an Order stating that the broker-dealer Edward D. Jones & Co. L.P. ("Edward Jones") had to pay a hefty fine to the SEC as well as remuneration to its customers due to certain of its actions in the municipal bond market. You may be asking "what'd you do"? According to the SEC, Edward Jones sold municipal securities at prices in excess of the initial offering prices prior to the time that the bonds were able to be publicly traded and improperly retained bonds in its own inventory. Edward Jones benefitted from such practices by retaining the difference between the higher sales prices and the initial offering prices. Anyone who has spent any time on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access database ("EMMA") has observed that trading in the secondary market at prices in excess of the initial offering prices happens ALL….THE….TIME…. (after the bonds have been sold by the underwriter at their initial offering prices, of course). For years, broker-dealers and financial advisors have affirmed that such practice is common because bonds are originally offered to the public in blocks that are too large for smaller retail customers. Therefore, certain retail-oriented broker-dealers will purchase a maturity and divide it up into multiple smaller pieces and sell the pieces off at slightly higher prices to retail clients. Because of the inefficiency of selling smaller pieces, salespersons need higher compensation on a percentage basis to be incentivized to make those sales. So what's the big deal?

The Big Deal

The big deal is the timing of the sales and the misleading practice that Edward Jones engaged in to effectuate the sales! Specifically, and among other things, [1] the SEC determined that Edward Jones engaged in the following practices which violate the rules in footnote 1 below:

> Edward Jones initially purchased the bonds by placing a "group net" order which is typically a higher priority order reserved for customers of the co-managers rather than for the manager's own account (which orders are referred to as "stock" or "member" orders and given a lower priority). Edward Jones subsequently offered and sold the new issue municipal bonds at prices in excess of the initial offering prices during the period of time when Edward Jones was obligated, pursuant to the underwriting syndicate restrictions, to offer and sell the bonds at the initial offering prices (i.e. before the bonds could be marketed to the public).[2]
>
> In violation of its Agreement Among Underwriters ("AAU") (upon which the senior underwriter relied in making the certifications in the issue price certificate), Edward Jones did not offer to sell bonds to its retail customers at the bonds' initial offering prices. Instead, without giving its retail customers an opportunity to purchase the lower priced bonds, Edward Jones first offered and sold securities at prices in excess of the initial offering prices.

What does this have to do with tax? Isn't this a tax blog? Where am I?

For an issue of bonds that are publicly offered, the issue price is based on sales made or expected to be made as of the sale date (i.e., the date on which the issuer and underwriter enter into a written, binding obligation for the underwriter to purchase the bonds) to the general public. The senior manager typically makes the representations in the issue price certificate and in so doing it relies on representations of the co-managers in the AAU.

As a result, once Edward Jones made the representation, the issue price was based off of the initial offering price (i.e., the price paid by Edward Jones to obtain the bonds in the first place) and did not account for subsequent sales. Scandalous! Now, this is not a blog on issue price and there are a number of important tax law concepts (in the TEB world and elsewhere)[3] that are based off of issue price that are beyond the scope of this blog. For purposes of this blog, however, there are a few simple relationships that are important to understand:

- The higher the price of individual bonds, the higher the issue price (insightful, right)?
- The higher the issue price, the lower the yield (see footnote [4]).
- The lower the yield, the lower return that tax-exempt bond proceeds are permitted to generate

without constituting arbitrage bonds or owing rebate!

If you've tuned out (can't blame you), here's where you should tune back in. If the higher-priced sales by Edward Jones are taken into account in determining the applicable bonds' issue price, then the issue price established by the issue price certificate is understated and the yield on the issue is overstated.[4] Any issue of bonds whose unspent proceeds are invested in investments that yield a return very close to the yield on the bonds as established by the lower issue price set forth on the issue price certificate run the risk of owing more rebate or losing their tax-exempt status!!![5] This is the point where my boss, Bob Eidnier, politely taps me on the shoulder and we have the following dialogue:

Bob: Joel, aren't you forgetting about a very important line in the definition of issue price?

Joel: Oh yeah, there is that line which reads "[t]he issue price does not change if part of the issue is later sold at a different price." But that line applies once the bonds are sold or expected to be sold to the public. Since Edward Jones did not effect such a sale, wouldn't it be inapplicable?

Bob: Possibly but the definition is designed to determine an issue price as of the sale date and based on reasonable expectations regarding the initial public offering price. Therefore, the issue price would have been established before Edward Jones sold the bonds at the higher prices! Permitting the consideration of sales after the initial sale to the underwriter(s) would introduce uncertainty into the determination of issue price that would make it very difficult, if not impossible, for issuers to comply with any of the tax-exempt bond provisions in the Code!

This is the way most of my disagreements with Bob go which is unfortunate for me but very fortunate for issuers because Bob is always correct (we're not above pandering here at Squire Patton Boggs!). Bob and I did not discuss whether sales by a member of an underwriting syndicate at prices in excess of the initial offering prices calls into question the reasonableness of the sale date expectations regarding issue price, but one would hope that where a member of the syndicate is less than forthcoming in the AAU about the initial offering prices of its sales to the public, the reasonableness of the lead underwriter's sale date expectations regarding issue price would not be impugned.

If the lack of consideration for post-sale date trading strikes you as odd and susceptible to manipulation, you aren't the only one. Interestingly, a few months ago the Service released a revised notice of proposed rulemaking that withdrew a prior, controversial set of proposed regulations governing issue price and replaced those with a more moderate approach. A Squire Patton Boggs tax partner wrote a magnificent blog (I describe it as magnificent because he is a partner) on the revised regulations, so a comprehensive explanation here is unnecessary. However, the proposed regulations do introduce an interesting concept that could be interpreted as the Service's consideration for Edward Jones-type activity. Specifically, if the proposed regulations were applied, when an underwriter has failed to sell at least 10 percent of each maturity of an issue to the general public and then subsequent to the sale date (but before the closing date of the issue), the underwriter sells the bonds at prices in excess of the initial offering prices, the underwriter must certify that the increase in price is due to market fluctuations and the issuer must "not know or have reason to know after exercising due diligence, that the certifications are false." Although the proposed regulations are not directly applicable to the Edward Jones case, they do introduce the concept of monitoring post sale-date trading by imposing a due diligence requirement.

Summary

The issue price rules are written (rightfully) to ensure that issue price can be determined as of the sale date (which would usually be the closing date for private placement bonds), and they currently preclude consideration of post-sale date activity in the determination of issue price. The heightened scrutiny over issue price that has evolved over the last 5-10 years coupled with the language in the proposed regulations may signal that the Service will eventually require issuers (and bond counsel :-)) to scrutinize post-sale date trading more closely. Rest assured, because this would signal a significant shift from current practice, the Service would likely impose any such requirement prospectively and with a lot of guidance.

[1] The SEC found that Edward Jones willfully violated Sections 17(a)(2) and (3) of the Securities Act (anti-fraud provisions), Section 15B(c)(1) of the Exchange Act (duty of municipal advisor), and rules G-17 (obligation of broker dealers to deal fairly), G-11(b) (broker dealer duty to disclose whether securities purchased for own account – priority given to customer orders rather than orders for own account), G-27 (obligation to supervise), and G-30 (requirement that BD sell to customers at price that is fair and reasonable).

[2] As an example, the SEC cited the Amarillo Economic Development Corporation, Taxable Sales Tax Revenue Bonds, Series 2009 (Official Statement) in which Edward Jones served as co-manager.

[3] For example, the 2% costs of issuance limitation is generally based off a proximate of issue price..

[4] In one example included in the SEC order, the increased sales price reduced the yield by more than 43 basis points.

[5] Federal tax law limits the amount of premium that certain tax credit bonds, such as Build America Bonds (Section 54AA of the Code) can have. Another consequence addressed in the SEC order is that bonds that are sold at higher prices could run afoul of this limitation and cause the bonds to no longer be eligible for the applicable tax credits.

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Appeals Court Judges Uphold SEC Rule Similar to G-37.

WASHINGTON — A panel of three federal appeals court judges on Tuesday dismissed a challenge to the Securities and Exchange Commission's pay-to-play rule for investment advisors, which is similar to the Municipal Securities Rulemaking Board's Rule G-37 for broker-dealers.

The U.S. Court of Appeals for the District of Columbia Circuit dismissed the challenge by the New York Republican State Committee and the Tennessee Republican Party, saying the two groups missed the 60-day deadline to challenge the rule after it went into effect, as the Investment Advisors Act of 1940 requires. A lawyer for the groups would not comment on whether there are plans to appeal the decision.

The two Republican groups first challenged the SEC's rule in a 2014 federal district court case that was ultimately dismissed for a lack of subject matter jurisdiction. The rule, which was adopted in 2010, is designed to prevent investment advisors and their firms from making significant political contributions to state and local officials or candidates who can influence the award of investment business. If an IA contributes to such an official beyond a specified de minimis amount, the rule requires the IA to wait two years before he or she can provide services for compensation to that government client.

The Republican groups argued the rule violated their constitutional rights and was an example of the SEC overstepping its authority.

While the appeals court panel decision was based on a failure to follow appeals procedures and thus does not have much bearing on the rule's substance, Hardy Callcott, a partner at Sidley Austin, said the constitutionality issue is likely to resurface when the MSRB modifies G-37 to include municipal advisors as well as dealers.

G-37 currently prevents a dealer from engaging in negotiated municipal business with an issuer for two years if that dealer or one of its municipal finance professionals makes a significant contribution to an issuer official who could influence bond business. Muni finance professionals can give $250 to a candidate whom they can vote for without triggering the ban.

FINRA has said it hopes to classify broker-dealers acting as placement agents as investment advisors under the SEC rule and that could also raise the constitutionality issue, Callcott said.

Neither of the proposed rule changes have been drafted, but Callcott said both will be "ripe for a challenge" if they are and the SEC approves them. He added that if they are challenged, the DC Circuit court will have to reconsider a 20-year-old case brought by Alabama bond dealer William Blount, who argued Rule G-37 violated his constitutional right to free speech.

The DC appellate court rejected the 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 the appellate ruling. But one could question whether the current Supreme Court would refuse to hear a similar case given that it has issued rulings overturning restrictions on political contributions, such as in Citizens United vs. Federal Election Commission in 2010.

THE BOND BUYER

BY JACK CASEY

AUG 25, 2015 4:58pm ET

S.E.C. Settlement With Citigroup Holds No One Responsible.

How can we expect Wall Street's me-first culture to change when regulators won't pursue or even identify the me-firsters who are directly involved?

That question came to mind after reading the terms of a settlement struck on Aug. 17 between the Securities and Exchange Commission and two units of Citigroup. It is a deal that holds no one at the bank accountable for behavior that caused investors to lose an estimated $2 billion.

The settlement involved a disastrous municipal bond strategy the bank concocted and peddled to 4,000 wealthy clients from 2002 until early 2008. It was sold to investors as a safe-money option, even though it used considerable leverage, which always brings hazards when assets decline.

The S.E.C. contended that officials at Citi did not disclose the risks in the investment strategy. "Advisers at these Citigroup affiliates were supposed to be looking out for investors' best interests, but falsely assured them they were making safe investments even when the funds were on the brink of disaster," said Andrew Ceresney, chief of enforcement at the S.E.C., when the settlement was announced.

Citigroup will pay $180 million in the settlement, most of which will be distributed to wronged investors. The bank neither admitted nor denied the S.E.C.'s allegations. A spokesman said the bank was pleased to have resolved the matter.

A $180 million deal is significant as far as these kinds of settlements go. But the S.E.C. is limited in its recoveries — it is only permitted to go after ill-gotten gains. It may not pursue compensatory damages for investor losses.

Among Citi's clients, those losses were substantial. And the bank has privately paid $726 million to compensate investors for some of them. The additional recoveries generated from the S.E.C.'s settlement will be nominal.

The timing of the S.E.C. case is also disappointing. It comes more than seven years after the Citigroup investment strategy imploded.

Unfortunately, six years is the time limit given to clients wishing to bring an arbitration case against the bank under Financial Industry Regulatory Authority rules. So the facts laid out in the S.E.C.'s complaint against Citi are of no help to any investor who had not yet sued to recover from the bank.

Most disturbing, though, is the lack of accountability in this settlement. As is all too common, Citigroup's shareholders are footing the $180 million bill associated with it. But they didn't devise the toxic municipal bond strategy, sell it or hide its risks to investors.

That was the work of Citi employees, as the S.E.C.'s order makes clear. Indeed, it contains chapter and verse about the crucial role played by the fund manager overseeing these investments. Some 50 references to actions taken by the fund manager and his staff are contained in the order.

For example: "the fund manager and the fund manager's staff played a significant role in drafting and disseminating information regarding the funds to investors and financial advisers without sufficient review or oversight to ensure that the information given to investors was accurate."

And "the fund manager was involved in virtually all fund-related communications with the financial advisers and investors."

Yet the S.E.C. never identifies who this central player was.

The S.E.C. has come under fire before for settlements like this one. In 2011, it faced intense criticism over another Citigroup settlement from Jed S. Rakoff, a federal judge in New York. That case involved toxic mortgage securities that generated more than $700 million in investor losses.

Unhappy with that settlement, Judge Rakoff said, "A consent judgment that does not involve any admissions and that results in only very modest penalties is just as frequently viewed, particularly in the business community, as a cost of doing business imposed by having to maintain a working relationship with a regulatory agency, rather than as any indication of where the real truth lies."

Speaking of truth, I asked Mr. Ceresney, the S.E.C. enforcement director, why the regulator did not identify or pursue the Citi fund manager who was all over the settlement order.

Through a spokeswoman, Mr. Ceresney said he could not comment on an individual case. But in a statement provided Thursday, he said, "The S.E.C. has aggressively held companies and their senior officers accountable for misconduct during the financial crisis, charging 181 companies and individuals, including 73 CEOs, CFOs and other senior corporate officers, obtaining more than $3.7 billion in monetary relief."

The mystery man behind those Citi investments was Reaz Islam, a former managing director of the bank's fixed income alternatives group. Mr. Islam left Citi in 2008; he is chief executive of L-R Managers LLC, an investment firm in New York.

When Mr. Islam testified in an investor arbitration brought against Citigroup in June 2012, it emerged that Citi paid him more than $10 million during the years he ran the funds.

Mr. Islam did not respond to a telephone message and an email seeking comment. But a website featuring Mr. Islam identifies him as a "seasoned investment professional." His "can do attitude, inquisitiveness, sharp investment and business acumen, made him an excellent fit at Citigroup from the start," the website says.

According to Mr. Islam's regulatory record, 46 Citi customers have filed complaints against him. Four are pending; the rest have generated civil judgments or arbitration awards paid by the bank totaling $22.4 million. In all of those cases, Citigroup denied the allegations.

Since 2008, Philip Aidikoff, a lawyer at Aidikoff, Uhl & Bakhtiari in Beverly Hills, Cal., and Steven B. Caruso a lawyer at Maddox Hargett & Caruso, represented 125 investors against Citi involving its ill-conceived municipal bond strategy. They received settlement payments in all but three of their cases, including a remarkable $54.1 million settlement paid to two investors in 2011.

Mr. Caruso and an associate also met with the S.E.C. in Feb. 2009, and provided the regulator with thousands of pages of documents relating to the Citi investment strategy.

Reading the S.E.C.'s recent order six years later, the lawyers said they were astonished that Mr. Islam was neither identified nor pursued.

"They say this guy caused billions of dollars in losses, and they do nothing with him?" Mr. Caruso asked. “He was absolutely the mastermind, there is no doubt about that.”

Mr. Aidikoff agreed. “It’s easy for Citi to write a $180 million check,” he said. “When you have the folks who not only designed this program but ran it and ran it into the ground — why aren’t they being named?”

That really is one of the burning questions of our time.

THE NEW YORK TIMES

By GRETCHEN MORGENSON

AUG. 28, 2015

MSRB Core Operational Hours.

Changes to the Municipal Securities Rulemaking Board’s (MSRB) information facilities to better align the language of the information facilities to the MSRB’s administration of these systems are operative today (see MSRB Notice 2015-11). Among other things, these changes include adding references to the MSRB core operational hours of 7:00 a.m. to 7:00 p.m. Eastern Time on business days. All manuals and specifications for the MSRB’s systems have been updated to clarify the availability of MSRB Support during core operational hours.

MSRB Eases Voluntary Bank Loan Disclosure for Issuers on EMMA.

WASHINGTON – The Municipal Securities Rulemaking Board has developed procedures for issuers to use to voluntarily disclose their bank loans on their home pages through EMMA in an effort to encourage such disclosures.

Bank loan disclosure has been an ongoing focus for the MSRB and credit rating agencies. They contend issuers’ non-security debt obligations are important in determining a government’s overall financial condition and the resources the government has to back its muni securities.

Bank loans have become a popular alternative to municipal securities for some issuers because they are cheaper and subject to much less regulation. While general information like the size of the loan usually ends up in an issuer’s financial documents, specific details such as the loan terms are only disclosed on a voluntary basis.

The MSRB said in a release its new procedures for bank loan disclosures on EMMA will contribute to “transparency and fairness” in the municipal market.

“By integrating these voluntary disclosures with all other disclosure documents and recent trade activity of an issuer, EMMA issuer homepages make it easier for investors to browse for information to help them make informed decisions about municipal securities,” the board said.

Katherine Newell, director of risk management for the New Jersey Educational Facilities Authority, said her office is recommending its college and university clients consider the new capabilities the MSRB is offering, although she emphasized that it is the individual client’s decision to make the voluntary disclosures and that the clients already inform credit agencies about their bank loans if they have them.

She added the issuer clients should be aware of the ongoing discussions on the topic, which includes a white paper released in 2013 by 10 market groups to help issuers make decisions on whether to disclose bank loan information.

The paper laid out specific information an issuer could consider disclosing in regard to bank loans, including the date of incurrence, principal amount, maturity and amortization, the interest rate, and information about what would constitute a default and remedies, if different than for the issuer's outstanding bonds. It also recommended the voluntary disclosures be made within 10 business days of the execution of the bank loan, which is the same amount of time issuers are given to disclose material events related to securities trading under Securities and Exchange Commission Rule 15c---12.

Newell said the ongoing discussion about bank loan disclosure makes it more likely "the idea will catch on" with issuers. "The longer an issue like this is reported about, ultimately people will move toward making the disclosures," she said.

Allen Robertson, a shareholder at Robinson, Bradshaw & Hinton who worked on the 2013 white paper, said the MSRB change will be "good and helpful" for investors, but will not necessarily change the frequency or amount of voluntary bank loan disclosure. He said an increase in disclosure will take "continued additional education of issuers about the need for that disclosure and the desire from the buy side for that disclosure."

Susan Gaffney, executive director for National Association of Municipal Advisors, said NAMA is pleased with the MSRB's efforts to continue expanding EMMA.

"Discussion of bank loan disclosure has been a hot topic for many years and this effort will go a long way to provide a place for issuers to post their information, thus giving investors an easy way to know more about [issuers'] credit," she said.

THE BOND BUYER

by Jack Casey

AUG 18, 2015 4:07pm ET

NABL Provides Issuers Disclosure Guidance in Wake of SEC Cases.

WASHINGTON — The National Association of Bond Lawyers released a paper Thursday giving its members tools to help issuer clients develop written disclosure policies and procedures in response to recent Securities and Exchange Commission cases against issuers.

The paper, titled "Crafting Disclosure Policies," explores the functions and benefits of voluntary written disclosure policies as well as the considerations that should go into drafting such policies. The procedures can help clients avoid actions under federal securities laws, which prohibit issuers from making false or misleading statements or omissions that are material and connected to the purchase or sale of securities, NABL said. Generally, information is material if investors would want to know it before engaging in securities transactions.

Daniel Deaton, a partner with Nixon Peabody who was involved in drafting the paper along with an eight-person committee, said the idea was to emphasize that creating disclosure policies and procedures should be its own process for counsel and issuers that takes into account a careful analysis of the issuer. He added the process should not be "one-size-fits-all" and should incorporate the "excellent" internal processes issuers already tend to have.

"One of the big concerns the paper identifies is that [the procedures are] not imposing new bureaucracies on an issuer but rather that members are looking at the issuer for what it is within its own natural organic operation," Deaton said.

Lawyers and their clients should also keep the disclosure plan from "becoming just a checklist," NABL said, while determining the issuers' existing processes and then finding out what enhancements need to be made for better disclosure.

"A disclosure policy that is merely a checklist can result in a myopic process that does not encourage issuer staff and officials to see and convey the big picture," the paper said. "A disclosure policy ideally should strike a balance between being systematic" and pragmatic, "ensuring that the systematic aspects of the process do not become the purpose of the disclosure process itself."

The paper begins with a background section on disclosure policies that explains how issuers can "reduce the chances of making a material misstatement or omission in disclosure to investors" and also establish "a defense of reasonable care against actions for misstatements and omissions that nevertheless occur."

It then lays out the "four core components" of good disclosure policies: a description of the types of disclosures to investors that are covered by the policy; a clear statement of the process by which each type of disclosure to investors will be undertaken, drafted, reviewed, and approved, as well as how compliance with the process will be documented; the process for adequate supervision and reasonable disbursement of responsibilities; and the steps for training of officials and employees.

NABL recommends lawyers and issuer clients consider which documents they have that could be considered material statements and create an inclusive policy. Examples of documents issuers might consider include primary offering documents, continuing disclosure filings, audited financial statements, information contained on issuer websites, and other statements like press releases, interviews and speeches.

A comprehensive policy should also be structured to include applicable levels of review, whether that be from an internal working group tasked with reviewing the documents for accuracy, or reviews from senior officials, outside consultants or governing bodies. Additionally, any continuing disclosure review should start early enough to give enough time for careful consideration and all public statements should be "properly vetted" before being released.

Issuers should also document their compliance and consider the kind of training they want to pursue "to ensure that their personnel sufficiently understand the disclosure policy and the issuer's obligations under the federal securities laws," according to the paper.

The paper ends with three appendices that discuss relevant SEC enforcement actions against issuers, give annotated examples of disclosure policies and procedures, as well as a table of references.

In its appendix on SEC actions, the paper notes the commission has mentioned some form of disclosure policies in almost every recent order against issuers in the municipal securities market. It describes the specific emphasis put on clearly identifying individual responsibilities in disclosing information, the process for disclosing that information, and the necessary supervision that came out of the 2006 case against San Diego. It also calls for comprehensive disclosure policies like those that came from more recent cases like those against New Jersey, South Miami and Kansas.

The paper concludes by stating that lawyers and issuers can address the SEC concerns: by combatting the "silo" effect that comes when only one department of a much larger organization is tasked with disclosure activities; by removing discrepancies in training; and by weeding political considerations out of disclosure decisions.

"The SEC's comments regarding the importance of written disclosure policies are not isolated or ad hoc remarks, but rather appear to represent one of its major emphases in the municipal securities market," the paper said. "These comments are indicative of the SEC's position that issuers should adopt written disclosure policies to avoid the securities law violations alleged in these orders."

THE BOND BUYER

BY JACK CASEY

AUG 20, 2015 5:40pm ET

MSRB Enables Issuers to Display Bank Loan Disclosures on Customized EMMA Issuer Homepages.

To support investor access to full disclosure about an issuer's indebtedness, the Municipal Securities Rulemaking Board (MSRB) recently made it possible for issuers to display bank loan disclosures on their customized homepages on the Electronic Municipal Market Access (EMMA®) website. Voluntary disclosure of bank loan financings and other debt-like obligations on the EMMA website contributes to the transparency and fairness of the municipal market. By integrating these voluntary disclosures with all other disclosure documents and recent trade activity of an issuer, EMMA issuer homepages make it easier for investors to browse for information to help them make informed decisions about municipal securities.

Learn how to submit bank loan disclosures to EMMA and associate these disclosures with your customized issuer homepage.

Read more about customizing your EMMA issuer homepage.

MSRB Changes MA Conduct Proposal, But Not Principal Transaction Bar.

WASHINGTON – The Municipal Securities Rulemaking Board proposed several changes to clarify its proposed Rule G-42 on core duties of municipal advisors, but declined to ease a controversial provision that would bar an MA giving advice from acting as a principal in the same transaction.

The amendments, filed with the Securities and Exchange Commission on Thursday, were a response to criticisms and other comments the SEC received on the proposed modified rule filed by the MSRB on April 24.

The SEC published the proposal for comments on May 8, but recently asked for a second extension – up to 90 days from Aug. 6 – to consider whether to approve it.

The MSRB's proposal states that MAs owe a fiduciary "duty of loyalty" to their municipal issuer clients, requiring "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 fiduciary duty was imposed on MAs by the Dodd-Frank Act.

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

The MSRB told the SEC that it had considered a number of comments on the proposed prohibition against an MA 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.

Several groups complained the prohibition is unreasonable and overly burdensome. The groups pushed for exceptions to the ban such as allowing the relationship: if the MA has client consent; if the advice is provided incidentally or is necessary for a broker-dealer to complete a transaction; or if the dealer is an affiliate of a larger business also advising an issuer.

But the MSRB did not agree with the complaints, saying the ban as proposed is sufficient and will protect issuers from conflicts of interest that could arise from an MA acting as principal.

In one change to the proposal, the MSRB removed the words "without limitation" from the rule's standards of conduct section. The rule had read: "A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes, without limitation, a duty of loyalty and a duty of care." The MSRB said eliminating "without limitation" will address concerns about "ambiguity regarding the relationship between additional fiduciary duties and the specified duties of care and loyalty." The board stressed, however, that this change does not narrow or modify the scope of fiduciary duty under the rule.

Another change was made to prevent duplicative disclosures of conflicts of interest in municipal advisor relationships. The rule had required disclosure of any conflicts of interest prior to, or upon, engaging in municipal advisory activities and then also required a similar disclosure be made when the advisory relationship would later be documented. Instead, the MSRB said it will not require an MA to disclose conflicts of interest in the documentation of the relationship if it has already been disclosed prior to the MA's activities and has not changed.

The MSRB also expanded the portion of the rule that requires MAs to disclose the last material change or addition to legal or disciplinary event disclosures on any Form MA or MA-I. The board said the MA should also provide a brief explanation for why the change or addition to the form was material.

The board clarified a section of the proposed rule that required MAs to alert clients if an advisory recommendation is unsuitable. Commenters had said the requirement is redundant because an MA already owes clients a fiduciary duty that would prohibit it from giving unsuitable recommendations. The MSRB said the requirement only applies if an MA is reviewing a recommendation from another advisor and finds it to be an unsuitable recommendation.

Susan Gaffney, executive director for National Association of Municipal Advisors, said NAMA is still concerned about confusion with Rule G-42 as it relates to prohibiting MAs from working on principal transactions related to the bond sale. She said that "in order to ensure compliance to the reasonable diligence and standards of conduct provisions "the MSRB should provide further interpretative guidance or through examples on how to meet these standards" either in the rulemaking or separately.

Bond Dealers of America general counsel and managing director of federal regulatory policy Jessica Giroux said BDA is still reviewing the board's letter but is "pleased that the MSRB and SEC are in communication about the need for continued dialogue with the industry."

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA is still reviewing the MSRB's letter but that the group is "disappointed that the MSRB seems to have rejected some reasonable suggestions that we and others made to refine the proposed rule."

NAMA, BDA and SIFMA all said they would be submitting new comment letters to the SEC to address the MSRB's changes.

THE BOND BUYER

BY JACK CASEY

AUG 14, 2015 5:03pm ET

Citigroup Companies to Pay $180M Over Hedge Fund Fraud.

WASHINGTON – Two Citigroup companies on Monday agreed to pay $180 million to settle charges they defrauded investors by misrepresenting that investments in two now-defunct muni-related hedge funds were safe, low-risk and suitable for traditional bond investors.

New York-based Citigroup Global Markets and Citigroup Alternative Investments raised almost $3 billion in capital from about 4,000 investors between 2002 and 2007 through the two funds — ASTA/MAT and Falcon – before they collapsed in 2008 during the financial crisis, resulting in billions of dollars of losses, according to the SEC.

Without admitting or denying the SEC's findings, CAI, the investment manager for the two hedge funds, and CGMI, which employed the financial advisors that recommended the funds to investors, agreed to disgorge more than $139. 95 million of ill-gotten gains and pay prejudgment interest of more than $39.61 million to the SEC under the settlement.

Danielle Romero, managing director of global public affairs for Citigroup, said the company is "pleased to have resolved this matter."

The SEC found the two Citigroup affiliates continued accepting additional investments and assuring investors of the funds' safety even as they started to decline in late 2007. The "misleading representations" the Citigroup companies made were "at odds with disclosures made in marketing documents and written material provided to investors," the SEC said in a release.

"Firms cannot insulate themselves from liability for their employees' misrepresentations by invoking the fine print contained in written disclosures," said Andrew Ceresney, director of the SEC's enforcement division. "Advisers at these Citigroup affiliates were supposed to be looking out for investors' best interests, but falsely assured them they were making safe investments even when the funds were on the brink of disaster."

ASTA/MAT was a municipal arbitrage fund that purchased municipal bonds and hedged interest rate risks using a Treasury or LIBOR swap. The fund employed 8 to 12 times leverage. Approximately 2,700 investors and advisory clients of CGMI bought about $1.962 billion of investments in ASTA/MAT from September 2002 through February 2007, the SEC said.

Falcon was a multi-strategy fund with 20% invested in ASTA/MAT and the rest invested in other fixed income strategies such as collateralized loan obligations and collateralized debt obligations and asset-backed securities. The Falcon fund used 5 to 6 times leverage. About 1,300 investors and CMGI advisory clients bought approximately $936 million of investments in Falcon from October 2004 through October 2007, according to the SEC.

Financial advisors assured the investors that the investments were safe, low-risk bond substitutes and in some cases encouraged them to sell their bond portfolios so they could purchase ASTA/MAT shares. At the same time, the written materials the clients received said the investments should not be viewed as bond substitutes and "carried significantly greater risk than a bond investment," according to the SEC order.

Investors also paid two tiers of advisory fees, which totaled about $212.5 million between the two funds. One fee went to the financial advisors with CGMI and one went to the fund manager and fund manager's staff with CAI. Both companies returned a total of only approximately $72.5 million to investors after the funds collapsed.

In August 2007, Falcon fund started experiencing margin calls and requested a $200 million loan from CAI. The loan request was denied and in the next two months, CAI and the financial advisors sold an additional $110 million in fund shares to investors without disclosing the liquidity problems. Then between November 2007 and March 2008, more than $8.4 billion was sold to meet Falcon fund's margin calls.

Despite the mounting liquidity issues and warnings in written documents, the fund manager and several financial advisors continued assuring Falcon fund investors the fund had adequate liquidity and was well capitalized.

The SEC found CAI lacked necessary policies and procedures to supervise how the fund manager was representing the two funds to investors. The manager had "virtually complete control" of all the information going to investors, according to the order, and the manager's staff and CGMI's financial advisors were reliant on the manager for the information that would be passed along to clients.

The Commission found CAI and CGMI willfully violated parts of Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities, and that CGMI also willfully violated several parts of Section 206 of the Investment Advisors Act of 1940, on prohibited transactions by registered investment advisors.

John "Jack" Coffee, a securities law professor at Columbia Law School, said the case will get banks' counsel taking to hedge fund managers both because "next time the penalties could be higher and because the other banks don't want the reputational damage."

"I think general counsel at other banks are going to be conscious that oral statements can come to the SEC's attention and produce enforcement actions even without a claim that the written disclosures were false," Coffee said.

But Better Markets president and chief executive officer Dennis Kelleher said in a statement the SEC's timing with the order is "laughable" and "too little too late" considering the violations happened seven years ago.

"For enforcement to work as punishment and deterrence, it has to be swift, commensurate with the violations, require full disgorgement plus fines, and meaningfully punish individuals," Kelleher said. "Justice delayed is justice denied, which too often is the SEC practice. The American public expects and deserves better."

THE BOND BUYER

BY JACK CASEY

AUG 17, 2015 3:52pm ET

SEC Members Demand Muni Markup Disclosure After Edwards Jones Case.

WASHINGTON — Securities and Exchange Commission members are calling for the adoption of rules requiring broker-dealers to disclose markups and markdowns on municipal securities, warning that if self-regulators do not act, the SEC will propose the rules itself.

Commissioners Luis Aguilar, Daniel Gallagher, Kara Stein and Michael Piwowar made the plea in a statement issued on Thursday after the SEC announced a first of a kind enforcement case, ordering the St. Louis-based brokerage firm Edward Jones to pay more than $20 million for overcharging retail customers for new municipal bonds. A spokesperson said SEC chair Mary Jo White has had the same position since she said in a speech in June 2014 that the SEC would work with self-regulators to develop rules requiring the disclosure of markups in riskless principal transactions.

In the enforcement case, the SEC found that, instead of selling new bonds to customers at the initial offering price, the retail-oriented firm and Stina Wishman, the former head of its municipal syndicate desk, took the bonds into the firm's own inventory and then improperly sold them to customers at higher prices. In other instances, the firm failed entirely to offer bonds until secondary market trading began and also did not monitor the reasonableness of its markups in certain secondary market trades. It is the commission's first case against an underwriter for pricing-related fraud in the primary market for municipal securities.

"Edward Jones undermined the integrity of the bond underwriting process by overcharging retail customers by at least $4.6 million and by misleading municipal issuers," Andrew Ceresney, director of the SEC's enforcement division, said in a release. "This enforcement action … reflects our commitment to addressing abuses in all areas of the municipal bond market." He would not comment on whether the improper pricing is a prevalent practice in the muni market but said the SEC's probe is continuing.

LeeAnn Gaunt, the chief of the SEC's enforcement division's municipal securities and public pensions unit, said the absence of a markup disclosure rule limits trading information. "Because current rules do not require dealers to disclose markups on municipal bonds, investors receive very little information about their dealer's compensation in municipal bond trades," she said in the SEC's release.

The enforcement case comes as the Municipal Securities Rulemaking Board proposed the idea of requiring dealers to disclose markups and markdowns on certain principal trades. The MSRB is collecting public comments on the idea, as well as modifications to an earlier proposal that would require dealers to disclose on customer confirmations a “reference price” of the same security traded on the same day.

The four SEC commissioners called for markup and markdown disclosure on munis, including riskless principal trades. They are trades in which dealers almost simultaneously buy and sell munis so that there is little risk the market will move against them. One obstacle to writing rules is that dealers have been arguing that riskless principal trades can’t be defined.

The overcharges in this case occurred through the offer and sale of 156 different bonds in 75 negotiated offerings in which Edward Jones served as a co-manager between February 2009 and December 2012. The order found Edward Jones negligently violated antifraud provisions of the Securities Act of 1933 as well as MSRB Rules G-17 on fair dealing, G-11 on primary offering practices, G-30 on prices and commissions, and G-27 on supervision.

The $20 million to be paid by the firm includes approximately $5.2 million in disgorgement and prejudgment interest for the customers who overpaid for bonds as well as a $15 million civil penalty. Wishman agreed to a $15,000 penalty and a ban from the securities market for at least two years. She retired from Edward Jones in 2013 after creating the firm’s municipal syndicate desk in 1993 and running it until she left. She was “primarily responsible for overseeing Edward Jones’ underwriting of new issue municipal bonds” during that time, according to the SEC order and was also responsible for keeping the desk in compliance with security laws and MSRB rules as well as doing a yearly review of written procedures on compliance

Edward Jones and Wishman neither admitted nor denied the SEC’s findings but agreed to the SEC’s orders. Lawyers for Wishman could not be reached.

John Boul, a spokesman for Edward Jones, said the enforcement case effects about 13,000 current and former clients of the firm and that the roughly $5.2 million in compensation and interest to be paid to them works out to about $400 per client. He noted that the case pertains to actions that took place from 2009 through 2013, that the firm has disclosed the SEC probe since 2012 and has fully cooperated with the commission. He also highlighted several of the firm’s remedial actions and added the firm is “pleased to have the matter resolved.”

Syndicates like the ones Edward Jones participated in for the negotiated offerings typically have “agreements among underwriters” that lay out standard terms for the deals, according to the SEC order. It is generally understood that these AAUs obligate syndicate members to sell the bonds at the initial offering prices negotiated with the issuer before trading begins, something the SEC found Edward Jones repeatedly failed to do. The SEC also found Edward Jones failed to prioritize customer orders over its own accounts, in violation of Rule G-11.

In addition to issues in primary market trading, the SEC also found Edward Jones did not have an adequate supervisory system to ensure markups charged for principal transactions in the secondary market were not excessive. A markup is designed to compensate dealers for the risk they take on when holding securities in their inventory for principal trades, the SEC said. However, Edward Jones did not have “an adequate system for reviewing certain of its principle trades,” which “may have prevented [it] from determining whether the markups it charged for certain principal transactions were reasonable,” the commission said. The firm did not hold securities for principal transactions very long and “because of the short holding periods, it faced little risk as a principal and almost never experienced losses on these intraday trades,” the SEC said.

The SEC order provided some examples of the firm’s practices. In November of 2009, the firm acted as a co-managing underwriter for a $38.83 million issuance of taxable tax revenue bonds issued by the Amarillo Economic Development Corporation. Edward Jones did not inform its financial advisors about the offering until after the order period had closed, making it impossible for customers to place orders at the initial offering price. Instead, the firm acquired $3.665 million of the term bonds and, between the time the order period closed and the bonds began trading, the firm offered the bonds to customers at higher than initial offering prices. All of the other underwriters in that deal sold their entire allocations at the initial offering price, the SEC said.

The list of problematic Edward Jones bonds the SEC attached to its order includes 25 separate Build America Bond maturities, including one offering from the Nebraska Public Power District for which Edward Jones was a syndicate member. The firm improperly sold a portion of the bonds above the initial offering price and caused the Internal Revenue Service to conclude a portion of the offering did not qualify for BAB subsidies because it exceeded the de minimis amount of premium over the stated amount of the bond. The NPPD resolved the dispute by agreeing to pay the IRS $350,000 in exchange for continuing to receive subsidy payments. About $145,000 of that amount came from Edward Jones, Boul said. He said the firm has no open issues with the IRS in connection with the bonds listed in the SEC enforcement case. The firm refunded $122,891 for eight BAB maturities that were sold with more than a de minimis amount of premium, the SEC said.

In assessing the sanctions, the SEC took into account the remedial actions Edward Jones took, Ceresney said in a call with press. The firm started voluntarily disclosing its markups in 2013, Ceresney said. Edward Jones also: has hired a compliance officer for its fixed income desk; reduced its maximum markups and markdowns on municipal bond buy orders; produced a new written supervisory procedure; and retained a consulting firm to review the firm’s municipal business and make recommendations for improvement.

Carol McCoog, chair of the National Association of Bond Lawyers’ securities and disclosure committee, said the SEC enforcement action” sheds some light on behavior that’s eye-opening” that hurt both investors and issuers. “It’s difficult to know how it’s going to affect the market,” she said. “We’re still trying to grapple with the proposed issue price rules” that the IRS released earlier this summer.

“We’re going to see how all of this is intertwined,” she said, adding that the case shows that now both the SEC and IRS are focused on pricing practices.

Elaine Greenberg, a partner at Orrick, Herrington and Sutcliffe and former head of the SEC’s municipal securities and public pension unit, said the SEC order sends “a message to firms that by this action the SEC [is] putting other firms on notice and if [it] find[s] violations similar to those” that were found in this case, then they “will likely pursue enforcement actions,” Greenberg said.

It would not be surprising to see the SEC bring more such cases in the future, due to a two-fold waterfall effect, said one source who did not want to be identified.

First, the SEC enforcement staff has developed expertise in syndicate practices and muni bond pricing in this case and knows what to look for, the source said. In addition, the Financial Industry Regulatory Authority will also likely be looking out for similar wrongdoing.

THE BOND BUYER

BY JACK CASEY

AUG 13, 2015 3:31pm ET

[MSRB Responds to Comments on Proposed Rule G-42 on Municipal Advisor Duties.]

The Municipal Securities Rulemaking Board (MSRB) today submitted a letter to the Securities and Exchange Commission (SEC) responding to issues raised by commenters about proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors. [Read the MSRB's letter.]

The MSRB also filed several clarifying and other minor amendments to the text of the proposed rule, which are explained in detail in the MSRB's letter. [View the amended rule language.]

The amendments revise the [MSRB's April 2015 rule filing] in which the MSRB sought approval from the SEC of new Rule G-42. [The SEC has invited additional comment] from interested parties on the proposed rule by September 11, 2015.

[MSRB to Cut Underwriting Fee; Raise Initial, Annual Fees.]

WASHINGTON — The Municipal Securities Rulemaking Board has announced that it will increase its initial and annual fees while lowering its underwriting fee to better distribute costs among regulated entities based on their level of involvement in muni market activities.

In a change to its Rule A-12 on initial and annual registration fees, the MSRB will raise both its initial fee to $1,000 from $100 and its annual fee to $1,000 from $500. Both increases will be implemented on Oct. 1.

An amendment to Rule A-13 on underwriting and transaction fees will reduce the underwriting fee to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000 of par value. That change will be implemented on Jan. 1.

The fee changes, which were filed with the Securities and Exchange Commission late Monday, are the result of a "holistic fee review" the MSRB said it undertook to balance its projected surplus in its technology fund with potential decreases in its future operating revenues.

The MSRB said the changes are "effectively revenue neutral" and support its "continuous and ongoing efforts" to "reasonably distribute fees among all regulated entities based on the level of involvement by brokers, dealers, municipal securities dealers and municipal advisors in the municipal securities market."

The annual fee has not changed since 2009 and in 2014 it only covered 3.5% of the MSRB's total expenses instead of the 5% it had covered in 2009, even as the number of regulated entities rose. The MSRB said the annual fee is "the primary way dealers share in the costs and expenses of operating and administering" the board and said the increase is a way for entities to "more fairly contribute" to MSRB costs.

The increase in the initial fee will be the first since the fee was adopted in 1975. The MSRB called the higher fee “reasonable” and said it would help defray a significant portion of administrative and operational costs.

Of the more than 2,000 dealers and municipal advisors registered with the MSRB in 2014, only about 140 dealers were assessed underwriting fees and 840 were assessed transaction and technology fees, according to the regulatory notice. Among the “highly concentrated” group of regulated entities paying these market activity fees, less than a dozen dealers accounted for about 52% of the payments. These findings led the MSRB to lower underwriting fees because the dealers who primarily pay them are also most of the payers of the transaction and technology fees.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said BDA appreciates the MSRB’s effort to create a more balanced distribution of fees among all regulated entities.

“The BDA’s historical concerns have always been that the broker dealer underwriting fees finance the majority of the MSRB’s operation,” Giroux said. “However, it appears that the MSRB has taken such concerns into consideration as they evaluated their new fee structure.”

Securities Industry and Financial Markets Association managing director and co-head of municipal securities Michael Decker said SIFMA is continuing to vet the MSRB’s fee changes, but that they “won’t appropriately balance the MSRB’s expenses among all the regulated parties” because the board still does not require non-dealer municipal advisors “pay their fair share of the MSRB expenses.”

He also said a separate proposal in the MSRB’s regulatory notice to permanently collect the technology fee, $1.00 per transaction for each interdealer and customer sale report to the board, goes back on an understanding market members had when the rule was approved in 2011 as a temporary measure until the MSRB’s capital reserve rose to an appropriate level.

The MSRB will no longer allocate the money collected from the technology fee specifically for capitalized hardware and software expenses, it said in the notice. Instead, the revenue will be generally used “for the most appropriate organizational uses,” the MSRB said.

THE BOND BUYER

BY JACK CASEY

AUG 11, 2015 1:21pm ET

MSRB Adjusts Fees to Align Revenues with Operational and Capital Expenses.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission a change to MSRB Rule A-12, on registration, and to MSRB Rule A-13, on underwriting and transaction assessments following an extensive holistic review of MSRB fees by its Board of Directors. The review was undertaken to ensure that the MSRB continues to be sufficiently funded to meet its operational and capital expenses in fulfilling its regulatory responsibilities while achieving a fair allocation among regulated entities for the associated expenses. The rule changes, which include a decrease in the underwriting fee under Rule A-13 and an increase to the initial and annual fees under Rule A-12, will effectively maintain the total fee revenue collected by the MSRB at approximately the current level.

Read the regulatory notice.

UBS Fined $750,000 for Misstating Tax-Exempt Bond Interest.

A unit of UBS AG was fined $750,000 for misstating that tax-exempt interest paid to customers was taxable, according to the Financial Industry Regulatory Authority.

As a result of inadequate procedures to address short positions in municipal bonds, UBS told about 4,370 customers that about $1.2 million in interest the firm paid them was exempt from taxes, Finra said. In fact, UBS didn't hold the bonds on behalf of the customers and the interest the firm paid them was taxable as ordinary income. The error resulted in the underpayment of about $282,000 in federal taxes, the regulator said. Only interest that is received from a municipal issuer is exempt from federal income tax.

"The firm failed to consider — and its automated system that calculated the interest owed to customers did not take into account — whether the interest it paid to customers should be coded as non-taxable when the interest was paid by the firm rather that the municipal issuer," Finra said.

UBS violated Municipal Security Rulemaking Board rules related to supervision and fair dealing, according to Finra.

UBS accepted Finra's decision without admitting or denying the findings.

By Martin Z. Braun

BLOOMBERG NEWS

AUGUST 15, 2015

Municipal Bond Underwriter Didn't Feel Like Underwriting.

As you may be aware, the basic idea of the securities business is: Buy Low, Sell High. What with the law of one price, advances in modern information technology, etc., this is not always easy to do. If you are a bond trader, there just aren't that many opportunities to buy a bond from one customer for a low price and turn around and sell it to another customer at a much higher price. That's good! For the customers.1 But for the traders, at least part of the job is to create those opportunities. Some ways of doing that are totally fine. Some are a bit unseemly, but legal. Some are illegal, or at least, so prosecutors think.

I find this a very murky area. It's easy to see why outsiders and prosecutors and customers might be offended when they find out that bond traders bought low from one customer and sold high to another customer with shall we say imperfect disclosure of those facts. But that is kind of the job. And the lines between how you are and are not allowed to do it don't seem totally clear to me. It's okay to sell bonds to a customer who doesn't know what you paid for them, probably, most of the time.2 It's not okay to lie to the customer about the price you paid for them, probably, most of the time. Other complexities abound.

It seems to me that these lines are drawn mostly by *custom*. If you nudge and omit and shade the truth in ways that are blessed by longstanding industry custom, then no one in the industry will be that mad at you, though prosecutors still might be. If you just go around lying where everyone else tells the truth, no one will sympathize when you get in trouble. That is the essential substance of the Jesse Litvak case: Was Litvak, convicted last year of criminal fraud in selling mortgage bonds, lying about stuff that everyone lies about? Were his lies just “puffery” that his counterparties knew to discount? Or was he breaking new ground in bond-deception creativity, lying to his customers about things they weren’t expecting to be lied to about?

Yesterday brokerage firm Edward Jones and its former head of municipal underwriting Stina Wishman agreed to settle Securities and Exchange Commission charges that they did this:

> In certain co-managed, negotiated transactions during the Relevant Period as further detailed below, Wishman and the municipal syndicate desk at Edward Jones improperly offered out particular bonds to customers from its inventory at prices above the initial offering prices while syndicate restrictions remained in effect. In these instances, Wishman and Edward Jones’ municipal syndicate desk typically placed orders with the lead underwriter for specific maturities for the firm’s own inventory during the order period, but did not give their customers an opportunity to similarly participate. Once Edward Jones’ municipal syndicate desk obtained an allocation of those bonds and took them into inventory, and while syndicate restrictions remained in effect, the firm offered the securities to customers from its own inventory at prices above the initial offering prices in these transactions.

They settled “without admitting or denying the findings”; Edward Jones agreed to pay more than $20 million. According to the SEC order, Edward Jones would sign up to be an underwriter of municipal bonds. It wouldn’t lead the underwriting, but would be a co-manager, involved in the syndicate so that it could sell some of the bonds to its “well-known, geographically-dispersed retail customer base.” But instead of doing what underwriters do — take orders from customers, put those orders into the order book, get allocated some bonds and sell those bonds to the customers at the offering price of the bonds — Edward Jones would (sometimes, from 2009 through 2012) just buy the bonds for itself at the offering price,3 and then sell them to customers at a higher price.

That is bad!4 Underwriters are supposed to distribute their bonds to customers, not hold on to them and hope they go up. And Edward Jones’s behavior seems to have been even worse than that: It didn’t just put the bonds in inventory, wait until they started trading, and hope to flip them for a profit (which would be bad!); it actually sometimes sold bonds to customers at prices above the offering price *while the offering was still going on*.5 As far as I can tell, this worked mostly because customers didn’t know any better, and Edward Jones didn’t tell them.6 (There’s no suggestion that Edward Jones lied to the customers about the price it paid, though.)

All of this strikes me as shocking, but there’s a reason that I’m shocked. The reason is that I used to work as a bond underwriter, and I know from experience that this sort of thing is *just not done*. Here is the SEC trying to explain why:

> During the Relevant Period, underwriters that used the template AAUs for negotiated municipal offerings were obliged, under those agreements, to make a public offering of all bonds at the initial offering price in effect at the time they were allocated bonds by the issuer and senior manager. Market participants have long understood the AAU to place an obligation on the syndicate members, as parties to the agreement, to offer and attempt to sell the bonds at the initial offering prices negotiated with the issuer before the bonds begin trading.

> In addition to the agreed-upon terms of the AAU, municipal underwriters adhere to a well-established industry practice in negotiated offerings that requires them, when part of a syndicate, to offer and attempt to sell all of the bonds at the initial offering prices for a certain period of time. These limitations are known as “syndicate restrictions,” and are generally in effect until the expiration of those restrictions. Among other things, syndicate restrictions ensure that the bonds are sold at the price which the issuer and the syndicate have agreed to sell them.

An “AAU” is an “Agreement Among Underwriters,” and I confidently assert that no bond syndicate manager has ever read one. (Here’s the standard master AAU for municipal underwritings in effect at the time, and I am not 100 percent convinced that it says all of what the SEC says it says, though its powerful mojo repelled me from reading it too.)7 The real point here is that there is a “well-established industry practice” that, if you’re an underwriter for municipal bonds, and you buy bonds from the issuer at the offer price,8 you have to re-sell them to customers at the offer price. You just can’t do what Edward Jones did.

The SEC grasps at some specific written authorities that sort of say that — the AAU and bond purchase agreements for these deals, and some Municipal Securities Rulemaking Board9 rules — but it’s clearly leaning heavily on custom, and on the industry understanding of what those authorities actually mean. Underwriting is a complex process that grew up organically and that is governed not so much by clear specific rules as it is by broadly shared understandings of how underwriters are supposed to behave. Some behaviors are fine, even though outsiders find them puzzling. Other behaviors are wildly illegal, even though, when the SEC gets around to punishing them, it has a bit of a tough time pointing to the actual words that say they’re illegal. It’s just … you know … you can’t *do* that.

But while Edward Jones’s alleged behavior here was *very bad*, it was not *a priori* bad. Buying bonds from a seller at 100 and re-selling them for 103 is not self-evidently evil, even if you don’t tell your customer that you paid 100. What makes it bad is the set of customer expectations and industry traditions that provide context for the basic buying and selling behavior.

Here’s the Wall Street Journal on this case:

> Some analysts said the case opens a new front for the SEC’s enforcement efforts in the sale of bonds backed by state and local government-related entities, showing a changing focus from problems related to disclosure to those related to pricing. SEC commissioners Luis Aguilar, Daniel Gallagher, Kara Stein and Michael Piwowar said in a statement the case illustrates the need for better rules on transparency in bond pricing.
>
> “The Commission’s recent enforcement action against [Edward Jones] involving the offer and sale of municipal bonds to retail investors highlights the need for clear rules requiring the disclosure of mark-ups and mark-downs,” they wrote, urging the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board to complete rules mandating increased price transparency. “If not, we believe the Commission should propose rules to address this important issue,” they wrote.

Maybe, sure, why not. Perhaps transparency solves everything. But to me the problem here was less about pricing transparency and more about the violation of expectations. After all, Edward Jones didn’t violate the clear rules requiring disclosure of mark-ups, since those rules don’t exist. The SEC found instead that it violated general anti-fraud rules.10 It deceived investors, not by lying to them, exactly, but by not behaving in the way they reasonably expected. And you can’t extend from this case to other cases about “pricing,” of municipal bonds or otherwise. The pricing and disclosures that customers expect are a function of specific contexts and rules and industry practices. The fact that Edward Jones shouldn't have sold these bonds to its customers for 103 is a fact about underwriting of primary offerings, which doesn't necessarily tell you anything about disclosure requirements in secondary trading.

When people get in trouble for fraud, in mortgage bonds or Libor manipulation or anything else, they are often scolded with words to the effect of "It's no excuse to say that everyone is doing it." *But it is!* Fraud is only fraud if it deceives.11 If everyone is used to operating without transparency, it's no fraud on them to be a bit shady. If everyone is expecting transparency, then opacity can be fraud. As the SEC knew in this case, industry custom can be the best indication of what is and isn't fraud. And if the custom looks a little fraudy, well, maybe the fact that it's customary makes it okay?

1. *Except insofar as they are worried about dealers providing insufficient liquidity. As Dan Davies has argued, if the buy-side wants dealers to cushion them against a liquidity shock, maybe they should pay dealers more? Though of course that would guarantee nothing.*

2. *Nothing is ever legal advice, but this is particularly not legal advice. TRACE exists, etc., and in many trading contexts you are required to give the customer transparency about what you paid. In others you aren't.*

3. *Minus, of course, underwriting fees:*

> *The municipal issuer usually compensates the syndicate for its services in distributing the bonds by selling the bonds to the syndicate at a discount to the "initial offering price," the price at which the bonds are offered to the investing public by the syndicate at the time of original issuance. The difference between the initial offering price and the discounted price for the syndicate is the "underwriters' discount" or "underwriters' spread."*

4. *I feel like I'm saying that a lot this week. It's been a big week for SEC actions! (As promised!) I like to joke sometimes about the national obsession with golf-based insider trading, but the news release hacking, the ITG order-flow misuse and the Edward Jones muni-underwriting abuses all strike me as really serious problems, so nice work by the SEC to address all of them.*

5. *I'm not totally clear on the timing but here's one example from the SEC order:*

> *45. The senior manager filled Edward Jones' entire orders for NPPD BABs on June 10 at par. The senior manager informed Edward Jones that it had been allocated $100,000 of the 2026 maturity and $10 million of the 2035 maturity, and that the initial offering price was 100 (i.e., par).*
>
> *46. On the afternoon of June 10, after the BABs order period closed but before syndicate restrictions were lifted, Wishman informed Edward Jones' Nebraska FAs of the NPPD BAB allocations and instructed them to offer those bonds out to customers at prices higher than the initial offering prices. Edward Jones offered the 2026 maturity of NPPD BABs at 102 and the 2035 maturity of NPPD BABs at 103, both above the initial offering price.*
>
> *47. On June 11, 2009, the senior manager sent a final pricing wire to the syndicate that set the initial trading time of NPPD bonds for 2:15 p.m. Eastern Time ("ET") that day. At 2:36 p.m. ET that day, the senior manager sent a free-to-trade wire to the rest of the syndicate regarding the NPPD taxable bonds and BABs which read: "Effective*

immediately all syndicate terms and price restrictions are removed and the bonds are free to trade."

6. From the order:

> *Generally, the syndicate is the only source of pricing and other information about the bonds to be issued before and during the order period(s). Retail investors, in particular, must rely on communications from their broker-dealer, acting in the capacity of underwriter, to learn about pricing and other offering details before the bonds begin trading. Ultimately, the initial offering prices are printed on the cover page of the final disclosure document, known as the Official Statement ("OS"), which typically is released days after the bonds begin trading.*

7. That's from this Sifma page (the 2002 Version "MAAU Master Standard Terms and Conditions – Negotiated Offerings of Municipal Securities"). The key language seems to be on page 14:

> *You agree to make a public offering of all Securities confirmed to you by us (other than for carrying purposes) at the public offering price in effect at the time of such confirmation and to offer all other Securities acquired by you prior to the time we have advised you that no Securities are held for the account of the Account at not less than the public offering price as from time to time in effect. You may, however, (i) hold Securities that cannot be sold at the public offering price, for later sale at such prices whether above or below the public offering price in effect at the time of confirmation, as you determine, and (ii) reserve Securities for retail sale in customary amounts, even if unfilled orders from nonretail purchasers have been received.*

What does that last clause (ii) mean? I think it means that the co-managers can keep customary amounts of bonds for sale to retail customers, but the actual operation of the clause seems to be left to custom to work out.

8. Again, less fees (see footnote 3). It is perhaps clarifying to pretend that banks buy bonds at the offer price and re-sell at the offer price and get paid a fee separately, though the actual legal operation is that they buy at a discount and sell at the offer price.

9. For the AAU, see footnote 7, above.

For the bond purchase agreements, see paragraph 20 of the SEC order, which says that "Many BPAs include an explicit agreement by the syndicate to offer all of the bonds to be issued at the final offering price negotiated with the issuer." But as a co-manager, Edward Jones wouldn't sign the purchase agreement, which was executed by "the senior manager on behalf of the syndicate."

For the MSRB rules, see paragraphs 71-81 of the SEC order. Some of these rules (G-17 and G-30(a)) are about general fairness and excessive markups, but one, Rule G-11(b), does require syndicate members to identify the person for whom the order is submitted, and the SEC says that Edward Jones fudged that identification to get bonds for itself. This sort of thing does seem to be what Rule G-11(b) is meant to prevent; on the other hand, you can't really say that the harm that Edward Jones did came from improper identifications on syndicate forms. And even this comes down to questions of custom; see paragraph 31 of the order ("Pursuant to industry practice and MSRB rules, a group net order can be placed for a dealer's own account, but it would have to be disclosed that the order was for stock, that is, for the dealer's own account.").

10. *See paragraphs 65-70 of the SEC order, particularly 65-66:*

> *Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." Negligence is sufficient to establish a violation of Sections 17(a)(2) and 17(a)(3); no finding of scienter is required. Aaron v. SEC, 446 U.S. 680, 696-97 (1980).*
>
> *An underwriter "occupies a vital position" in a securities offering because investors rely on its reputation, integrity, independence, and expertise. Municipal Securities Disclosure, Exchange Act Release No. 26100, 1988 WL 999989 at 20 (Sept. 22, 1988). "By participating in an offering, an underwriter makes an implied recommendation about the securities." Id. "An underwriter must investigate and disclose material facts that are known or reasonably ascertainable." Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634, 641 (D.C. Cir. 2008) (citing Municipal Securities Disclosure, Exchange Act Release No. 26100, 1988 WL 999989 at 20). "Although other broker-dealers may have the same responsibilities in certain contexts, underwriters have a 'heightened obligation' to ensure adequate disclosure." Id.*

11. *I mean, not really, I'm being rhetorical here. (Another super-not-legal-advice sentence.) But, materiality, reliance, blah blah blah.*

Bloomberg

By Matt Levine

15 AUG 14, 2015 4:01 PM EDT

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

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Observers: SEC Delay on MA Conduct Rule May Foreshadow Changes.

WASHINGTON — The Securities and Exchange Commission has asked for an extension to decide whether to approve the Municipal Securities Rulemaking Board's proposed Rule G-42 on the core duties of municipal advisors.

The request for more time, published late last week, is the second extension the SEC has sought. Some observers say that means the SEC may have some concerns about the proposal and that the commission and the MSRB may be negotiating some changes.

The proposed core conduct rule has already gone through three comment periods – two with the MSRB and one with the SEC, the latter of which generated 15 comment letters. Most of those commenting raised concerns. The SEC plans to solicit more comments on the proposed rule in the 30 days after its order to extend its consideration of it is published in the Federal Register. It will have an additional 90 days from Aug. 6 to determine whether to approve the MA proposal.

The MSRB has not yet responded to the 15 comments made to the SEC, but said in a release Friday that it plans to reply soon through a letter that will be made available on its website. The delay in filing a response letter is another indication changes may be coming on the proposal, observers said.

The proposed rule delineates how MAs would comply with the fiduciary duty they owe municipal issuer clients – a duty to put clients' interests first that was mandated by the Dodd-Frank Act. MAs would have less stringent "duty of care" requirements in dealing with all other clients. Under the duty of care requirements, MAs would have to: exercise "due care" in their work; be qualified to provide advisor services; conduct a "reasonable inquiry" into the background of a client's request; and show they've done a reasonable investigation to ensure their advice is appropriate.

Dealer groups and issuers have been concerned about several portions of the rule, including one that would prevent an MA from acting as a principal in transactions with issuer clients that are directly related to transactions on which the MA is providing advice. Both dealers and issuers have argued for a narrower ban, with the Securities Industry and Financial Markets Association saying in its May letter that the ban should not apply to business affiliates of a firm that had no knowledge of an MA relationship between a municipal client and the MA.

Groups also asked for several clarifications on language in the proposal, including what constitutes reasonable diligence in confirming advice is suitable for MA clients.

The MSRB's planned letter in response to the comments the SEC received in late May could lead several of the groups who commented before to do so again, representatives of several of those groups said.

The Bond Buyer

by Jack Casey

AUG 7, 2015 3:27pm ET

MSRB to Cut Underwriting Fee; Raise Initial, Annual Fees.

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An amendment to Rule A-13 on underwriting and transaction fees will reduce the underwriting fee to $0.0275 per $1,000 of the par value of primary offerings from the current $0.03 per $1,000 of par value. That change will be implemented on Jan. 1.

The fee changes, which were filed with the Securities and Exchange Commission late Monday, are the result of a “holistic fee review” the MSRB said it undertook to balance its projected surplus in its technology fund with potential decreases in its future operating revenues.

The MSRB said the changes are “effectively revenue neutral” and support its “continuous and ongoing efforts” to “reasonably distribute fees among all regulated entities based on the level of involvement by brokers, dealers, municipal securities dealers and municipal advisors in the municipal securities market.”

The annual fee has not changed since 2009 and in 2014 it only covered 3.5% of the MSRB’s total expenses instead of the 5% it had covered in 2009, even as the number of regulated entities rose. The MSRB said the annual fee is “the primary way dealers share in the costs and expenses of operating and administering” the board and said the increase is a way for entities to “more fairly contribute” to MSRB costs.

The increase in the initial fee will be the first since the fee was adopted in 1975. The MSRB called the higher fee “reasonable” and said it would help defray a significant portion of administrative and operational costs.

Of the more than 2,000 dealers and municipal advisors registered with the MSRB in 2014, only about 140 dealers were assessed underwriting fees and 840 were assessed transaction and technology fees, according to the regulatory notice.

Among the “highly concentrated” group of regulated entities paying these market activity fees, less than a dozen dealers accounted for about 52% of the payments. These findings led the MSRB to lower underwriting fees because the dealers who primarily pay them are also most of the payers of the transaction and technology fees.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said BDA appreciates the MSRB’s effort to create a more balanced distribution of fees among all regulated entities.

“The BDA’s historical concerns have always been that the broker dealer underwriting fees finance the majority of the MSRB’s operation,” Giroux said. “However, it appears that the MSRB has taken such concerns into consideration as they evaluated their new fee structure.”

Securities Industry and Financial Markets Association managing director and co-head of municipal securities Michael Decker said SIFMA is continuing to vet the MSRB’s fee changes, but that they “won’t appropriately balance the MSRB’s expenses among all the regulated parties” because the board still does not require non-dealer municipal advisors “pay their fair share of the MSRB expenses.”

He also said a separate proposal in the MSRB’s regulatory notice to permanently collect the technology fee, $1.00 per transaction for each interdealer and customer sale report to the board, goes back on an understanding market members had when the rule was approved in 2011 as a temporary measure until the MSRB’s capital reserve rose to an appropriate level.

The MSRB will no longer allocate the money collected from the technology fee specifically for capitalized hardware and software expenses, it said in the notice. Instead, the revenue will be generally used “for the most appropriate organizational uses,” the MSRB said.

The Bond Buyer

by Jack Casey

AUG 11, 2015 1:21pm ET

BDA Testifies Before U.S. Department of Labor on Fiduciary Duty.

BDA CEO Mike Nicholas testified before the U.S. Department of Labor (DOL) regarding its proposal to expand the definition of "fiduciary" under the Employee Retirement Income Security Act (ERISA).

In his remarks, Nicholas focused on how the proposed expansion would significantly limit the ability of dealers to provide investment advice and recommendations to retirement investors. You can find his prepared remarks here.

Specifically, Nicholas spoke about how the BDA does not believe the proposed rule or the associated exemptions represent the right approach for improving the market for retirement investment advice and services. He further stated that the proposal naturally favors an investment advisory business model over a commission-based brokerage model.

BDA recommendations and concerns include the following:

- The BDA encourages and supports a harmonized multi-agency approach in which the DOL and SEC develop a uniform best interest standard of care
- The BDA believes the Best Interest Exemption is not in the best interests of investors and is especially concerning given restrictions on transactions in taxable or tax-free municipal bonds
- The Principal Trading Exemption explicitly restricts investor asset choice and ignores the existing broker-dealer regulatory regime

In additional to Nicholas' testimony, BDA has submitted a comment letter to the Labor Department regarding its request for comment. BDA's letter recommends the DOL to take an alternative approach and urges the DOL work with SEC to craft a rules-based uniform best interest standard of care for investors generally, not just retirement investors.

08-13-2015

Puerto Rico Investors Win Relief From UBS.

Mom-and-pop investors facing steep losses in Puerto Rico municipal-bond funds are starting to get some money back, following legal victories against the unit of UBS Group AG that sold the funds.

Investors scored their latest win on Tuesday. UBS was ordered to pay about $2.5 million to a San Juan couple who bought Puerto Rico bond funds that plummeted in value as the island commonwealth's financial crisis deepened, according to law firms Sonn & Erez PLC and Aldarondo & Lopez-Bras PSC, which represented the plaintiffs. The investors had requested up to $6 million in damages.

Earlier this year, UBS was ordered to pay nearly $1.5 million, out of about $5.8 million requested, to investors in three other cases regarding the Puerto Rico bond funds. The cases were decided by arbitrators from the Financial Industry Regulatory Authority, which resolves disputes between brokers and their clients.

The Swiss bank said it faces more than $1.1 billion in damages tied to its Puerto Rico activities. Roughly 900 cases have already been filed with Finra, and lawyers are preparing to file more in the wake of Puerto Rico's first-ever municipal-bond default this month. More investor losses are likely as the island commonwealth seeks to restructure a debt load that Gov. Alejandro García Padilla has said is unpayable.

UBS said investors in the funds received excellent returns for years, which often exceeded the broader bond market. It said that a roughly $250,000 award in a recent case was only a small portion of what was sought and doesn't indicate how future cases will be decided.

Each dispute is "based on the facts and circumstances particular to the individual claimant," UBS said. A UBS broker won one Finra case in which an investor had requested about $9,000 in damages. That investor didn't have legal representation.

"Before it's over, UBS is going to pay hundreds of millions of dollars, maybe more than a billion dollars, over what happened in Puerto Rico," said Craig McCann, president of Securities Litigation & Consulting Group, which is working for individual investors in some of the cases against UBS. "You would think at some point, either the individuals or the corporate entities would see that they have to be more careful about what they're selling investors."

Investors say UBS brokers told them that the Puerto Rico bond funds were safe, when in fact they were heavily invested in just a few Puerto Rico bond issues, and had used leverage, a risky strategy, to improve returns. They also say UBS reaped millions of dollars in fees by selling and trading the funds and that investors didn't know that UBS largely controlled the market for the funds, making them illiquid and prone to outsize price swings.

The risks of the funds became apparent in mid-2013, when worries about Puerto Rico's finances caused prices on the island's bonds to fall, according to the investor claims. In 2013, roughly $3 billion of the funds' market value was wiped out, according to an analysis from Mr. McCann's firm.

UBS has disclosed that federal regulators are investigating whether one broker improperly encouraged investors to take out loans so they could buy more shares in the funds. UBS has said it is cooperating with the inquiry.

One UBS broker, Jose Ramirez, has been fired and is the focus of a criminal investigation by the Justice Department, The Wall Street Journal previously reported. At the time, an attorney for Mr. Ramirez said it was "sheer speculation" who was the subject of the probe.

The Securities and Exchange Commission also recommended bringing an action against a current UBS broker, Ramiro Colon, for failure to supervise, according to broker records. Mr. Colon intends to "vigorously defend" against the allegations, the records show.

UBS declined to comment on Mr. Ramirez and Mr. Colon. The SEC and Justice Department declined to comment.

Some of the cases filed by individual investors have been settled, at times for millions of dollars. For those that go to a hearing, the Finra-trained arbitrators who preside aren't required to write opinions explaining their decisions. But they issued an opinion in May, when they awarded Juan Burgos Rosado $1 million to compensate him for his losses.

The arbitrators said Mr. Rosado was “at age 66 essentially a first-time senior investor with no experience” and “that a proper effort to know her customer would have revealed that to his broker.”

For many investors, “their life savings are invested in these kinds of funds,” said W. Scott Greco, a lawyer at Greco & Greco PC whose client won an award against UBS. “However small that may be to UBS, it’s a very large amount for them.”

In a case decided last month, one of the plaintiffs, Francisco Ramis, was a business executive in an aluminum door and window business and was looking for a safe investment that would provide funds for him and his wife after he retired, according to legal documents. He knew Mr. Ramirez, the ex-broker scrutinized by the Justice Department, since childhood.

A lawyer for Mr. Ramirez, Guillermo Ramos-Luiña, said the award was exclusively against UBS. “We have contested all the allegations,” he said.

Mr. Ramis initially asked for approximately $3.1 million, an amount that included punitive damages, and received about $250,000. Mr. Ramis and his wife are happy they won a damage award, said Francisco Pujol, an attorney in San Juan who represented the couple.

“He really trusted the broker completely because of their friendship,” Mr. Pujol said.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Updated Aug. 11, 2015 11:06 p.m. ET

Write to Mike Cherney at mike.cherney@wsj.com

Edward Jones to Pay $20 Million to Settle SEC Municipal Bond Charges.

The Securities and Exchange Commission, moving against abusive practices in the municipal-bond industry, penalized a major brokerage firm for overcharging customers.

Edward Jones will pay $20 million to settle charges that the St. Louis-based firm and Stina R. Wishman, the former head of its municipal underwriting desk, improperly sold new bonds to customers at prices higher than those negotiated with bonds’ issuers, the SEC said. The agency said the firm’s practice cost customers at least $4.6 million.

It is the SEC’s first pricing-related case against an underwriter selling new municipal securities.

Edward Jones and Ms. Wishman settled without admitting or denying the SEC’s findings. An Edward Jones spokesman said the firm will fully compensate the 13,000 current and former clients who were overcharged between 2009 and 2013. The firm said it cooperated fully with the SEC investigation and has taken steps to enhance its municipal-bond business.

A lawyer representing Ms. Wishman couldn’t immediately be reached for comment.

Some analysts said the case opens a new front for the SEC’s enforcement efforts in the sale of bonds backed by state and local government-related entities, showing a changing focus from problems related to disclosure to those related to pricing. SEC commissioners Luis Aguilar, Daniel Gallagher, Kara Stein and Michael Piwowar said in a statement the case illustrates the need for better rules on transparency in bond pricing.

"The Commission's recent enforcement action against [Edward Jones] involving the offer and sale of municipal bonds to retail investors highlights the need for clear rules requiring the disclosure of mark-ups and mark-downs," they wrote, urging the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board to complete rules mandating increased price transparency. "If not, we believe the Commission should propose rules to address this important issue," they wrote.

Chairwoman Mary Jo White said in June 2014 that the SEC would work with Finra and the MSRB on rules for increased pricing transparency, saying the importance of such disclosure was greater in the current low interest-rate environment, where brokers' compensation can measurably impact investors' returns.

"This information should help customers assess the reasonableness of their dealer's compensation and should deter overcharging," she said.

Small investors make up around 70% of the $3.7 trillion municipal bond market, either individually or through mutual funds. But researchers have found that significant markups persist on municipal bonds sold to retail investors, long after similar practices in other markets have largely been swept aside by changing technology, competition and enforcement efforts.

Elaine Greenberg, partner in the securities litigation, investigations and enforcement practice at Orrick, Herrington & Sutcliffe LLP, said the case sends a message to municipal-market participants that the SEC is on the hunt for violations of securities law or MSRB regulations in both the primary and secondary markets.

"They're really looking at all aspects of the market, whether it's disclosure, market structure or pricing," she said. Ms. Greenberg previously served as head of the SEC's specialized unit on municipal securities and public pensions.

The SEC said that Edward Jones took new bonds into inventory, then wrongly sold them to customers at higher prices.

In some cases, the firm didn't offer the bonds to its customers until secondary trading began, then sold them at inflated prices. The SEC also charged the firm with failing to adequately supervise some secondary-market trades.

The settlement includes about $5.2 million in payments to current and former customers who were overcharged, the SEC said. Ms. Wishman agreed to pay $15,000 and will be barred from working in the securities industry for at least two years. Edward Jones now discloses the percentage and dollar amount of markups on all fixed-income trade confirmations to retail customers, the SEC said.

A marketwide study by Securities Litigation and Consulting Group found that investors paid $10.6 billion in markups across $2.5 trillion worth of municipal bond trades between 2005 and 2013, more than half of which were excessive. Fees have been dropping, yet remain above those charged in other, more transparent markets such as stocks, according to S&P Dow Jones Indices LLC, part of McGraw Hill Financial.

"It's a very visible and painful warning that will put a fire under other firms that aren't fully compliant with SEC rules," said Matt Fabian, partner at Concord, Mass.-based research firm Municipal Market Analytics. "It's important that customers have faith in the prices on municipal bonds offered for sale."

The SEC called the municipal-bond market "illiquid and opaque" in a 2012 report and called for greater protections for investors.

The report said transaction costs and markups are typically higher for individual investors than for institutions, unlike in U.S. equity markets, and some studies have shown that "the opacity of the market contributes to the relatively higher prices paid by retail investors."

The SEC's efforts since have included settlements with underwriting firms for making false statements or omissions in bond documents, brokerages for improperly selling junk-rated Puerto Rico bonds to individual investors, and states for failing to disclose the risk of unfunded pension obligations on the repayment of municipal bonds. The agency has even sought to ban local officials from the market for their involvement in alleged fraud.

Andrew Ceresney, director of the SEC's Enforcement Division, said Thursday's move demonstrates the SEC's commitment to maintaining the integrity of the market, which he called critical to financing U.S. infrastructure such as bridges and schools.

"It also further illustrates our continued focus on the municipal market and ensuring that participants in this market follow all legal requirements," he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated Aug. 13, 2015 8:43 p.m. ET

—Chelsey Dulaney
contributed to this article.

Write to Aaron Kuriloff at AARON.KURILOFF@wsj.com

Edward Jones to Pay $20M to Settle Federal Bond Sales Probe.

ST. LOUIS — Edward Jones has agreed to pay more than $20 million to settle claims by federal regulators that the brokerage firm and its former head of municipal underwriting overcharged customers in new municipal bonds sales, the U.S. Securities and Exchange Commission announced Thursday.

The SEC described the case as its first against an underwriter for pricing-related fraud in the primary market for municipal securities. The commission declined to specify the prevalence of such misconduct, saying only that its investigation was continuing.

Municipal bonds are debt securities issued by states, cities, counties and other governmental entities typically to finance long-term public projects such as building schools, highways or sewer systems.

Underwriters are required to offer new bonds to their customers at the "initial offering price," which is negotiated with the bonds' issuer. But the SEC said it found that largely between 2009 and 2012, Edward Jones and Stina Wishman — then chief of the firm's municipal bond underwriting desk —

instead took new bonds into the firm's own inventory and improperly offered them to customers at higher prices.

Edward Jones sometimes didn't offer the bonds to customers until after trading began in the secondary market, then offered them at prices higher than the initial offering price, the SEC said.

Edward Jones' customers paid at least $4.6 million more than they should have for new bonds. Under the settlement $5.2 million will be distributed to those past and current clients, which Edward Jones spokesman John Boul said Thursday number roughly 13,000.

"We know who they are and what amount they will be compensated" with interest, Boul told The Associated Press, adding that Edward Jones cooperated fully with the SEC's probe and never hid the scrutiny, having disclosed in SEC filings since 2012 that it was the target of an investigation.

"We are pleased to have this matter resolved," he said.

The SEC said Wishman will pay $15,000 and is barred from working in the securities industry for at least two years.

The St. Louis-based firm also was accused of supervisory shortcomings in its review of municipal bond trades on secondary markets, specifically in monitoring whether the firm's markups charged to customers for certain trades were reasonable.

Neither Edward Jones nor Wishman admits violating any federal securities laws. The SEC credited the firm with recently undertaking "a number of remedial efforts," including disclosing the percentage and amount of markups on all fixed-income retail order trade confirmations in principal transactions.

Andrew Ceresney, head of the SEC's enforcement division, said Edward Jones "undermined the integrity of the bond underwriting process," and that the first-of-its-kind enforcement action "reflects our commitment to addressing abuses in all areas of the municipal bond market."

By THE ASSOCIATED PRESS
AUG. 13, 2015, 12:40 P.M. E.D.T.

MSRB Updates Professional Exams to Include Recent Rule Changes.

WASHINGTON — The Municipal Securities Rulemaking Board late Friday filed with the Securities and Exchange Commission revised content outlines to its qualification exams for municipal fund securities limited principals, municipal securities representatives, and municipal securities principals that will bring the tests in line with recent MSRB rule changes. The changes to its Rule G-3 on personal qualification requirements, were effective immediately following the filing and will be implemented on Aug. 31, according to the regulatory notice published by the board. They updated the exams to reflect recent rule requirements and rule citations.

The exams for municipal fund securities limited principals and municipal securities representatives, Series 51 and 52, respectively, are designed to measure candidates' "knowledge of rules, rule interpretations and federal statutory provisions" applicable to their respective duties as well as a candidate's ability to apply the rules, interpretations and federal statutory provisions in specific situations, the MSRB said.

Those trying to qualify as a municipal fund securities limited principal must also have previously or concurrently qualified as a general securities principal or investment company or variable contracts limited principal.

Municipal fund securities limited principal candidates have one and one-half hours to complete the Series 51 examination, which consists of 60 multiple-choice questions, and municipal securities representative candidates have three and one-half hours to complete the Series 52 exam, which consists of 115 multiple-choice questions.

The Series 53 examination for municipal securities principal candidates assesses the participants in the same areas as the Series 51 and 52 exams, Candidates are given three hours to answer the exam's 100 multiple-choice questions.

In addition to bringing the Series 53 exam in line with current rules, the MSRB also updated the weightings placed on five of the exam's six parts. The first section, on federal regulations, will stay weighted at 4%, but the second topic area, on general supervision, changed to 23% from 21% of the exam and the third topic area, on sales supervision, changed to 25% from 29%. The fourth topic area, on origination and syndication, changed to 23% from 22%, the fifth topic area, on trading, changed to 10% from 8%, and the sixth topic area, on operations, changed to 15% from 16% of the examination.

The changes were necessary because of a reorganization of rules within the topic areas. There were no substantive changes to the topic areas the exam covers, the board said.

THE BOND BUYER

by Jack Casey

AUG 3, 2015 1:28pm ET

Proposed MSRB Rule G-42 Moves to Additional Phase of Rulemaking.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) announced today that the Securities and Exchange Commission (SEC) has ordered the MSRB's proposed rule to establish core standards of conduct for municipal advisors into an additional phase of the rulemaking process. Proposed MSRB Rule G-42, which the MSRB filed with the SEC for approval in April 2015, is designed to serve as the cornerstone of the MSRB's developing regulatory framework for municipal advisors that was outlined in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

In 2014, the MSRB twice sought industry and public feedback on draft versions of proposed Rule G-42. Following filing with the SEC, proposed Rule G-42 was published in the Federal Register on May 8, 2015, and the SEC's initial 45-day period to approve or disapprove the proposed rule was extended an additional 45 days, until August 6, 2015.

On August 6, 2015, the SEC began an additional phase of rulemaking on the proposed rule pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (Exchange Act), which may last up to 90 days, during which time the SEC determines whether to approve or disapprove the MSRB's proposed rule. As stated in the SEC's order, this procedural step has been taken to allow for additional analysis and does not indicate the SEC has reached a conclusion or will ultimately disapprove the proposed rule. The SEC invites additional comment from interested parties for 30 days following publication of its order in the Federal Register. View the SEC order.

In the interim, the MSRB plans to respond to issues that have been raised by earlier commenters on proposed Rule G-42 in a letter to the SEC that will made available on the MSRB's website. The MSRB will continue to inform market stakeholders as this key rule proposal proceeds through the federal rulemaking process.

The stages of the rulemaking process that apply to self-regulatory organizations are set forth in the Exchange Act and SEC implementing regulations.

Date: August 7, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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Municipal Securities Trading Activity Rises in Second Quarter.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released municipal market statistics for the second quarter of 2015, showing a significant increase in the number of municipal securities trades compared to previous quarters. Municipal securities trading activity increased 14 percent in the second quarter of 2015 to 2.56 million trades, up from 2.24 million trades in the second quarter a year ago. The number of trades in the second quarter of this year was also up 14 percent from the previous quarter and is the highest quarterly number of trades since late 2013.

The MSRB, which regulates the municipal market, is the official source of municipal market trading and disclosure data, and operates the free Electronic Municipal Market Access (EMMA®) website that disseminates the information in real time. The website also houses aggregate trading, disclosure and new issuance data.

Other second quarter 2015 municipal securities trading highlights:

- Par amount traded increased slightly to $742 billion, compared to $739 billion traded in the same period in 2014.
- Customer buying activity also increased, with an average of 17,009 customer purchases each day in second quarter 2015, accounting for 58 percent of the 40,606 total daily trades. Last year's second quarter average was 15,327 and 35,504 total trades.
- The volume of interest rate resets on municipal variable rate demand obligations (VRDOs) rebounded slightly from first quarter 2015, totaling 135,556 in the second quarter compared to 133,898 in the previous quarter. The 2015 numbers continue to show a decline compared to previous years.

The MSRB's quarterly statistical summaries include aggregate market information for different types of municipal issues and trades, and the number of interest rate resets for variable rate demand obligations and auction rate securities. The data also include statistics pertaining to continuing disclosure documents received through the MSRB's EMMA website.

The EMMA website is a centralized online database operated by the MSRB that provides free public access to official disclosure documents and trade data associated with municipal bonds. In addition to current credit rating information, the EMMA website also makes available real-time trade data and primary market and continuing disclosure documents for over one million outstanding municipal bonds, as well as current interest rate information, liquidity documents and other information for most variable rate municipal securities.

Date: August 5, 2015

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MSRB Announces New Officers and Board Members for Fiscal Year 2016.

Alexandria, VA – The principal regulator of the municipal securities market, the Municipal Securities Rulemaking Board (MSRB), today announced new officers and members of its Board of Directors who will begin their terms on October 1, 2015. The Board makes policy decisions, authorizes rulemaking and oversees the operation of the MSRB's Electronic Municipal Market Access (EMMA®) website. In the coming year, the MSRB will be addressing municipal market structure issues, including additional price transparency for investors, among other topics.

Nathaniel Singer, Senior Managing Director at Swap Financial Group, will serve as Chair of the Board. Colleen Woodell, former Chief Credit Officer of Global Corporate and Government Ratings for Standard & Poor's, will serve as Vice Chair.

New members of the MSRB Board of Directors represent the public as well as entities regulated by the MSRB. New public representatives are Ronald Dieckman, former Senior Vice President at J.J.B. Hilliard, W.L. Lyons; Megan Kilgore, Assistant City Auditor at the City of Columbus Auditor's Office; Mark Kim, Chief Financial Officer at the District of Columbia Water and Sewer Authority; and Andrew Sanford, Senior Vice President at the Chubb Corporation. Joining the Board as bank representatives are Ed Tishelman, Managing Director and Head of the TD Securities Municipal Finance Group, and Dale Turnipseed, Executive Director at J.P. Morgan. Renee Boicourt, Managing Director and Partner for Lamont Financial Services Corporation, joins the Board as a municipal advisor representative.

"The MSRB is gaining a striking level of municipal securities expertise with the new Board members and outstanding leadership," said MSRB Chair Kym Arnone. "I have known Nat and Colleen for decades and they rank among the most committed and knowledgeable market experts. They will ensure that the MSRB continues to fulfill its important mission to protect investors, municipal entities and the public interest. I am also excited to welcome seven new Board members whose deep experience and knowledge about the municipal market will contribute to the important policymaking efforts of the MSRB."

All MSRB Board members are required to be knowledgeable about the municipal securities market and are selected from a large group of applicants. New Board members will each serve three-year terms.

MSRB Officers and New Board Members, Fiscal Year 2016

Chair-Elect Singer has served on the Board since 2013 where he chairs the Finance Committee and serves as a member of the Steering Committee. He is also Senior Managing Director at Swap Financial Group, where he is responsible for analyzing strategies, policies and pricing of municipal bonds and derivative-based products. Prior to his position at Swap Financial Group, Mr. Singer was Senior Managing Director and Chief Operating Officer for Bear Stearns & Co. Inc.'s municipal bond department. Mr. Singer has been a guest lecturer at Princeton University's Woodrow Wilson School of Public and International Affairs and its Operations Research and Financial Engineering program, is an Independent Trustee for Reality Shares ETF Trust and is a former board member of Princeton University's Department of Engineering. He has also served as an advisor to the Government Accounting Standards Board in the design and implementation of GASB Statement No. 53 and No. 64, on Accounting and Financial Reporting for Derivative Instruments. Mr. Singer graduated magna cum laude from Princeton University with a bachelor's degree in engineering.

Vice Chair-Elect Woodell has been an MSRB Board member since 2013. She currently serves as Chair of the Nominating and Governance Committee, and is a member of the Steering Committee. Ms. Woodell is the former Chief Credit Officer of Global Corporate and Government Ratings for Standard & Poor's. Prior to this role at Standard & Poor's, she was S&P's Chief Quality Officer and Team Leader for U.S. Public Finance. Ms. Woodell has also worked for First Albany Corporation, Fitch Investors Service and Moody's Investors Services. She is a former member of the Analytic Policy Board at Standard & Poor's and a past president and member of the Board of Governors of the Municipal Forum of New York. Ms. Woodell has a bachelor's degree from Wells College.

Renee Boicourt is Managing Director and Partner for Lamont Financial Services Corporation, where she provides transactional and strategic advice to the States of Louisiana and Wisconsin, the New York Power Authority, and the New York City Municipal Water Finance Authority. Renee has also advised the municipal bond insurers regarding Jefferson County, Alabama and Detroit, Michigan. Prior to joining Lamont Financial Services Corporation, Ms. Boicourt was Managing Director for High Profile Ratings at Moody's Investors Service, where she managed ratings for the 50 states, the U.S. territories, the largest cities, as well as airports, surface transportation, and power and water utility issuers. Ms. Boicourt received a bachelor's and master's degree in public policy from University of California, Berkeley.

Ronald Dieckman was until 2011 Senior Vice President and Director of the Public Finance and Municipal Bond Trading and Underwriting Department at J.J.B. Hilliard, W.L. Lyons. Mr. Dieckman worked for J.J.B. Hilliard, W.L. Lyons from 1977 to 2011 and held positions as Vice President of its municipal bond trading and underwriting department and as manager of the Ohio municipal bond trading and underwriting department. Mr. Dieckman received a bachelor's degree from University of Cincinnati.

Megan Kilgore is Assistant City Auditor at the City of Columbus, Ohio. Ms. Kilgore is responsible for the debt administration for the City, including the issuance and management of all debt. She is also an Adjunct Professor at The Ohio State University's John Glenn College of Public Affairs where she teaches a graduate-level course in public finance. Ms. Kilgore is the founder and president of Ohio Women in Public Finance, a statewide organization dedicated to advancing women's leadership opportunities in public finance by providing education, networking and career resources. She is a 2015 Women for Economic Leadership and Development (WELD) Women You Should Know honoree and a recipient of the 2012 Women in Public Finance's Rising Star Award. Ms. Kilgore received a bachelor's degree from The Ohio State University and a master's degree in public policy and administration from Northwestern University.

Mark Kim is Chief Financial Officer at the District of Columbia Water and Sewer Authority (DC Water), where he is responsible for ensuring the long-term financial sustainability of the largest advanced wastewater treatment plant in the world, serving over 2.2 million customers residing in the District of Columbia, Maryland and Virginia. Prior to his position at DC Water, Mr. Kim was Deputy Comptroller for Economic Development for the City of New York, where he directed the economic development agenda of the Office of the Comptroller, including oversight of several city agencies, asset management, and economic research and policy. He also served as Assistant Comptroller for Public Finance for the City of New York. Earlier he was Vice President at Fidelity Capital Markets, Vice President at Goldman, Sachs & Co. and Assistant Vice President at UBS Investment Bank. Mr. Kim received a bachelor's degree from Northwestern University, a law degree from Cornell University Law School and a Ph.D. in public policy from Harvard University.

Andrew Sanford joined The Chubb Corporation in 2013 as a Senior Vice President. He is the senior portfolio manager of municipal bond investments, overseeing a portfolio of approximately $20 billion. He is also a member of the Chubb Investment Department fixed income strategy team. Prior to joining Chubb, Mr. Sanford was a Managing Director at RBC Capital Markets where he managed the Tender Option Bond program and the Direct Purchase portfolio. He also held positions as Managing Director at IXIS Capital Markets, Managing Director at Travelers Investment Group/ Citgroup Asset Management, Vice President at Blackrock Financial Management, Assistant Vice President at Fiduciary Trust International and Trading Assistant at Chase Manhattan Bank. Mr. Sanford received his bachelor's degree from the University of Pennsylvania and a master's degree in business administration from New York University Stern School of Business.

Ed Tishelman is Managing Director and Head of the TD Securities Municipal Finance Group, where he is responsible for public finance, as well as the underwriting, trading and distribution of all municipal securities and products. Prior to this position, Mr. Tishelman led the municipal underwriting desk at Bank of America. Earlier he was also Co-head of Municipal Underwriting at JP Morgan, which he joined as a municipal bond salesman and later served as national sales manager. He began his career in municipal finance as a trader at E.F. Hutton and went on to trade municipal bonds institutionally for 16 years, serving as Head of Trading at PaineWebber. Mr. Tishelman received a bachelor's degree from University of Vermont.

Dale Turnipseed is an Executive Director at J.P. Morgan, where he is a municipal bond salesman. Prior to joining J.P. Morgan, Mr. Turnipseed was an institutional tax-exempt salesman at Bear Stearns, where he covered mutual funds, investment advisors and insurance companies. Earlier he was an institutional tax-exempt salesman at First Albany Corporation for 17 years. Mr. Turnipseed received a bachelor's degree from Columbia College, Columbia University.

Date: August 4, 2015

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MSRB Holds Quarterly Meeting.

Alexandria, VA – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 29-30, 2015 where it discussed several rulemaking proposals and corporate matters in preparation for the start of the organization's upcoming fiscal year.

Regulatory Topics

The Board discussed its earlier proposal to require dealers to provide pricing reference information for municipal securities transactions on retail customer confirmations and has directed staff to prepare a second proposal for public comment.

"Based on the feedback we received, the MSRB is developing a new proposal on disclosure of markups and markdowns for a category of principal transactions of municipal securities," said MSRB Chair Kym Arnone. "We are interested in hearing the merits of this approach in comparison with our first proposal to help investors understand the transaction costs and pricing of a municipal bond trade." The MSRB plans to publish its markup proposal in the near future, which will also seek comment on several modifications to the MSRB's initial proposal as an alternative to the preferred new approach. In addition the MSRB will continue to coordinate with the Financial Industry Regulatory Authority (FINRA) on the general subject of confirmation disclosure.

The Board also reviewed draft guidance for dealers on the MSRB's new best-execution rule, which will be finalized in the coming weeks to ensure that dealers have additional guidance to implement new Rule G-18 by the December 2015 effective date. Rule G-18, on best execution, requires dealers to seek the most favorable terms reasonably available for their retail customers' transactions, a step that supports existing MSRB rules and is a key investor protection.

"We are eager to provide the market with additional guidance on the implementation of this important rule," Arnone said. "We believe the guidance will help ensure investors see a consistent application of the order-handling principles outlined in the best-ex rule."

Both MSRB rulemaking initiatives advance the vision outlined in the MSRB's long-range plan for market transparency and align with recommendations in the SEC's July 2012 report on the municipal securities market.

At its meeting, the Board also discussed comments received on its proposal to modify the application of the standard of independence under MSRB Rule A-3 for the public member of the Board designated to be representative of institutional or retail investors in municipal securities. The Board agreed to continue to discuss ways to ensure that it can benefit from the expertise and knowledge of municipal market participants such as institutional investors as it discusses complex market structure issues.

The Board directed staff to develop a rule proposal on changes to MSRB Rule G-12, on uniform practice, to address outdated requirements for close-out procedures for dealers purchasing municipal securities. The proposal will be a part of the MSRB's ongoing regulatory efficiency initiative that has resulted in a number of updated and streamlined MSRB rules.

The Board discussed the securities industry's voluntary initiative to shorten the settlement cycle from the current T+3 cycle to T+2 and agreed it would support any associated MSRB rule changes necessary to accommodate a shortened settlement cycle, contingent on the necessary decisions of other regulators.

The Board discussed MSRB Rule G-10, on the delivery of the investor brochure, and determined to continue discussions on the best ways to address the customer complaint process.

Financial and Corporate Business

Following more than a year's analysis of its fees, the Board approved a proposal to adjust several MSRB fees to align the organization's revenues with operational and capital expenses. The MSRB will file with the Securities and Exchange Commission the proposed changes to MSRB Rules A-12, on registration, and A-13, on underwriting and transaction assessments, soon. The Board discussed and approved the MSRB's annual operating plan and associated budget for the upcoming fiscal year beginning on October 1, 2015 in support of the organization's strategic goals.

Date: August 3, 2015

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MSRB to Revise Proposed Rule on Disclosing Bond Price Markups.

Aug 3 (Reuters) – The Municipal Securities Rulemaking Board is modifying a controversial proposal that would require brokers and dealers to disclose how much above their cost they sell certain municipal bonds to small investors, the regulator's executive director said on Monday.

The decision follows extensive comments from bond dealers on the costs and redundancies of building systems to comply with the rule, which was proposed last November, and the complexity of determining how to apply it.

The MSRB plans to seek comments on a new two-part proposal in September that addresses some complaints without sacrificing the customer-protection purpose of the rule. It will spell out a preferred new approach as well as a modification of the original proposal that limits the set of bonds requiring the pricing disclosure, Executive Director Lynnette Kelly told reporters.

Since there are no centralized marketplaces for buying and selling municipal and corporate bonds, as there are for trading stocks, retail investors cannot tell if they are getting reasonable prices from their dealers. Individual investors routinely pay as much as 5 percent more than institutional investors and dealers, U.S. Securities and Exchange Commissioner Luis Aguilar said earlier this year.

The MSRB is coordinating its approach to the rule with the Financial Industry Regulatory Authority, which in November published a similar disclosure proposal for corporate bonds traded by retail investors. FINRA's board in July said the regulator would issue a revised version of its proposal later this year.

Disclosure of bond markups should foster more-competitive pricing for retail customers, SEC Chair Mary Jo White and Republican Commissioner Michael Piwowar have said. The SEC must approve all rules proposed by the MSRB and FINRA.

The proposals require dealers to mark on customer trade confirmation statements how much above their cost they are selling bonds or how much below cost they are buying them from investors.

The initial rules applied to relatively small trades of 100 or fewer bonds with a maximum trade value of $100,000. They would have applied as well only to bonds that brokers or dealers acquired or sold on the same day that they made a similar trade with a retail customer.

FINRA did not elaborate on details of its proposed changes. Kelly said MSRB might modify its initial proposal to apply to a more limited set of trades requiring disclosure.

At a board meeting last week, MSRB directors also voted to give municipal bond dealers guidance within the next few weeks on a new best-execution rule that takes effect in December.

(Reporting by Jed Horowitz; Editing by Chizu Nomiyama and Lisa Von Ahn)

MSRB Revises Content Outlines for its Professional Qualification Examinations for Municipal Securities Dealers

The Municipal Securities Rulemaking Board (MSRB) today filed a proposed rule change with the Securities and Exchange Commission (SEC) to revise the content outlines for the Municipal Fund Securities Limited Principal Qualification Examination (Series 51), Municipal Securities Representative Qualification Examination (Series 52) and the Municipal Securities Principal Qualification Examination (Series 53).

The revisions to the content outlines are effective immediately and will be implemented on August 31, 2015, 30 days following the filing date.

Read the regulatory notice.

Read the filing.

Read more about MSRB professional qualification exams.

NABL 2015 Nominating Committee Report.

The 2015 Nominating Committee released the slate of officers and directors nominated for the 2015-2016 NABL Board of Directors. The election will be held at the 2015 Annual Meeting on Wednesday, September 9 at the Fairmont Chicago in conjunction with the 40th Annual Bond Attorneys' Workshop. All NABL members are invited to attend the Annual Meeting.

In accordance with NABL's By-laws, the Nominating Committee Report is available here.

GFOA Comments on Federal Reserve Proposal to Classify Muni Securities as High Quality Liquid Assets.

This week the GFOA submitted comments to the Federal Reserve Board on its proposal to classify some municipal securities as high quality liquid assets

(HQLA) under the Liquidity Coverage Ratio rule approved by federal regulators in 2014. The 2014 rule established a minimum liquidity requirement for large banking organizations and identified acceptable investments – deemed HQLA – to meet this requirement. However it failed to include municipal securities in any of the acceptable investment categories, despite classifying foreign sovereign debt as HQLA. GFOA raised a number of concerns with the rule before it was approved, chief among them being the great likelihood that banks will 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 altogether, if these bonds don't count toward their HQLA holdings.

In May of this year the Federal Reserve Board introduced a proposed rule that would permit some municipal securities to be classified as HQLA. GFOA's comments to the Federal Reserve are primarily focused on four areas of concern with the proposed rule – (1) classifying investment grade revenue bonds as HQLA in addition to investment grade GO municipal securities; (2) removing the proposal's restriction on a bank's holding of no more than 25 percent of the outstanding amount of any individual muni CUSIP; (3) eliminating the proposal's limitation on the amount of municipal securities a bank could include as HQLA to two times the average daily trading volume; and (4) doing away with the proposal's five percent limitation on the amount of municipal securities that banks could include in their HQLA holdings.

Fourteen other associations joined GFOA in voicing these concerns, including the International City/County Management Association, National League of Cities, U.S. Conference of Mayors, National Association of Counties and the National Association of State Auditors, Comptrollers and Treasurers.

Download the comment letter.

Thursday, July 30, 2015

NABL Announces 2015 Award Recipients.

The National Association of Bond Lawyers has announced two recipients of NABL's prestigious awards.

The Bernard P. Friel Medal recognizes distinguished service in the field of public finance. The Friel Medal will be awarded to John M. McNally, Hawkins Delafield & Wood LLP, Washington, DC. NABL President-Elect and Awards Committee Chair Ken Artin said, "John is very deserving of the award, his service in public finance has not only benefitted his clients but also the practice area nationally. For almost two decades John has been actively involved in numerous projects impacting the municipal market. He has contributed to NABL's educational programs through published memoranda, speaking engagements and publications. He served as NABL president in 2010-2011. His efforts also include participation in programs sponsored by GFOA, NAST, NFMA, SIFMA, Bond Buyer, SEC, MSRB and others organizations with the goal of assisting market participants in matters involving federal securities laws. He is an incredibly well respected securities lawyer deserving of the recognition of the Bernard P. Friel Award."

The Frederick O. Kiel Distinguished Service Award recognizes extraordinary service to NABL over an extended period of time. The Kiel Award will be presented to Robert Dean Pope of Hunton & Williams LLP, Richmond, VA. "Dean is extraordinarily deserving of the Kiel Distinguished Service Award. For decades, Dean, who served as NABL's President from 1987-88, has been a tireless contributor to NABL: countless comment letters, prodigious speaker and panelist at NABL seminar programs and workshops, and most recently, in the Fred Kiel tradition, serving as Editor of The Bond Lawyer publication. Dean unselfishly contributes to NABL every practice day — and many weekends, too — with one goal in mind: to serve NABL members' interests," said Awards Committee member, Drew Kintzinger.

The awards will be presented on Thursday, September 10, in conjunction with NABL's 40th Annual Bond Attorneys' Workshop in Chicago, IL. The 2015 NABL Awards Committee was composed of: Kenneth Artin (Bryant Miller Olive P.A., Orlando, FL), Chair; Antonio Martini (Hinkley Allen, Boston, MA), Vice Chair; Allen Robertson (Robinson Bradshaw & Hinson, P.A., Charlotte, NC); Kristin Franceschi (DLA Piper LLP, Baltimore, MD); and Drew Kintzinger (Hunton & Williams LLP, Washington, DC).

MSRB Commemorates 40th Anniversary with New Video.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released a video to commemorate its 40th year of promoting a fair, transparent and efficient municipal securities market. The seven-minute video traces the history of the market and highlights the MSRB's role in protecting the public interest in a well-functioning capital market that helps support the construction of bridges, schools and other public projects.

"As the MSRB enters its fourth decade, we celebrate the success of the municipal market in helping ensure that communities have access to needed capital and acknowledge the role of the MSRB in protecting investors and state and local governments," said MSRB Executive Director Lynnette Kelly. "We have a strong legacy of leadership and are proud to continue to uphold the integrity of this critical capital market."

The 40th anniversary video features former MSRB Board members and staff contributing their recollections about the origins of municipal market regulation, the development of the MSRB's landmark pay-to-play rules and the creation of the Electronic Municipal Market Access (EMMA®) website. The video also explores the effects of the Dodd-Frank Wall Street Reform and Consumer Protection Act on the future of municipal market regulation.

"I appreciate the many contributions of MSRB Board members, staff and market participants who have shared their time, expertise and thoughtfulness over the years to help create a regulatory framework that continues to work for this important market," Kelly said.

Watch the video.

Read more about how the MSRB has protected the public interest for the last 40 years.

Date: July 29, 2015

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Dealers, Issuers: Fed Proposal Too Strict on Munis, Would Hurt Market.

WASHINGTON – The Federal Reserve's proposed rule changes are so restrictive that they would either substantially reduce or exclude municipal securities from being considered high-quality liquid assets in banks' liquidity coverage ratios and would hurt the municipal market, dealer groups and issuers are warning.

The Fed proposed modifying its Liquidity Risk Measurement Standards in May to allow some municipal securities to be considered as HQLA. It proposed the changes after muni market participants complained about the rules jointly adopted by the Fed, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation in September 2014, that exclude munis from HQLA consideration because of concerns they are not liquid or easily marketable.

While the dealer groups and issuers sent the Fed comments letters praising its efforts to try to include some munis as HQLA, they said the proposed conditions for doing so are so strict that they are unhelpful and unworkable in some cases.

The limitations on the types of bonds allowed and the amount of holdings of such bonds the banks could have "negates the ability of an institution to use municipal bonds to comply with the liquidity coverage ratio," Mike Nicholas, the chief executive office of Bond Dealers of America, told the Fed. The dealers and issuers also said the Fed's proposed changes would be of very limited use because the OCC and FDIC have not budged from the rules established in September, which exclude all munis as HQLA. All but two of nine of the largest financial institutions that must comply with the liquidity rules are primarily regulated by the OCC, according to Fed data.

"We are seriously concerned that this amendment was not also jointly proposed by the OCC and FDIC," the Securities and Industry Financial Markets said in a letter signed by Michael Decker, a managing director and co-head of munis for the group.

The liquidity rules are designed to help the nation's largest financial institutions better cope during times of financial stress by requiring them to meet liquidity coverage ratios. An LCR is defined as the ratio of HQLA to total net cash outflows. Assets are considered HQLA if they can be easily and quickly converted to cash with little or no loss of value during a period of liquidity stress.

Under the modifications to the rules the Fed proposed in May, munis would only be eligible as HQLA if they are, at a minimum, uninsured investment grade general obligation bonds. Munis also would not qualify as HQLA if they exceed: 25% of an individual CUSIP; an amount equal to two times the average daily trading volume of an issuer's bonds over the previous four quarters; and 5% of a bank's total stock of HQLA. The "restrictions and limitations are unfounded" and "will discourage bank investment in the U.S. municipal securities market, thereby negatively affecting the ability of state and local governments to finance vital investment in domestic infrastructure," Decker said.

"The effect of these limitations on the inclusion of municipal securities within the definition of HQLAs will be to increase borrowing costs for state and local governments, including [New York City], because banks will be disincentivized to purchase and hold municipal securities," said Alan Anders, the deputy director for finance in New York City's Office of Management and Budget.

The dealer groups and issuer particularly s took issue with the exclusion of revenue bonds from consideration as HQLA, saying many revenue bonds are backed by revenues from a wide variety of systems or assets. They urged the Fed to include certain investment grade revenue bonds as HQLA.

The failure to include revenue bonds as HQLA is "based on a misconception" and "is unnecessarily excluding many of the highest quality and most liquid and actively traded municipal securities from HQLA consideration permanently," said Nicholas.

Decker and Anders both rejected the idea that a revenue bond is less secure because it is not backed by the full faith and credit of the issuer.

"A general obligation bond can be a very secure form of financing, but it is not inherently or necessarily more secure than a revenue bond," Decker wrote. Anders added it would be "preferable and more accurate" to focus on the investment grade of a bond instead of whether it is a GO or revenue security.

BDA and SIFMA also pushed the Fed to allow insured bonds to qualify as HQLA as long as they would be investment grade if uninsured.

Decker argued the bond issuer is still obligated for all debt service payments even if the bonds are insured and that investors generally look at the ability of the issuer to meet its obligations instead of the insurance "wrapping" the bonds.

"Insurance never makes bonds less liquid … but the proposal seems to reflect that as true," Decker wrote.

Build America Mutual Assurance Company CEO Sean McCarthy also urged insured bonds be considered as HQLA, saying this would "advance the [Fed's] goals for improving the security and stability of the U.S. financial system."

The dealers and issuers pushed the Fed to eliminate its CUSIP and trading volume restrictions. Nicholas said the CUSIP cap would "unreasonably restrict" HQLA status for muni bonds because, unlike corporate bonds, many large bond issues are structured with a mix of serial and term bonds with different maturities that result in multiple CUSIPS. The cap would greatly limit the amount of an overall muni offering that a bank could hold, he said.

"BDA urges the [Fed] to remove the CUSIP restriction and allow financial institutions to include investment grade municipal securities set aside as HQLA in quantities that the regulated institution believes can be sold within a 30 day period," Nicholas wrote.

SIFMA took a similar approach, saying a better way to manage the concentration of risks in bonds would be to eliminate the 25% rule and apply the "sophisticated" systems banks already have that take into account factors like the issuer, the credit quality, and the maturity.

The commenters said the trading volume restriction proposal is not only flawed but also unworkable. BDA said it is unaware of any system or source that would provide access to the kind of trading information needed to comply with the restriction. The group also said the provision is "backwards-looking" from a market perspective because it would ignore times of increased trading volume when opportunistic buyers buy bonds as yields rise.

Decker said investments that may be highly sought after in a stressed market may trade "relatively infrequently because they are held by institutional investors as buy-and-hold investments." He added that volumes can appear low when holders do not want to sell and expose themselves to taxable gains and that "there is no indication that historic trading volume, even as recent as the preceding four quarters, is an indication of liquidity."

The dealer groups and issuers also challenged, and urged repeal of, the Fed's proposed stipulation that municipal bonds only make up 5% of the overall HQLA holdings.

The established rule, which doesn't take effect until Jan. 1, 2017, already limits the overall holdings of level 2A and 2B HQLA to 40% and 15%, respectively.

Anders said there is "no basis for imposing additional limitation" on top of those "imposed on other HQLAs at the same level as municipal securities."

In addition, some of the commenters pushed for a reclassification of certain munis as level 2A, saying they are more secure than the level 2B-rated corporate bonds and thus deserve a higher rating.

Decker said it is wrong that Europe treats munis at a higher HQLA level, 2A, than the U.S. He said the discrepancy "creates an awkward situation where U.S.-specific securities are treated worse domestically than internationally."

THE BOND BUYER

BY JACK CASEY

JUL 27, 2015 5:05pm ET

Potential Risks in Voluntary Reporting of Bank Loans.

A current hot topic in the world of municipal finance is the issue of voluntary reporting of information regarding direct bank loans to governmental entities or conduit governmental entity borrowers. The Municipal Securities Rulemaking Board (MSRB) has strongly encouraged municipal issuers to voluntarily report this information, through its Electronic Municipal Marketplace Access system (EMMA).

The MSRB has published a number of notices and advisories over the last few years in support of its position that this information should be voluntarily provided. The MSRB's expressed concern is that such loans often contain terms that may adversely affect the parity position, rights or collateral of existing bondholders or the liquidity of the issuer, and that information regarding such loan terms, and the risks presented to bondholders, is not readily available to the secondary market.

Inextricably intertwined with this voluntary reporting initiative is the consideration of whether governmental notes issued as part of these loans constitute municipal securities under federal securities laws. Characterization of bank loans as securities potentially subjects the issuer and other participants in the transaction to anti-fraud and other provisions of federal securities laws and regulations enforced by MSRB, the U.S. Securities and Exchange Commission (SEC) and other regulators.

The MSRB first raised the issue of the potential application of the federal securities laws to bank loans when it published Notice 2011-37 on Aug. 3, 2011, aimed generally at municipal advisers involved in such loans. The MSRB stated that if such loans were properly characterized as a municipal security, a municipal adviser participating in the private placement of a loan would be required to register with the SEC as a broker-dealer, thereby subjecting the adviser to the rules and regulations of the MSRB. Among other things, the municipal adviser would become subject to MSRB Rule G-23, which precludes municipal advisers who are also broker-dealers from becoming underwriters or placement agents for municipal issues for which they are serving as financial advisor.

Later that year the MSRB provided additional guidance to professionals involved in bank loans that might be characterized as municipal securities. In Notice 2011-52 (Sept. 12, 2011), the MSRB cautioned that if a broker-dealer serves as a placement agent for a "direct purchase" by a bank of municipal securities or as a placement agent for a "bank loan" that is, in fact, a municipal security, the broker-dealer is subject to all MSRB rules, as well as other federal securities laws. Further, the MSRB explained that a municipal adviser becomes subject to the rules and regulations governing municipal advisers if it advises a government issuer on whether to enter into a bank loan that is, in fact, a municipal security, or on a direct purchase by a bank of the issuer's securities followed by a restructuring of the securities that is considered a primary offering.

The MSRB followed up on Notice 2011-52 with Notice 2012-18 on April 3, 2012, in which it provided guidance on how to actually do the voluntary filing through EMMA of information regarding a bank loan. According to the MSRB, the EMMA posting may be done by either filing copies of the bank loan documents, or a summary of the documents containing the following information: the lender; the borrower; purpose of the loan/financing; security for repayment; third-party guarantees; source of repayment; dated/closing date; par amount; interest rates, including method of computation; payment dates; maturity and loan amortization; optional, mandatory and extraordinary prepayment provisions; entity tax status; events of defaults/remedies; current borrower credit rating; governing law; CUSIP number, if applicable; and redistribution rights, if applicable.

The MSRB also restated in Notice 2012-18 its prior cautionary advice to broker-dealers and municipal advisers regarding bank loans potentially constituting municipal securities, thereby subjecting them to existing securities law requirements. However, the MSRB did acknowledge that SEC Rule 15c2-12 (which, among other things, imposes various duties on a broker or underwriter regarding issuer or obligated person initial and continuing disclosure) would not apply to a bank loan that is negotiated and made directly by a bank since there is no underwriter or placement agent involved who is subject to this rule. While a bank loan made with the participation of an underwriter or placement agent may also be exempt from Rule 15c2-12 under certain circumstances, the participating broker would be required to report the loan to the MSRB under Rule G-32. And, in any event, the MSRB has signaled that the greater transparency and disclosure needs of the secondary market overshadow these "technicalities."

The MSRB's statements on voluntary reporting and the classification of bank loans as municipal securities culminated in its Jan. 29 publication of Notice 2015-03. In this notice, the MSRB incorporated the substance of the prior notices and set forth its "best practices" for voluntary reporting of bank loans. However, and perhaps as a harbinger of things to come, the MSRB includes two important cautionary notes regarding information that is voluntarily filed for bank loans under its guidelines: all voluntary disclosure information "may" be held to the same standards of materiality and timeliness of information disclosed under SEC Rule 15c2-12; and bank loan disclosure information provided should be consistent with the requirements of SEC Rule 10b-5 such that the information is not false or misleading in the context in which it is provided.

These comments from the MSRB present the obvious and important question of whether an issuer that voluntarily files a report regarding its bank loan activity is subjecting itself to MSRB jurisdiction and potential securities fraud exposure where none may otherwise exist. So far, there is no clear answer.

There is little doubt that the policy behind the MSRB's voluntary disclosure initiative is sound or that the secondary market for municipal securities would benefit from greater access to information regarding such bank loans.

However, significant legal and jurisdictional questions remain unresolved, including when and under what circumstances bank loans may constitute municipal securities and the scope of a disclosing party's potential liability. Not the least of these concerns is the possibility that by posting voluntary information on EMMA, the issuer or borrower is subjecting itself to potential securities law regulation and Rule 10b-5 liability if that information is later determined by a regulator or a court to have been materially inaccurate or incomplete. This is particularly true where the regulators have not provided any safe harbors or other firm guidance that can be relied upon with legal certainty.

Of course, there is also a concern that based on the MSRB's rather clear trajectory, the SEC may in the future take the position that an issuer's failure to do a voluntary bank loan posting, where the issuer has outstanding municipal securities, constitutes a basis for a securities fraud proceeding, on a theory that the failure to file caused the information then available to the secondary market to be materially inaccurate or misleading.
Such a concern may not be as untenable as it may initially appear, particularly in light of a prior enforcement proceeding brought by the SEC against the city of Harrisburg, where it took a substantially similar position. In the consent order entered in that proceeding, the SEC found that, when considered against the total mix of information available to investors and potential investors, the city's failure to make its required continuing disclosure filings constituted actionable securities fraud.

In addition, the Municipalities Continuing Disclosure Cooperation Initiative undertaken by the SEC in 2014 clearly demonstrates that regulators are actively seeking out new, innovative and aggressive enforcement techniques regarding municipal securities.

There likely will be additional developments in this area, as the signals from the MSRB and the SEC are clear as to their position on the issues. Issuers, obligated persons, banks, broker-dealers and municipal advisers would be well advised to pay close attention to future developments.

Daniel J. Malpezzi and Timothy J. Horstmann, The Legal Intelligencer

July 28, 2015

Daniel J. Malpezzi *and* ***Timothy J. Horstmann*** are attorneys with the law firm of McNees Wallace & Nurick in Harrisburg, and practice in the firm's financial services and public finance groups. The firm represents state and local governments and agencies as issuers of revenue bonds and general obligation bonds. The firm also routinely serves as underwriter's counsel and counsel to conduit borrowers, banks and trustees. Malpezzi can be reached at dmalpezzi@mwn.com and Horstmann at thorstmann@mwn.com.

MSRB Documents System Hours in EMMA, RTRS and SHORT Information Facilities.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a rule change to the MSRB's core operational hours relating to the MSRB's Electronic Municipal Market Access (EMMA®) system, Real-time Transaction Reporting System (RTRS) and Short-Term Obligation Rate Transparency (SHORT) system.

The rule change will be made operative on August 24, 2015.

View the regulatory notice.

Read the rule filing.

MSRB Announces Regulatory Topics to be Discussed at Upcoming Board

Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet July 29-30, 2015 where in addition to addressing corporate issues and electing new members and officers, the Board will discuss the following rulemaking topics:

Best Execution Guidance
The Board will review draft guidance for municipal securities dealers regarding MSRB Rule G-18, on best execution, which is effective December 7, 2015.

Confirmation Disclosure
The Board will discuss next steps on its proposal to require dealers to provide disclosure of pricing reference information on retail customer confirmations.

Investor Representation on the Board
The Board will discuss comment letters received on its proposal to modify the application of the standard of independence under MSRB Rule A-3 for the one public member of its Board of Directors designated to be representative of institutional or retail investors in municipal securities.

Uniform Practice Rule Review
The Board will discuss a request for comment on proposed changes to MSRB Rule G-12, on uniform practice, as part of the MSRB's regulatory efficiency initiative.

Delivery of Investor Brochure
The Board will consider changes to MSRB Rule G-10, on the delivery of the investor brochure and the customer complaint process, as part of the MSRB's regulatory efficiency initiative.

Holistic Fee Review
The Board will discuss the findings of a holistic review of all fees on regulated entities and consider possible changes to MSRB Rules A-12 and A-13.

Trade Settlement Cycle
The Board will discuss the securities industry initiative to shift to a T+2 settlement cycle from the current T+3.

This list is subject to change without notice. A summary of actions taken by the Board at the meeting will be sent to regulated entities and published on the MSRB's website following the meeting.

BDA Submits Comment Letter to Labor Department on Fiduciary Duty Proposal.

Today, BDA submitted a comment letter to the Labor Department (DOL) regarding its request for comment on a proposal to expand the definition of 'fiduciary' under Employee Retirement Income Security Act (ERISA). As proposed, the expansion would significantly limit the ability of dealers to provide investment advice and recommendations to retirement investors. BDA's letter focuses on issues with the rule's two main exemptions:

- Best Interest Contract Exemption
- Exemption for Principal Transactions in Certain Debt Securities

Additionally, the letter recommends the DOL to take an alternative approach and urges the DOL work with SEC to craft a rules-based uniform best interest standard of care for investors generally, not just retirement investors.

07-21-2015

BDA Submits Comment Letter to Federal Reserve on Municipal Securities as 'High Quality Liquid Assets' (HQLA).

Today, BDA submitted a comment letter to the Federal Reserve in response to its proposed rule to allow investment grade, general obligation U.S. state and municipal bonds to be counted as High Quality Liquid Assets (HQLA) under the Liquidity Coverage Ratio (LCR), a new bank liquidity rule.

The proposed rule would include GO municipal securities as level 2B high quality liquid assets under the LCR, subject to significant limitations. BDA argues that the exclusion of revenue bonds is based on a mischaracterization and the proposed limits on GO bonds are unnecessary given the ability of municipal bonds to retain value under stressful market conditions relative to other level 2B assets, including corporate debt and equity.

Currently, the proposal will only apply to bank holding companies that are primarily regulated by the Federal Reserve. Therefore, BDA urges the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation to work on a comprehensive rule that will include all investment grade municipal securities and apply to all bank holding companies subject to the rule.

The BDA's previous letter on including munis as HQLA can be read here.

MSRB Considers Creating Municipal Market Data Product for Academic Researchers.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) is requesting comment on a proposal 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 collects trade data from dealers through its Real-Time Transaction Reporting System (RTRS). Certain RTRS data are disseminated to the public through the Electronic Municipal Market Access (EMMA®) website and made available in a real-time feed on a paid subscription basis. In both dissemination methods, identifying information about dealers involved in transactions is exclusively for regulatory purposes.

Academic researchers have requested access to trade data containing dealer identifiers to gain a better understanding of secondary market trading practices in the municipal securities market, including issues related to intermediation costs, dealer participation and liquidity previously explored in the MSRB's 2014 study on secondary market trading. The MSRB's proposal for a historical data product for academics includes anonymous dealer identifiers to assist researchers in distinguishing transactions executed by specific parties, while still protecting their actual identity.

The MSRB is requesting input from researchers, dealers and other market participants about appropriate parameters for this new historical trade data product. Comments should be submitted to the MSRB no later than September 14, 2015. The Financial Industry Regulatory Authority (FINRA) is also soliciting comment on a similar proposal that would apply to other areas of the fixed income market.

Read the Regulatory Notice.

Date: July 16, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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SEC Investor Advocate: MSRB Public Investor Proposal 'Deeply Flawed.'

WASHINGTON -The Municipal Securities Rulemaking Board's proposal to ease the independence standard for its public investor slot is "deeply flawed" and "would undermine the very purpose" of Dodd-Frank Act provisions, according to the Securities and Exchange Commission's Investor Advocate.

The proposal "weakens the standard for material business relationships and allows the board to consider less independent applicants for the public investor representative seat," SEC Investor Advocate Rick Fleming said in an eight-page letter to the MSRB. "In our view, the proposal is based on an overly restrictive view of the existing pool of qualified candidates and focuses far too narrowly on what appears to be one preferred type of candidate," he said.

Several other industry groups echoed the investor advocate's concerns in their letters to the SEC, including the National Association of Municipal Advisors, Americans for Financial Reform, the American Federation of State, County and Municipal Employees, and the Consumer Federation of America.

Four former MSRB board members, along with the Investment Company Institute, the National Federation of Municipal Analysts, Wells Capital Management, Inc., and the Securities Industry and Financial Markets Association, supported the MSRB proposal.

The groups said comment letters to the MSRB in response to amendments to Rule A-3 on board membership it released in June that would allow it to select a public investor representative who has some affiliation with a regulated entity such as a broker-dealer.

The proposal is a narrower version of one the MSRB released in 2013 that would have eased the independence standard for all public board positions. But that proposal was abandoned after being criticized by many of the same groups that oppose the current proposal.

Under its current structure, which was created after Dodd-Frank mandated the board have a public majority, there are 21-members, 11 public and 10 regulated. The public members must be independent from muni brokers, muni advisors, and banks, meaning they have "no material business" with any of those entities.

The MSRB defined having no material business as meaning individuals are not, and have not been, associated with a regulated entity for two years and cannot have a compensatory or other relationship with a regulated entity that would affect their independent decision-making.

At least one of the public members must represent institutional or retail investors, one must represent issuers and one must have knowledge of or experience in the muni industry.

Under the MSRB's proposed changes, an employee or officer of an MA- or dealer-affiliated investment advisory firm could qualify as independent public investor.

The MSRB said in its regulatory notice that it proposed the changes because the current rule is "unduly restrictive, resulting in the disqualification of qualified individuals, who have relevant knowledge and expertise that are key to the MSRB's ability to meet its statutory mandate."

The board is particularly concerned that many mutual fund companies are disqualified because they are affiliated with dealers who market their investments to 529 college savings plans, sources said.

Fleming challenged the idea that many qualified people are excluded from serving as the public investor representative on the board, citing a lack of proof in the MSRB's June proposal.

He said that while Dodd Frank requires board members to be 'knowledgeable of matters related to the municipal securities markets,' the MSRB proposal and economic analysis "does not describe who the MSRB believes would satisfy this requirement, nor does it attempt to quantify the pool of available candidates for the public investor representative position."

Fleming added that MSRB's proposal seems to imply it wants to "convert the public investor representative seat into a de facto buy-side fund adviser seat."

"Although we agree that the board could benefit by having representation from a buy-side portfolio manager, such a narrow view of public member qualification, particularly as applied to the public investor representative, is unnecessary," Fleming said. "It may also contradict the purpose of the Dodd-Frank Act amendments, which seem designed to inject greater independence into the board and avoid the inevitable bias that comes from an insular type of industry group-think." Fleming added that the MSRB should be looking to the "many thousands" of household investors who could qualify to serve as public investor representatives.

That advice clashed with four former MSRB board members who wrote letters in support of the amendments and backed the MSRB's claims that the current process is too restrictive. Mark Muller, a senior vice president of the Loews Corp., said finding candidates for the public investor position while he was on the board was a "significant challenge" because of the restrictions. Bob Lamb, president of Lamont Financial Services Corp., said any person with fiduciary duty to investors should qualify for the position.

Michael Decker, managing director and co-head of municipal securities for SIFMA, agreed the current rules make it "excessively difficult" to recruit members to the position. SIFMA urged the MSRB to clarify what portion of revenues would be enough to disqualify a candidate under the new amendments.

Lisa Good, the executive director of the National Federation of Municipal Analysts, said the proposal would "give voice to a significant segment of the municipal bond market, primarily analysts and portfolio managers employed by mutual funds, who are largely ineligible for membership consideration under existing rules." NFMA also proposed having at least three public investors on the board as an appropriate step for better representation.

But AFSCME, CFA and AFR, opponents of both the prior and current MSRB proposals, challenged the need for mutual fund representatives to sit on the board while also recognizing this narrower version was an improvement from 2013. In a joint letter, the groups argued mutual funds, which make up about 20% of bondholders, are the most informed investors while households, which make up more than 40% of bondholders, would be more sensitive to the need for more transparency.

"[Mutual funds] are clearly not the investors currently most disadvantaged due to lack of transparency in the municipal market, nor do they represent the majority of investor holdings," the groups said. "As a result, we believe implementing this MSRB proposal is both unnecessary to ensure adequate investor representation and would essentially undermine the Dodd-Frank requirement that the board be majority independent."

Terri Heaton, president of the National Association of Municipal Advisors, also said there is a qualified pool of retail investors that would better suit the board position than institutional ones.

She said the proposal, "provides significant potential imbalance on the board to favor the interests of dealers and institutional investors, at the expense of issuers and retail investors" and that this could "affect … a break with the public trust." Heaton also pushed for the MSRB to move to a majority-public 15-member board.

Concerns about retail investors serving on the board have centered on their potential lack of overall industry knowledge. Fleming said that, to ease those concerns, the MSRB could allow a public investor to serve two consecutive three-year terms to gain additional experience.

ICI. Lamb and former board member Benjamin Thompson, chief executive officer of Samson Capital Advisors, pushed for allowing all MSRB members to serve two consecutive three-year terms.

SIFMA called for four-term terms for new MSRB board members, with a lifetime cap of four years.

But NAMA and NFMA were concerned about a lack of turnover that could result from extended terms.

The MSRB's question of whether it should continue to publish the names of candidates applying for board positions, also got a mixed reception. The MSRB asked if publishing board candidates' names could discourage them from applying. ICI and Lamb said yes. But several market groups, including AFSCME, CFA, AFR, transparency would best be served by continuing to publish the names of candidates.

"Permitting anonymous applications is likely to give rise to an impression, or strengthen an impression that may already exist, that the MSRB is dominated by industry insiders and does not welcome a broad range of membership," the groups told the board.

THE BOND BUYER

BY JACK CASEY

JUL 14, 2015 2:14pm ET

Frequently Asked Questions on FINRA's Eligibility Proceedings for Firms

[Participating in the MCDC Initiative.]

To guide firms participating in the SEC's Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative), FINRA is issuing the following questions and answers regarding the statutory disqualification process. The questions and answers address topics that firms participating in the MCDC Initiative have recently raised with FINRA. As a result, information contained in this guidance applies only to firms that become statutorily disqualified based on an SEC order issued under the MCDC Initiative. For general information relating to FINRA's statutory disqualification process, please review FINRA's [Statutory Disqualification page]. More information regarding the SEC's MCDC Initiative is available on the SEC's website.

1. What causes a broker-dealer that participates in the MCDC Initiative to be subject to a statutory disqualification?

Based on discussions with SEC staff as well as publicly available information, FINRA understands that a broker-dealer participating in the SEC's MCDC Initiative (a "Participating Firm") may be subject to findings by the SEC that it willfully violated the federal securities laws. A willful violation of the federal securities laws results in a statutory disqualification, as described in Section 15(b)(4)(D) of the Securities Exchange Act of 1934 ("Exchange Act"), incorporated by reference in 3(a)(39)(F) of the Exchange Act.

2. At what point in the process does a Participating Firm become statutorily disqualified?

A Participating Firm will become statutorily disqualified only if the Participating Firm is subject to a Commission order under the MCDC Initiative. A Participating Firm does not become statutorily disqualified merely upon submitting an offer of settlement to the SEC.

3. What happens when a Participating Firm becomes subject to a Commission order and, therefore, is subject to a statutory disqualification?

Article III, Section 3(a) of FINRA's By-Laws states that no firm can continue in membership with FINRA if it is subject to a statutory disqualification. Article III, Section 3(d) of the By-Laws, however, allows a disqualified firm to file an application to seek FINRA's approval to continue its membership notwithstanding a statutory disqualification.

Accordingly, after the SEC accepts an offer of settlement and issues an order, FINRA's Registration & Disclosure Department ("RAD") will send a letter, known as the SD Notification Letter, to the Participating Firm. The letter will notify the Participating Firm that it is subject to a statutory disqualification and that it must file a Membership Continuance Application (Form MC-400A) within ten business days after receipt of the SD Notification Letter if it wishes to continue in FINRA membership. The filing of a Form MC-400A application begins a process known as FINRA's Eligibility Proceedings. The SD Notification Letter will provide specific instructions regarding how to initiate an Eligibility Proceeding.

In order for a Participating Firm to continue in membership, it must submit a timely Form MC-400A application to FINRA to initiate the Eligibility Proceeding. As part of the Eligibility Proceeding, a Participating Firm will be required to provide FINRA with specified information, and importantly, a Participating Firm should expect that FINRA will require it to consent to a plan of heightened supervision.

4. What information and/or documents are required to initiate an Eligibility Proceeding?

In general, a Participating Firm will be required to answer designated questions on the Form MC-400A application and to provide a copy of the SEC's order as well as a statement explaining why it should be permitted to continue in membership notwithstanding a statutory disqualification. In addition, the Participating Firm should expect that it will be required to submit a plan of heightened supervision with its application. The Participating Firm will need to immediately implement the plan of heightened supervision should its application be approved.

5. What conditions should Participating Firms expect FINRA to require in a plan of heightened supervision?

A definitive answer to this question will depend on any conditions that are contained within the SEC's order involving the Participating Firm. FINRA anticipates, however, that at a minimum the conditions of the plan will align with any undertakings that the SEC imposes on the Participating Firm. FINRA also anticipates that the plan will include an obligation on the part of the Participating Firm to notify FINRA, in addition to the SEC, when the firm has completed its obligations pursuant to the SEC order and to forward confirming documents to FINRA.

6. What parts of the Form MC-400A application must a Participating Firm complete?

Participating Firms will receive instructions in the SD Notification Letter on how to complete the Form MC-400A application. That letter will detail the questions that must be completed on the application and those that can be omitted. FINRA has the right to request the omitted information or other information as needed during its review process.

7. Where can I obtain a copy of the Form MC-400A application?

FINRA encourages Participating Firms to review the application in advance. An electronic copy is available on FINRA's website at the following link: Form MC-400-A. The application cannot be submitted until the Participating Firm receives the SD Notification Letter from FINRA that will provide specific instructions for the completion of the application.

8. What is the cost of the Eligibility Proceeding?

There is no fee associated with the Form MC-400A application or the Eligibility Proceeding for a Participating Firm.

9. What happens once a Participating Firm submits the Form MC-400A application?

FINRA is required by rule to evaluate a Participating Firm's application and determine whether such firm should be approved to continue in FINRA membership notwithstanding a statutory disqualification. If FINRA determines that approval of the application is warranted, FINRA is required by Exchange Act Rule 19h-1 to provide the SEC with notice of the approval of the firm's application for continued membership. Should FINRA deny the application, FINRA is required by Exchange Act Rule 19d-1 to file a notice with the SEC of such denial.

10. Will FINRA preclude a Participating Firm from conducting a securities business during the pendency of the Eligibility Proceeding?

No. A Participating Firm will be permitted to continue business operations as normal during the pendency of the Eligibility Proceeding. However, it is critical that any statutorily disqualified firm timely file a Form MC-400A application with FINRA. Failure to timely file an application could result in cancellation of a firm's membership with FINRA.

11. Can a Participating Firm's Form MC-400A application be denied by FINRA?

Approval of a Participating Firm's Form MC-400A application is not automatic. FINRA's Eligibility Proceedings are designed to ensure that the continued membership of a statutorily disqualified member is consistent with the public interest and does not create an unreasonable risk of harm to the market or investors.

12. What happens after FINRA files a notice with the SEC approving the Participating Firm's continued membership?

The SEC will conduct a review of the notice and issue a written communication to FINRA regarding the continued membership of the Participating Firm. Upon receipt of the SEC's communication, FINRA will forward a copy to the Participating Firm.

FINRA cannot speak to the time it will take the SEC to conduct its review or to the SEC's processes for considering FINRA's notice filing; however, a Participating Firm's business operations may continue without interruption during this time.

13. What happens after the SEC issues its written communication to FINRA?

The Participating Firm must implement any plan of heightened supervision as agreed upon during the Eligibility Proceeding and will be required to comply with the provisions of the plan for the time period it is in place.

14. Does a Participating Firm have to disclose that it participated in the SEC's MCDC Initiative in response to any of the disclosure questions on the Form BD?

Yes. A Participating Firm must disclose on Form BD the settlement with, and findings made by, the SEC in connection with the MCDC Initiative (see Question 11C of the Form BD).

15. Does a Participating Firm have to disclose that it is undergoing FINRA's Eligibility Proceeding in response to any of the disclosure questions on the Form BD?

No. A Participating Firm is not required to disclose on the Form BD that it is subject to FINRA's Eligibility Proceedings.

16. Is the reporting requirement provided for in FINRA Rule 4530(a)(1)(H) triggered as a result of a Participating Firm's settlement with the SEC?

A Participating Firm will need to report to FINRA that it is subject to statutory disqualification pursuant to FINRA Rule 4530(a)(1)(H). In addition, the rule requires, among other things, that a member report to FINRA whenever it is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities ("financial dealings") with any person that it knows or should have known is statutorily disqualified.

However, a recent amendment to FINRA Rule 4530(a)(1)(H) provides that a firm will not need to report financial dealings with another firm that is subject to statutory disqualification, if the statutorily disqualified firm has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member. Subject to some exceptions, FINRA's current practice permits a FINRA member firm that becomes statutorily disqualified to continue in membership without interruption to its business activities, provided that a timely Form MC-400A application is filed in accordance with FINRA Rule 9522(a)(2). Based on this practice, for the purpose of any statutory disqualification that arises from the MCDC Initiative, FINRA will not require a firm, including a Participating Firm, to report to it that it engaged in any financial dealings with a Participating Firm during the period that the application is pending, provided that the Participating Firm that is the subject of reporting has filed a timely application with FINRA pursuant to Rule 9522(a)(2). This deferment period is only available if the reporting firm knows or should have known that the Participating Firm that is the subject of reporting has filed a timely application pursuant to Rule 9522(a)(2). If FINRA approves the Participating Firm's application, the reporting firm has no reporting obligation under FINRA Rule 4530(a)(1)(H). If FINRA denies the application, the reporting firm has an obligation to retroactively report financial dealings that occurred with the Participating Firm during the deferment period as well as any future financial dealings with such Participating Firm.

FINRA intends to work with Participating Firms to obtain their consent to publish the fact that they have filed an MC-400A Application as a result of the MCDC Initiative. FINRA will publish to its website a list of Participating Firms that have given FINRA their consent to this publication.

17. Does the scope of the MCDC Initiative include registered representatives?

According to the SEC's website, the "…MCDC Initiative covers only eligible issuers and underwriters."

18. Will FINRA contact other self-regulatory organizations ("SROs") of which a Participating Firm is a member regarding the Form MC-400A application?

In the notice that FINRA is required to file with the SEC pursuant to Exchange Act Rule 19h-1, it must identify any other SRO of which the Participating Firm is a member and whether such SRO is in agreement with the terms and conditions of the proposed continuance. FINRA will, therefore, contact any applicable SRO so that it can identify in its filing with the SEC, whether such SRO agrees that the Participating Firm should be permitted to continue in membership.

19. If I have questions regarding the Eligibility Proceedings or a Participating Firm's Form MC-400A application, whom should I contact?

All questions regarding FINRA's Statutory Disqualification Program may be directed to Lorraine Lee-Stepney, Manager, at (202) 728-8442 or by email at Lorraine.Lee@finra.org.

For questions relating to FINRA Rule 4530 reporting, please contact Dave Troutner at (240) 386-6404 or dave.troutner@finra.org.

MSRB Extends 529 Plan Disclosure Date as Groups Push for More Clarification.

WASHINGTON — The Municipal Securities Rulemaking Board is giving 529 college savings plan underwriters a 60-day extension on the first date data submissions are due under a recently adopted rule.

The rule, MSRB Rule G-45, requires underwriters for 529 plans to submit information semi-annually using an online form called Form G-45. The form asks for specific data like plan descriptive information, assets, contributions, withdrawals, and fee and cost structure. Dealers are also required to provide performance data submissions annually. The information can either be submitted manually through MSRB's Electronic Municipal Market Access system or through a computer-t-

-computer interface, which was launched for beta testing in February.

Rule G-45 gives underwriters 60 days past each filing date to get their information to the MSRB. The first submissions under the rule would have been due 60 days after a semiannual period that ended Tuesday. The extension changes the end of the first reporting period to Oct. 28, meaning dealers now have 60 days past Oct. 28 to submit.

The MSRB formed and got feedback from a group of representatives from 12 different industry organizations that handle 529 plans soon after the Securities and Exchange Commission first approved the rule.

Lynnette Kelly, the MSRB's executive director, said feedback from the industry user group "has been essential" in developing the submission process. She added the extension announced Tuesday was done "to help ease the initial burden on industry participants" and to make sure the agency receives "complete and accurate information."

David Cohen, managing director and associate general counsel for the Securities Industry and Financial Markets Association, said the extension is "welcomed relief" and validates concerns that SIFMA has been raising for more than a year. The organization's main concerns center on the technical aspect of submitting with Form G-45 and the remaining interpretive questions SIFMA and others are working through with the MSRB.

"This 60-day delay gives dealers more time to conduct testing and gives the MSRB more time to answer implementation questions and finalize the Form G-45 manual," Cohen said, adding the manual is not currently "one-stop shopping" for technical and compliance issues. "Dealers need to piece together information from the rule, the MSRB submission to the SEC, the MSRB response to comment letters sent to the SEC, the manual, and webinar slides. All of this information should be in one place, the manual."

Rachel McTague, the director of media relations for the Investment Company Institute, said the institute is "pleased" with the extension.

"We've long advocated taking the necessary time to implement the rule, with a focus on the quality of the information the MSRB receives from underwriters of 529 college savings plans rather than on speed," the spokesperson said. "Among other things, this extension was needed to allow the MSRB time to address several issues relating to the filing process."

The MSRB said in an accompanying regulatory notice that it believes the extension will provide underwriters with sufficient time to submit complete and accurate filings.

THE BOND BUYER

BY JACK CASEY

JUN 30, 2015 4:02pm ET

[MSRB Extends Deadline for First Submissions of 529 College Savings Plan Data.]

The Municipal Securities Rulemaking Board (MSRB) announced today that it is extending by 60 days the date the first submissions of information about 529 college savings plans are due to the MSRB under its Rule G-45. Recently adopted Rule G-45 requires underwriters of 529 college savings plans to provide the MSRB with information regarding their plans' assets, contributions, withdrawals, fees and cost structure. The first submissions are now due October 28, 2015.

The rule amendment was filed with the Securities and Exchange Commission for immediate effectiveness.

Read the regulatory notice.

View the full press release.

SEC Makes Point with MCDC Settlements

WASHINGTON – The Securities and Exchange Commission, in announcing the first penalties under its disclosure violations self-reporting program last week, tried to refute criticism while providing hints about what kinds of violations are important to investors, lawyers said Monday.

The SEC announced charges against 36 underwriters for selling bonds with offering documents that contained false or misleading statements about the issuers' compliance with continuing disclosure obligations. The firms, which settled for a total of $9.3 million, were taking advantage of the municipalities continuing disclosure cooperation, which offered lenient terms for both underwriters and issuers who self-reported any time in the last five years in which they sold or underwrote bonds with deficient offering documents.

Bond lawyers had been awaiting the settlements to see what they could learn about the SEC staff's thinking on what sorts of continuing disclosure violations were significant enough to be considered "material" and therefore require mention in a bond's official statement. There had also been criticism from some dealers and attorneys that the program targeted a problem that was already fixed when the SEC sent out a risk alert in 2012 that made clear it was paying attention to violations of its Rule 15c2-12, which requires that underwriters make sure that issuers have contracted to provide annual financial data as well as material event notices. Materiality has been defined by the Supreme Court to mean something a reasonable investor would want to know before making an investment decision.

"There were arguments by the industry that the SEC sent its message when it did the risk alert in 2012," said Elaine Greenberg, a partner at Orrick, Herrington & Sutcliffe in Washington.

In the settlements released June 18, the SEC cited examples back to 2010 but included transactions that occurred in 2013 and 2014. A securities lawyer who declined to be named said that the SEC may have chosen these examples to make the point that there are still problems in the market since the alert.

"It's almost a refutation," the lawyer said. "It's a rebuttal to those who said 'much ado about nothing.'"

Greenberg noted that the SEC's orders cite examples of financial documents filed as little as 14 days late as well as some in which the filings were never done. That means that the commission staff considers a filing late by two weeks as potentially material, she said, but it is unclear if the SEC would have pursued action if the firm had underwritten for an issuer whose only violation was a filing late 14 days.

The orders don't make reference to material events such as rating changes, but Greenberg said the market cannot take that to mean that the commission will never consider those to be material.

Robert Feyer, a partner at Orrick's San Francisco office, said that it is difficult to determine glean too much information about the SEC's views on materiality based on these settlements.

"The message continues to be that the best thing to do is comply," Feyer said.

John McNally, a partner at the law firm of Hawkins Delafield & Wood in Washington said ongoing concerns about materiality are "misplaced."

"Although we all would have appreciated further guidance as our clients considered whether to self-report under the MCDC Initiative, now that the self-reporting process has been completed, and issuers and underwriters made their determinations whether to self-report … if there were to be a new failure to comply with a continuing disclosure agreement, the prudent course would be simply to disclose such failure without regard to where it may lie on the materiality spectrum," McNally said.

McNally also discussed previous concerns over underwriters "willfully" violating securities laws that triggered the possibility for disqualifications and detrimental effects to underwriter firms' business dealings. However, the SEC granted waivers to the firms, allowing disqualification to fade away as an issue. Feyer said it is hard to know how widespread the violations were, because some of the violations noted in the settlements could have stemmed from the poor disclosure by the same issuer.

Teri Guarnaccia, a partner at Ballard Spahr in Baltimore, noted a relative lack of competitive offerings cited in the settlements: only four firms were charged with doing sloppy due diligence in competitive deals. The SEC has taken the position in past enforcement cases that underwriters have a reduced due diligence responsibility in competitive sales because they have less time to review the documents, though it has never taken the position that the obligation isn't there. Guarnaccia said she didn't see a clear message about materiality in the settlements.

The SEC has said that more settlements with underwriters could be forthcoming, and that issuer settlements will also be coming in the future.

THE BOND BUYER

BY KYLE GLAZIER and JACK CASEY

JUN 22, 2015 3:59pm ET

New MSRB Rule Will Increase Available Information Regarding Trades of Municipal Securities: Butler Snow

Last month, the Securities and Exchange Commission (the "SEC") approved amendments by the Municipal Securities Rulemaking Board (the "MSRB") to MSRB Rule G-14 regarding the reporting of trades of municipal securities. These changes will provide issuers, investors and the general public with more information regarding the ongoing market for municipal bonds and similar securities. Presently, bond dealers are required to report most executed transactions of municipal securities to the MSRB via its Real-Time Transaction Reporting System ("RTRS") within 15 minutes of the trade. The MSRB sells this data to vendors and financial institutions, and also makes some of the data available to the public at no charge. The public may access this information by visiting the MSRB's Electronic Municipal Market Access system ("EMMA") and searching for an issue. Once on the page of an individual issue, a member of the public may find this information by clicking on the tab labeled "Trade Activity." Under the new rule, new information will be available on this system including: (1) List Offering Price and Takedown Transaction indicators for additional transactions; (2) a new indicator showing whether the transaction includes a dealer compensation component such as a mark-up, mark-down or commission; and (3) a new indicator to indicate trades that have occurred using alternative trading systems ("ATSs"). In addition, the rule changes remove the requirement that dealers report the yield of a security for each trade, as the MSRB has indicated that it will perform these calculations itself and publish the results. In announcing the approved changes, MSRB Executive Director Lynette Kelly said "The MSRB's EMMA website provides an unrivaled window into the trading of municipal securities for investors and other market participants. With the addition of useful new data points, the market – regulators included – will gain a better understanding of the ever-evolving practice of trading municipal securities, particularly the growing use of ATSs." The new reporting requirements take effect on May 23, 2016, giving dealers time to establish the appropriate reporting systems. The MSRB expects to release additional technical guidance to assist firms with this process. For further reading, please read the full-text of the MSRB amended rule and the SEC's approval order.

Last Updated: June 23 2015

Article by Matthew O. Gray and Elizabeth Lambert Clark

Butler Snow LLP

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.

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36 Underwriters to Pay $9.3M to Settle Under SEC MCDC Program.

WASHINGTON – Thirty-six municipal underwriters agreed to pay a total of $9.3 million and take remedial actions to settle Securities and Exchange Commission charges that they sold bonds with offering documents that contained false or misleading statements about the issuers' compliance with continuing disclosure obligations.

The underwriters allegedly failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to their customers as required by the SEC's rule 15c2-12, the commission said in the settlements, which were reached under the Municipalities Continuing Disclosure Cooperation initiative. The violations cited in the settlement orders took place between 2010 and 2014. The MCDC, announced last March, encouraged issuers and underwriters to voluntarily report to the SEC any time in the last five years in which they sold or underwrote bonds with offering documents that might not pass legal muster. The reporting period expired on Sept. 10 last year for underwriters and on Dec. 1 for issuers.

"The MCDC initiative has already resulted in significant improvements to the municipal securities market, including heightened awareness of issuers' disclosure obligations and enhanced disclosure policies and procedures," said SEC chair Mary Jo White. "This ongoing enforcement initiative will continue to bring lasting changes to the municipal securities markets for the benefit of investors."

The 36 firms, which did not admit or deny the SEC's findings, agreed to cease and desist from future violations. They agreed to pay civil penalties based on the number and size of the fraudulent offerings, up to a cap based on the size of the firm. The maximum penalty, imposed on 10 underwriters, was $500,000. The smallest one announced was $40,000. The $500,000 cap was for firms who reported more than $100 million of revenue in fiscal year 2013. All the participating underwriters agreed to retain independent consultants to review their policies and procedures on due diligence and make recommendations for improvements.

"The MCDC initiative highlights the importance of continuing disclosure in the municipal bond market and due diligence in the underwriting process," said Andrew Ceresney, director of the SEC's enforcement division. LeeAnn Gaunt, chief of the enforcement division's municipal securities and public pensions unit, said the actions will help investors.

"The settlements announced today reflect these underwriters' cooperation in self-reporting their own misconduct and agreeing to improve their procedures going forward," Gaunt said. "Because these 36 firms underwrite a substantial portion of the country's municipal bonds each year, we expect a large number of bondholders will benefit from the resulting improvements in due diligence and disclosure."

Ceresney said during a press call that the 36 firms represent about 70% of muni underwriting volume by dollar amount for the past four fiscal years. Some large firms were not among those named. Wells Fargo & Co., which was a top five underwriter that accounted for nearly 7% of the dollar volume of underwritings in 2014, was not named. Nor was Barclays, a top 10 underwriter accounting for nearly 5%. Ceresney told The Bond Buyer that more settlements with underwriters who participated in the MCDC initiative could be coming.

The conduct cited in the settlements included instances in which official statements failed to disclose that the issuer had done almost no continuing disclosure at all. The settlement against Citigroup, for example, said that in five negotiated sales between 2011 and 2013 the issuer did not disclose that it had failed to file four annual financial reports since 2009. The settlement with The Baker Group cited competitive offerings, including an instance of a 2014 issuance in which the official statement did not disclose that the issuer had been between 145 and 374 days late in filing annual financial information in four prior bond offerings.

The SEC granted waivers to the firms to prevent them from being disqualified from certain exemptions or safe harbors in SEC rules. Without such waivers, firms charged under the MCDC might be unable to do certain types of non-muni transactions. Firms will still need to go through a process to reinstate their memberships with the Financial Industry Regulatory Authority, Ceresney said.

The SEC had previously charged one issuer under the MCDC, but Kings Canyon Joint Unified School District in California was already under investigation when it chose to take advantage of the standardized settlement terms of the initiative.

Jessica Giroux, general counsel and managing director of federal regulatory policy at Bond Dealers of America, said BDA supports improving disclosure but found the MCDC disrupted service to issuer clients.

"This has been a long and burdensome process for our dealers who have spent countless hours and a massive amount of resources working to comply with this enforcement initiative," she said.

Giroux said BDA was also disappointed that the SEC did not pursue the MCDC initiative under only Section 8A of the Securities Act of 1933 instead of Section 15(b) of the Securities Exchange Act of 1934 because that modification could have avoided triggering statutory disqualifications of all the firms.

Michael Diver, the head of Katten Muchin Rosenman's litigation and enforcement group in Chicago, questioned whether the SEC could have gotten a judge to agree that the disclosures were material to investors and that selling the bonds violated the antifraud provisions of the law. Diver, who represented four underwriting firms, including BMO Capital Markets GKST Inc., Oppenheimer & Co., and Loop Capital Markets, said the SEC developed an effective initiative with the MCDC.

"The SEC developed a fairly effective 'carrot and stick' approach to drive participation in the initiative and I think broker-dealers that are active in the municipal securities marketplace were wise to participate," he said.

Diver added that assessing issuer compliance can be difficult and that he saw his broker-dealer clients respond "in good faith" to the SEC's March 2012 risk alert on 15c2-12 compliance, well before the MCDC initiative.

A Securities Industry and Financial Markets Association spokesperson said that SIFMA wants disclosure to improve, but that issuer disclosure failures "could have been handled by the SEC in an alternative manner with far less expense and collateral consequences to market participants, especially considering the absence of harm to investors."

The SEC is expected to release future "waves" of settlements with issuers and with individuals whom the commission decides to charge separately.

Underwriters Fined Under MCDC Settlements include:

• The Baker Group, LP – $250,000

• B.C. Ziegler and Company – $250,000

• Benchmark Securities, LLC – $100,000

• Bernardi Securities, Inc. – $100,000

• BMO Capital Markets GKST Inc. – $250,000

• BNY Mellon Capital Markets, LLC – $120,000

• BOSC, Inc. – $250,000

• Central States Capital Markets, LLC – $60,000

• Citigroup Global Markets Inc. – $500,000

• City Securities Corporation – $250,000

• Davenport & Company LLC – $80,000

• Dougherty & Co. LLC – $250,000

• First National Capital Markets, Inc. – $100,000

• George K. Baum & Company – $250,000

• Goldman, Sachs & Co. – $500,000

• Hutchinson, Shockey, Erley & Co. – $220,000

• J.P. Morgan Securities LLC – $500,000

• L.J. Hart and Company – $100,000

• Loop Capital Markets, LLC – $60,000

• Martin Nelson & Co., Inc. – $100,000

• Merchant Capital, L.L.C. – $100,000

• Merrill Lynch, Pierce, Fenner & Smith Incorporated – $500,000

• Morgan Stanley & Co. LLC – $500,000

• The Northern Trust Company – $60,000

• Oppenheimer & Co. Inc. – $400,000

• Piper Jaffray & Co. – $500,000

• Raymond James & Associates, Inc. – $500,000

• RBC Capital Markets, LLC – $500,000

• Robert W. Baird & Co. Incorporated – $500,000

• Siebert Brandford Shank & Co., LLC – $240,000

• Smith Hayes Financial Services Corporation – $40,000

• Stephens Inc. – $400,000

• Sterne, Agee & Leach, Inc. – $80,000

• Stifel, Nicolaus & Company, Inc. – $500,000

• Wells Nelson & Associates, LLC – $100,000

• William Blair & Co., L.L.C. – $80,000

THE BOND BUYER

BY KYLE GLAZIER and JACK CASEY

JUN 18, 2015 12:48pm ET

GFOA Seeks MA Conduct Rule Changes to Reduce Issuer Costs, Burdens.

WASHINGTON — The Government Finance Officers Association is calling for changes in the Municipal Securities Rulemaking Board's core conduct rule for municipal advisors to reduce the costs and burdens for issuers.

The GFOA made the request in a recent two-page letter to the Securities and Exchange Commission, which has been seeking comments on Rule G-42. The letter was signed by Dustin McDonald, director of GFOA's federal liaison center.

Some of the concerns the GFOA raised echoed those made by dealer groups in May.

The GFOA said, for example, that it is worried about language that would prohibit MAs or their affiliates such as brokers, from selling securities to issuers if they have given advice to the issuers related to the brokerage activities.

"The GFOA is concerned with this subsection because it would bar brokers from making investment recommendations and then selling the investment to an issuer," McDonald said. "This prohibition could force small governments to open a more expensive fee-based arrangement with an investment advisor in order to receive this very limited type of advice on investments that are not risky."

The GFOA said that while the principal ban makes sense for traditional financial advisors, "it is unclear what abuse the proposed rule is trying to solve for in the case of brokerage of bond proceeds investments."

The Securities Industry and Financial Markets Association also told the SEC the ban was too broad.

The GFOA warned that the requirement to document the MA relationship in writing and specify where the issuer can access the advisor's MA and MA-I forms seems "unnecessarily burdensome." The group said the proposed rule should be amended to require MAs to provide copies of the forms and to notify issuers of any material changes to them.

The GFOA said that while it generally supports the proposed rule's duty of care provisions, it is worried some of the provisions could lead to cost increases for issuers. "Since finance officials have a duty to their government, and most of the financial information about the government is public, adding an additional requirement on advisors to investigate the information provided to them by the client may be excessive," the group said. "We ask that regulators be cognizant that excessive and unnecessary regulations may result in cost increases to these professions, which may be transferred to issuers."

The group also asked for clarification of a provision of the proposed rule that would require MAs to give clients the basis for believing a recommended transaction or product was or was not suitable for the client. This provision "seems contrary to the proposed rule's duty of care and loyalty requirements," the GFOA said.

THE BOND BUYER

BY JACK CASEY

JUN 19, 2015 1:55pm ET

SEC Fines Wall Street's Top Banks Over Fraudulent Muni Deals.

The U.S. Securities and Exchange Commission alleged that 36 underwriters, including Wall Street's biggest banks, sold bonds for municipalities that failed to make adequate financial disclosures to investors.

Bank of America Corp.'s Merrill Lynch unit, Citigroup Inc., Goldman Sachs Group Inc., JPMorgan Chase & Co. and Morgan Stanley settled with the SEC and will each pay $500,000, according to a statement released Thursday. The SEC said they were negligent because the offering documents for deals they sold contained false information or material omissions about borrowers' compliance with the law.

The $9.3 million of penalties are the first against underwriters to result from an offer of leniency the agency extended to banks and localities that self-reported running afoul of securities rules. It's part of a years-long push to crack down on borrowers in the $3.6 trillion municipal-bond market that fail to provide key information to investors.

The initiative "has already resulted in significant improvements to the municipal securities market, including heightened awareness of issuers' disclosure obligations," SEC Chair Mary Jo White said in the statement. It "will continue to bring lasting changes to the municipal securities markets for the benefit of investors."

Enforcement Ability

The SEC stepped up its municipal-market enforcement in 2010, after officials bemoaned lax disclosure as states and cities were reeling from the recession. It established a unit to police such fraud five years ago.

Unlike with corporations, the SEC doesn't have direct authority to force states and cities to file updated financial statements and other documents because of exemptions that have been in place since the 1970s. It enforces the rules indirectly through its power over underwriters, requiring them to receive agreements from municipalities that they'll provide investors with annual financial reports and other information that could affect the value of the bonds.

Some underwriters failed to realize that their clients had provided no continuing disclosure after the bonds were sold, LeeAnn Gaunt, the head of the SEC's municipal-enforcement unit, said in a conference call with reporters.

The regulator has also targeted remiss localities. The SEC first fined a municipal issuer in November 2013. Before that, it had settled with states including Illinois and New Jersey without imposing a financial penalty.

Market Share

The SEC settled charges in July 2014 with a California school district, the first case to be resolved through the leniency program.

The underwriters, under the same initiative, didn't admit or deny the findings, the SEC said. The penalties were capped based on the size of the firm and were dependent on how many fraudulent offerings were identified.

Together, the firms have underwritten more than 70 percent of all municipal debt issued in the past four years, Andrew Ceresney, the SEC's enforcement director, said on the conference call. As part of the settlement, the underwriters must retain an independent consultant to review policies and procedures, he said.

Spokespeople for Bank of America, Goldman Sachs, JPMorgan and Morgan Stanley declined to comment. Citigroup spokesman Scott Helfman said the company is "pleased to have the matter resolved."

Bloomberg

by Brian Chappatta & Kate Smith

June 18, 2015 — 9:38 AM PDT Updated on June 18, 2015 — 1:07 PM PDT

NABL: SEC Announces First MCDC Charges.

The Securities and Exchange Commission (SEC) today announced enforcement actions against 36 municipal underwriting firms for violations in municipal bond offerings. The cases are the first brought against underwriters under the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative.

The SEC's press release on these enforcement actions can be seen here. The SEC's orders against these underwriters can be seen here.

More enforcement actions related to MCDC are anticipated in the future. NABL will alert members when these actions have been announced by the SEC.

New Resource Available for Municipal Advisors Developing Supervisory and Compliance Systems.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that new MSRB Rule G-44, which establishes the supervisory and compliance obligations of municipal advisors, became effective on April 23, 2015. The MSRB has provided an educational document designed to support municipal advisors' development of effective policies and procedures for supervision and compliance, particularly for municipal advisors that are newly subject to regulatory oversight.

Read Considerations for Developing a Municipal Advisory Supervisory and Compliance System.

SEC Charges Municipal Underwriters With Making False Statements.

The Securities and Exchange Commission charged 36 municipal underwriting firms, including units of Bank of America Corp., Citigroup Inc. and J.P. Morgan Chase & Co., with making false statements or omissions in bond documents, the first penalties for underwriters under the agency's voluntary self-reporting program targeting inaccuracies in those documents.

Between 2010 and 2014, the firms violated federal law by selling municipal bonds with offering documents that “contained materially false statements or omissions about the bond issuers’ compliance with continuing disclosure obligations,” the SEC said in a news release Thursday. The firms also failed to conduct due diligence to identify those inaccurate statements or omissions before selling the bonds, the agency said.

The 36 firms settled the cases for a combined total of around $9 million, without admitting or denying the findings, and agreed to cease and desist from such actions in the future, the SEC said. Under the terms of the Municipal Continuing Disclosure Cooperation Initiative, the largest firms will pay civil penalties up to $500,000, and smaller firms will pay up to $100,000, based on the number and size of the offerings. They also agreed to retain an independent consultant to review policies and procedures for underwriting municipal bonds.

“The MCDC initiative has already resulted in significant improvements to the municipal securities market, including heightened awareness of issuers’ disclosure obligations and enhanced disclosure policies and procedures,” said Mary Jo White, chairman of the SEC, said in the release. “This ongoing enforcement initiative will continue to bring lasting changes to the municipal securities markets for the benefit of investors.”

The program began in 2014, offering favorable settlement terms to underwriter and issuers who voluntarily reported disclosure problems tied to bond sales. Those included such issues as failing to disclose missed filings of financial reports or filing them late.

Andrew Ceresney, director of the SEC’s enforcement division, said the settlements reflected the firms’ cooperation and self-reporting of possible violations, which he said had already improved disclosure practices in the $3.7 trillion market for debt sold by U.S. state and local governments. Those involved underwrote about 70% of the dollar value of all municipal bonds issued in the U.S. in the past four fiscal years, he said.

“Municipal investors are the big winners here,” he said in a call with reporters.

Spokespeople for J.P. Morgan and Bank of America declined to comment, and a Citi spokesman said they are “pleased to have the matter resolved.” All three firms paid the maximum $500,000.

Matt Fabian, partner at Concord, Mass., research firm Municipal Market Analytics, said it remains to be seen what the SEC will do with government entities that also made misstatements or omissions in bond documents. The program has made both issuers and underwriters more aware of the importance of disclosure, which will be helpful to investors, he said.

“Any time you have that kind of impact, even if it’s small individually, it’s a big deal for the market,” he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated June 18, 2015 3:29 p.m. ET

Write to Aaron Kuriloff at AARON.KURILOFF@wsj.com

[Voluntary Reporting of Bank Loans – Best Practice or Sword of Damocles?]

One of the hottest current topics in the world of municipal finance is the issue of the "voluntary" reporting on the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Marketplace Access system ("EMMA[1]") of direct bank loans to governmental entities or conduit governmental entity borrowers.

The MSRB is wholly committed to promoting this practice in the marketplace and has published a number of notices and advisories on this point over the last several years. The MSRB's expressed concern over the increasing use of bank loans is that such loans often contain terms and conditions, acceleration provisions or events of defaults that could impact the parity position, rights or collateral of existing bondholders or the liquidity of the issuer. Information regarding such loan terms, and the risks presented to bondholders, is not readily available to the secondary market, and are often disclosed only in the annual financial statements of issuers or conduit borrowers that are filed on EMMA as part of continuing disclosure obligations. The MSRB has summarized its position as follows:

> "The MSRB believes that the availability of timely information about bank loan financings is important for market transparency and promoting a fair and efficient market. Voluntary submission of information concerning bank loan financings through EMMA … would provide timely access for bondholders, potential investors and other market participants to key information useful in assessing their current holdings of municipal securities or in making investment decisions regarding potential transactions in municipal securities."[2]

Inextricably intertwined with this voluntary reporting initiative is the consideration of whether governmental entity notes issued as part of so-called bank loans constitute municipal "securities" under the federal securities laws. This is critical because characterization of bank loans as securities potentially subjects the loan/note, the issuer and various other participants in the transaction to anti-fraud and other provisions of the federal securities laws and regulation by the MSRB, the United States Securities and Exchange Commission ("SEC") and other regulators.

In Notice 2011-37 (August 2, 2011), the MSRB first warned municipal advisors that bank loans may, depending on the specific terms and conditions of the transaction, actually be placements of municipal securities. Such a result could require municipal advisors participating in the private placement of bank loans to register with the SEC as a broker-dealer and subject the municipal advisor to the rules and regulations of the MSRB, including Rule A-13, Rule G-3, Rule G-14, Rule G-17, Rule G-32, Rule G-34 and Rule G-37 with respect to the bank loan. And if a municipal advisor was required to register as a broker-dealer, it would become subject to MSRB Rule G-23, which precludes municipal advisors who are also broker-dealers from becoming underwriters or placement agents for municipal issues for which they are serving as financial advisor. The MSRB did not provide any meaningful information as to what terms and conditions may convert a bank loan to a municipal security, but deferred the determination to "guidance" provided by the SEC and the courts on this point.

The MSRB continued this drumbeat in its Notice 2011-52 (September 12, 2011) and Notice 2012-18 (April 3, 2012). In these Notices, the MSRB expresses its continuing concern over the need for secondary market transparency in the trading of issued municipal securities through provision of readily accessible information of the terms and conditions of bank loans.

Notice 2011-52 cautions that if a broker-dealer serves as a placement agent for a "direct purchase" by a bank of municipal securities or as a placement agent for a "bank loan" that is, in fact, a municipal security, the broker-dealer is subject to all MSRB rules, as well as other federal securities laws. This is true even for broker-dealers who are affiliates or separate divisions of the bank providing the loan. Further, a municipal advisor that advises a state or local government issuer on whether to enter into a bank loan that is, in fact, a municipal security, or on a direct purchase by a bank of the issuer's securities followed by a restructuring of the securities that is considered a primary offering, is subject to the rules of the MSRB concerning municipal advisors.

Notice 2012-18 follows the same theme and provides further guidance on how to actually do the voluntary filing using EMMA's existing capabilities. According to the MSRB, the EMMA posting could be done by either filing copies of the bank loan documents, or a summary of the documents containing the following information: the lender; the borrower; purpose of the loan/financing; security for repayment; third party guarantees; source of repayment; dated/closing date; par amount; interest rates, including method of computation; payment dates; maturity and loan amortization; optional, mandatory and extraordinary prepayment provisions; entity tax status; events of defaults/remedies; current borrower credit rating; governing law; CUSIP number, if applicable; and redistribution rights, if applicable.

In Notice 2012-18, the MSRB also repeats it cautionary advice to broker-dealers and municipal advisors regarding bank loans potentially constituting municipal securities, thereby subjecting them to existing securities law requirements. The MSRB did acknowledge that SEC Rule 15c2-12 (which, among other things, imposes various duties on a broker or underwriter regarding issuer or obligated person initial and continuing disclosure) would not apply to a bank loan that is negotiated and made directly by a bank since there is no underwriter or placement agent involved who is subject to the Rule.

Further, a bank loan made with the participation of an underwriter or placement agent may also be exempt from Rule 15c2-12 requirements under a limited offering exemption set forth in the Rule, but the participating broker would be required to report the loan to the MSRB under Rule G-32. However, the greater transparency and disclosure needs of the secondary market overshadow these technicalities in the view of the MSRB. The Notice also attempted to provide additional guidance as to the features and attributes that would cause a bank loan to constitute a "security" by citing to the U.S. Supreme Court decision in Reves v. Ernst & Young, Inc., 494 U.S. 56 (1990).

All of this culminated in the publication by the MSRB earlier this year of its Notice 2015-03 (January 29, 2015). In this Notice, the MSRB incorporates the substance of the prior Notices and sets forth what it believes to be the best practices for voluntary reporting of bank loans. However, and perhaps as a harbinger of things to come, the MSRB works into the Notice two very important cautionary notes regarding information that is voluntarily filed for bank loans under its best practices guidelines: all voluntary disclosure information "may" be held to the same standards of materiality and timeliness of information disclosed under SEC Rule 15c2-12; and bank loan disclosure information provided should be consistent with the requirements of SEC Rule 10b-5 such that the information is not false or misleading in the context in which it is provided. Is the MSRB inviting issuers to subject themselves, by voluntary disclosure, to MSRB jurisdiction and potential securities fraud exposure where none may otherwise exist?

There is little doubt that the policy behind the MSRB's voluntary disclosure initiative is sound or that the secondary market for municipal securities would benefit from greater access to information regarding bank loans undertaken by issuers of municipal bonds and conduit borrowers of municipal bond proceeds. However, there are significant legal and jurisdictional questions still unresolved, including when and under what circumstances bank loans may constitute municipal securities and the scope of a disclosing party's party potential liability, that should be considered before undertaking voluntary disclosure of a bank loans. Not the least of these concerns is the possibility that by posting voluntary information on EMMA, the issuer or borrower is subjecting itself to potential securities law regulation and Rule 10b-5 liability if that information is later determined by a regulator or a court to have been materially inaccurate or incomplete. This is particularly true where the regulators have not provided any safe harbors or other firm guidance that can be relied upon with legal certainty.

On the flip side, would the regulators at some point take the position that failure to do a voluntary bank loan posting by an issuer that has outstanding municipal securities constitutes a basis for a securities fraud proceeding on a theory that such failure to file caused the information then available to the secondary market to be materially inaccurate or misleading? Sounds a bit far-fetched, perhaps, but it is noteworthy that the SEC, in its 2013 enforcement proceeding against the City of Harrisburg, took a substantially similar position. In the consent order entered in that proceeding,[3] the SEC found that, when considered against the total mix of information available to investors and potential investors, the City's failure to make its required continuing disclosure filings constituted actionable securities fraud. In addition, the Municipalities Continuing Disclosure Cooperation Initiative ("MCDC") undertaken by the SEC in 2014 clearly demonstrates that the regulators are actively seeking out new, innovative and aggressive enforcement techniques regarding municipal securities.

There will very likely be future developments in this evolving area of municipal finance law as the signals being provided by the MSRB and the SEC are clear as to their direction on these issues. The only thing missing at this point is reliable guidance from the regulators or the courts on the key legal points, but it is reasonable to expect new rules or regulations from the SEC and the MSRB further addressing disclosure of bank loans. Issuers, obligated persons, banks, broker-dealers and municipal advisors would be well advised to pay close attention to future developments as the federal regulators continue to take aim at the municipal marketplace and its participants.

[1] EMMA is a registered trademark of the MSRB

[2] MSRB Notice 2012-18 (April 3, 2012)

[3] United States Securities and Exchange Commission, In the Matter of the City of Harrisburg, Pennsylvania, Respondent, Administrative Proceeding File No. 3-15316, entered May 6, 2013, Release No. 6915

by Daniel Malpezzi | McNees Wallace & Nurick LLC

6/16/2015

MSRB Proposes Easing Independence Standard for Board Member Category.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing to ease the standard of independence for one category of its public board members, having failed to gain approval for a similar but broader proposal more than two years ago.

The proposal would amend the board's Rule A-3, which governs board membership in an effort to allow investment advisers affiliated with regulated entities, such as dealers, to qualify as public investor representatives.

The MSRB made a similar push in July 2013, asking the Securities and Exchange Commission to allow it to change the independence standard. But that proposal, which was broader and applied to all public board members, was eventually withdrawn after facing significant backlash.

The Dodd-Frank Act mandated the MSRB to have a majority public board, but left the specifics up to the MSRB. The MSRB expanded its board to 21 members from 15, 11 of which are to be independent of any muni broker-dealers, banks or muni advisors. In addition, at least one member must represent issuers, at least one must represent investors, and one must have knowledge or experience in the muni industry. Of the 10 regulated members, at least one must be associated with a non-bank securities broker-dealer, one with a bank. In addition, at least one but not less than 30% of the 10 must be associated with non-dealer or non-bank muni advisors.

MSRB chief legal officer Robert Fippinger said the proposal is aimed at allowing more qualified investor representatives to potentially serve as public members. Under the current rule, he said, an investment adviser whose firm is part of a larger broker dealer entity would fail the independence test.

“We just think the present standard is too restrictive,” Fippinger said. Currently, the board defines public members who are “independent of any regulated entities” to mean individuals who have “no material business relationship” with any broker-dealer or municipal advisor. The individuals must not be, and not have been, associated with a regulated entity for two years and must not have any compensatory or other relationship with a regulated entity that would affect the independence of their decision-making.

Under the new proposal, an employee or officer of an MA-affiliated or dealer-affiliated investment advisory firm being considered as a public member could qualify as independent.

“The board shall consider relevant factors,” the proposal states, including whether revenue from the regulated entity accounts for a “material portion” of the revenues of the consolidated entity that includes the investment adviser and the regulated entity. Other factors will include whether the regulated entity underwrites, privately places, or otherwise facilitates the origination of municipal securities. The board also will consider whether the investment adviser has a fiduciary duty or other similar relationship of trust to investment company clients or other investor clients.

Fippinger said the 2013 proposal differed from the new one in some major ways. First, he said, the MSRB did not request comment on it but instead filed it directly with the SEC.

“That rubbed a lot of people the wrong way,” he said.

Further, he said, the 2013 proposal would have changed the independence standard for all public board members, rather than narrowing it to the investor representative as the new proposal does. The MSRB’s 2013 proposal drew support from investor groups but met criticism from issuers and consumer advocacy groups. The MSRB withdrew its request in October of that year.

Michael Decker, a managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association, said many SIFMA members feel that a “tangential” relationship between an investment adviser and a broker dealer shouldn’t preclude an adviser from serving as a public board member.

“In concept I think we are in favor of the notion, Decker said.

National Federation of Municipal Analysts industry and media liaison Bill Oliver said NFMA supported the previous attempt to amend A-3 and is at least initially supportive of this one as well.

“We feel that this new amendment would be a positive step for the MSRB by increasing the pool of analysts and portfolio managers from mutual fund companies to serve on the MSRB board," Oliver said.

Mike Nicholas, chief executive officer of the Bond Dealers of America, said the MSRB needs the ability to find knowledgeable investor representatives but must approach the proposal with care.

"While BDA appreciates the MSRB's goal of ensuring it has the most qualified individuals representing investors in the municipal market on its board, these proposed amendments do present the potential for significant conflicts of interest that MSRB will need to manage," Nicholas said.

Meanwhile, Terri Heaton, president of the National Association of Municipal Advisors said, "We do have some concerns with both diluting the independent nature of the investor representation of the board, and the implications for the board being comprised of a majority of truly public members, as well as reducing the transparency of the board selection process. NAMA will need to carefully review these items as well as extending the board term contained within the proposal."

The MSRB proposal asks whether the board should consider extending the terms of board members and whether the board should continue to publicly disclose the names of all board applicants.

"Is the MSRB's requirement to announce publicly the names of all board applicants a deterrent to potential applicants, and would eliminating or modifying it likely increase the number of applicants to the board?," it asks. "Would the publication of other identifying information, such as the names of the applicants' employers or the categories on the board for which they were considered, provide adequate transparency to the process?"

The MSRB has previously touted the publishing of those names as one of the ways it has improved transparency in recent years, pointing it out to the SEC in a Sept. 19 2011 comment letter responding to criticisms about the transparency of the MSRB's rulemaking process.

The board is soliciting public comment on the proposal through July 13.

THE BOND BUYER

BY KYLE GLAZIER

JUN 11, 2015 3:53pm ET

MSRB: Content Outline Now Available for Series 50 Professional Qualification Exam.

Municipal advisor professionals can now review the content outline for the MSRB's forthcoming Municipal Advisor Representative Qualification Examination, or Series 50. The content outline, released in April, is designed to help municipal advisors prepare to take the Series 50 exam, which the MSRB expects to begin administering in 2016 following a pilot period later this year. Municipal advisors are required to take and pass the Series 50 within one year of the launch of the permanent test in order to continue engaging in municipal advisory activities.

Visit the Municipal Advisor Professional Qualifications page on msrb.org to access:

- Series 50 content outline, which includes exam topics, sample questions and reference material

- FAQs about participating in the pilot exam later this year
- FAQs about the rules establishing municipal advisors' professional qualification standards
- Timeline for the development and implementation of the Series 50

Volunteer to Take the Series 50 Pilot Exam.

The MSRB plans to offer municipal advisors the opportunity to take a pilot Series 50 exam later this year. Volunteers who take and pass the pilot Series 50 exam will obtain the municipal advisor representative qualification and will not be required to take the permanent Series 50 exam. The pilot exam assists the MSRB in validating the bank of exam questions and establishing a passing grade for the examination. Municipal advisors interested in volunteering to take the pilot exam may sign up here to receive details about the test-taking process as they become available.

MSRB Provides Access to the Full Universe of Disclosures for a Municipal Security.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) has added a new feature to its Electronic Municipal Market Access (EMMA®) website that allows investors and others to access the full universe of disclosure information available for a municipal security in cases where new identification (CUSIP) numbers are assigned to portions of the bond after issuance.

The EMMA website, which is the electronic source of all disclosure information for municipal securities, now links a municipal bond to any new CUSIPs assigned to portions of that bond. This new feature is helpful for investors in the newly created securities, as well as the issuer of the original security, who may want to refer to the official statement or other disclosures associated with the retired security.

"We know that there are many EMMA users that want access to disclosures for partially refunded bonds and other securities connected with original bond issues," said MSRB Executive Director Lynnette Kelly. "Digitally linking these new bonds to the retired security on EMMA solves the challenge of locating disclosures for these related securities."

Related securities are created when, for example, a bond is partially "called" in connection with a current refunding. In this case, the original CUSIP is retired and new CUSIPs are assigned to the refunded and unrefunded portions. Investors in the new securities may want to refer to the official statement or other disclosures associated with the retired security. To find these disclosures, investors can go to EMMA's "Security Details" for a bond then click the "Related Securities" tab to find links to any new (or former) CUSIPs that may share disclosure information.

The EMMA website is the MSRB's official repository for information on virtually all municipal 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 16, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
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Regulators Close In On Bond-Markup Rules.

U.S. securities industry regulators are close to proposing final rules requiring brokerage firms and bond dealers to disclose how much they mark up the price of most bonds they sell to retail customers.

The controversial rules, proposed in November by the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB), aim to help the public assess the reasonableness of prices charged by brokers for corporate and municipal bonds. Unlike stocks that have a price publicly available on an exchange, individual dealers determine the price at which they sell or buy bonds.

“I expect us to be moving forward with some proposal to the (Securities and Exchange) Commission in the near future,” FINRA Chairman and Chief Executive Richard Ketchum said at Reuters Wealth Management Summit in New York on Wednesday.

In comments submitted earlier this year, the securities industry slammed the proposed rules as expensive to implement, unnecessary and potentially confusing to investors.

“From an operational and implementation perspective,” the proposals are “irredeemably flawed,” Wells Fargo Advisors wrote. Others said investors can already estimate markups by checking industry-financed databases, and might be confused by numbers on a trade confirmation.

FINRA, which is funded by the securities industry, is taking especially seriously comments related to operational issues and also is working with the MSRB to address some minor differences between FINRA and MSRB’s proposals, Ketchum said.

The municipal bond regulator is likewise working out “details of our proposal with FINRA so that we can coordinate next steps to the extent possible,” MSRB Executive Director Lynnette Kelly wrote in an e-mailed statement.

The regulators’ rules would apply to corporate and municipal bonds bought by brokers and dealers on the same day they sell them to an investor. Most are purchased by dealers within an hour of the sale, presenting little risk of price volatility. However, “the range of markups (among dealers) is quite substantial,” Ketchum said.

Brokers would be required to put on trade confirmation statements how much more customers pay to buy, or how much less they receive to sell, “same-day” bonds. Most firms today only include a purchase/sale price and quantity of bonds traded on the confirmation.

Disclosure “should deter overcharging” in the $1.6 trillion corporate bond and the $3.6 trillion municipal bond markets, SEC Chairwoman Mary Jo White said in a speech a year ago.

Ketchum said disclosure is especially timely because of an expected jump in interest rates that will affect bond valuations. “These next few years is a time to focus on the ways fixed-income securities are traded and sold to investors,” he said at the Reuters Summit.

(The story was refiled to change the sixth paragraph to show that FINRA, not SIFMA, is the subject of Ketchum's remarks.)

REUTERS

NEW YORK | BY JED HOROWITZ

Wed Jun 10, 2015 5:09pm EDT

Hawkins Advisory (Disclosure by Municipal Issuers).

This edition of the Hawkins Advisory describes rules governing the required disclosures by issuers and underwriters of findings and conclusions of certain third-party due diligence reports relating to asset-backed securities. Such rules go into effect on June 15, 2015.

Read the Advisory.

Hawkins, Delafield & Wood LLP

6/8/2015

Bid-Riggers Lose Appeal in Potentially Far-Reaching Ruling.

WASHINGTON — A federal appeals court denied the appeals of a trio of convicted bid-riggers in a ruling that could have lasting effects for future fraudsters, according to a securities litigation lawyer.

The U.S. Court of Appeals for the Second Circuit in lower Manhattan issued an opinion on Thursday dismissing the arguments of former UBS AG bankers Peter Ghavami, Michael Welty and Gary Heinz.

The three men were seeking to have their convictions overturned after a district court jury found them guilty in August 2012 for participating in a far-reaching scheme to manipulate bids for guaranteed investment contracts and other municipal products between 2001 and 2006. The Justice Department had filed fraud and conspiracy charges against them.

The foundation of the defendants' arguments was that the government took too long to indict them because the five-year statute of limitations for wire fraud had expired before they were brought up on charges. Former General Electric bankers Steven Goldberg, Dominick Carollo and Peter Grimm, convicted as part of the same investigation, won their appeals on those grounds in December 2013.

But the government took a different avenue with the Ghavami defendants and alleged that the fraud affected a financial institution, triggering a 10-year rather than five-year, statute of limitations. The defendants tried to have the charges thrown out by the district court, but the court allowed the case to go forward.

Lawyers for the convicted men argued that the conspiracy affected municipal issuers, not banks, and that the banks, including UBS, were "active participants in the fraud." Further, they argued, the costs, fines, and legal fees incurred by the banks during as a result of the fraud are not the kind of harm the law contemplates. Justice Department lawyers countered that the men exposed their employers and the employers of their co-conspirators to criminal sanctions and said that the men even conceded that their crimes affected UBS in order to prevent the government from presenting evidence to that effect at trial.

The Second Circuit opinion, issued in the name of the court rather than by the individual judges who heard the case, noted that UBS and other financial institutions involved admitted responsibility for the crimes and agreed to pay more than $500 million in fines and restitution to municipalities.

“As a result, the banks incurred significant payments and related fees, which were foreseeable to the defendants at the time of their fraudulent activity,” the court said in its opinion. “The role of the banks as co?conspirators in the criminal conduct does not break the necessary link between the underlying fraud and the financial loss suffered.”

The court issued its opinion unusually quickly — in less than three weeks. The three-judge panel heard oral arguments just last month, and appellate court decisions often take 60 days or more.

“The cursory fashion in which the Second Circuit rejected the appeal reflects its view that the longer, ten-year limitations period applied,” said Anthony Sabino, a white-collar defense attorney in Mineola, N.Y., and a St. John’s University law professor. “Clearly, the higher court gave no credence to the defendants on that argument.”

Sabino said the court’s decision could have serious implications for those charged with financial frauds in the future.

“Its far greater significance is to the financial community,” he said. “Based upon this ruling, if you transmit anything fraudulent that has anything more than a trivial effect upon a bank and its business, you are subject to a statute of limitations more than twice the norm. That’s a pretty powerful weapon to use against the bad guys in the financial world.”

Ghavami received an 18-month prison sentence and a $1 million fine last July; Heinz got 27 months and a $400,000 fine; and Welty received 16 months and a $300,000 fine. Nearly all of the other bid-riggers escaped with light sentences.

Goldberg, Carollo and Grimm are free after their successful appeal and most of the other men indicted escaped significant punishment. Former UBS banker Mark Zaino became a cooperating witness for the government and received no prison sentence or fine when sentenced last year.

Former CDR Financial Products, Inc. employees Douglas Goldberg and Daniel Naeh were not given any prison time or probation when sentenced last year. CDR founder David Rubin escaped jail but was ordered to pay more than $2 million in restitution and millions more in fines for both himself and the firm. Former Bank of America executive Douglas Lee Campbell received virtually no punishment at his sentencing last year, and Bank of America’s Phillip Murphy last month received a prison sentence of 26 months.

It is unclear whether the Ghavami, Heinz and Welty will attempt to appeal to the Supreme Court, but Sabino said there is virtually no chance the highest court in the land would decide to hear the case. The Department of Justice declined to comment.

THE BOND BUYER

BY KYLE GLAZIER

JUN 5, 2015 2:29pm ET

Ex-UBS Execs Lose Appeal of U.S. Municipal Bond-Rigging Convictions.

(Reuters) – Three former UBS AG executives on Thursday lost a bid to reverse their 2012 convictions for conspiring to deceive U.S. cities and towns by rigging bids to invest municipal bond proceeds.

A U.S. appeals court in New York rejected arguments by Gary Heinz, Peter Ghavami and Michael Welty that prosecutors waited too long to bring wire fraud and conspiracy charges.

The case stems from a bid-rigging investigation involving the $3.7 trillion U.S. municipal bond market that resulted in 17 convictions and $743 million in settlements with five banks, including $160 million from UBS.

The defendants contended that prosecutors improperly relied on a 1989 law arising from the savings-and-loan crisis to extend the statute of limitations to 10 years from five.

The 2nd U.S. Circuit Court of Appeals said the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) covered any wire fraud that “affects a financial institution,” even when the banks themselves are also accused of wrongdoing.

The ruling may affect Bank of America Corp’s appeal of a $1.27 billion mortgage fraud penalty in a case that also centers on the reach of FIRREA, said Don Hawthorne, a financial litigation attorney not involved in either case.

The decision does not resolve the issues presented in the bank’s case, but the court’s plain-language reading of the statute is similar to the approach taken by the Bank of America trial judge, Hawthorne said.

“I think the new opinion will not have been greeted with joy in the Bank of America camp,” he said. “It moves the ball somewhat in the direction of the government.”

Nathaniel Marmur, Ghavami’s lawyer, said his client may appeal “the court’s counterintuitive ruling that a statute meant to protect banks from being victimized also applies where the bank itself is the bad actor.”

Heinz will also consider an appeal, said his lawyer, Marc Mukasey. A lawyer for Welty declined to comment.

Ghavami was UBS’s global head of commodities, while Heinz and Welty worked on its municipal bond reinvestment and derivatives desk.

U.S. authorities accused them of steering financial contracts to others in exchange for kickbacks and favors between 2001 and 2006.

After a jury found them guilty in 2012, Heinz, Ghavami and Welty received prison sentences of 27, 18 and 16 months, respectively.

The case is U.S. v. Ghavami, 2nd U.S. Circuit Court of Appeals, No. 13-3121.

Thu Jun 4, 2015 4:01pm EDT

By Joseph Ax

(Reporting by Joseph Ax; Editing by Cynthia Osterman, James Dalgleish and Steve Orlofsky)

SEC's Olsen: Too Soon for MA Rule Changes.

PHILADELPHIA – A leading official in the Securities and Exchange Commission's Office of Municipal Securities said Monday that municipal advisor rules are too new to add a sophisticated issuer exemption, even though a number of market participants have asked for it.

Rebecca Olsen, deputy director of the OMS, made those comments during a panel discussion at the Government Finance Officers Association's conference here. Olsen, who was promoted to her current position last month after previously serving as the office's chief counsel, told issuer officials at the conference that the rule has been effective less than a year and that the Municipal Securities Rulemaking Board is still working to complete the MA regulatory framework.

Some issuers and dealers have been saying for months that the MA rule should include an exemption for dealers working with "sophisticated municipal issuers," meaning that they would be at least partially exempt from the requirements of the regulatory framework. The idea is similar to exemptions in other MSRB rules that allow dealers to have lesser responsibilities when dealing with sophisticated investors, which are typically institutional investors.

"I think we should wait and see how they are working before we consider adding something like that," Olsen said, referring to whole group of MA rules.

Olsen said that the extreme diversity among issuers would make defining "sophistication" difficult, and also noted that such an amendment to the rule would require action by the commission, not just the staff. Sophisticated issuers are already making use of the available exemptions in the rule if they want to get advice from dealers, Olsen said, especially the Independent Registered Municipal Advisor, or IRMA exemption. That feature allows investment bankers to give muni-related advice to municipalities without registering as MAs as long as the issuer has its own MA that is independent of the dealer, and has said it will rely on that advisor.

Peggy McCarthy, finance director for the city of Tukwila, Wash., also participated on the panel and shared her city's experiences from the perspective of a smaller, less frequent issuer. Tukwila used municipal advisory services on some recent bond issuances, including its first-ever competitive sale, she said.

"After using a municipal advisor, it's clear there is value, even if it can't be easily quantified," McCarthy said. She strongly encouraged issuers to use an MA, saying that her experience was "very, very favorable."

Jonas Biery, debt manager for the city of Portland, Ore., shared the experience of a larger issuer. Biery said Portland put a notice online that it had retained an IRMA, and received acknowledgement of that from a number of underwriting firms.

Biery said issuers are probably spending more money now because they are leaning heavily on MAs, but said he considers it a "cost of doing business." More problematic, he said, is the likelihood that the number of MAs in the market might be reduced because of compliance struggles, which could reduce the options available to issuers shopping for advisors.

MSRB general counsel for regulatory affairs Michael Post also participated on the panel, and provided conference attendees with an update on the MSRB's regulatory framework.

The Bond Buyer

by Kyle Glazier

JUN 1, 2015 4:49pm ET

GFOA's Watkins: MCDC Cost Issuers; SEC Initiative 'An Abuse of Power'.

PHILADELPHIA — Municipal issuers spent $2,000 to $18,000 to do continuing disclosure reviews under the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative and the vast majority of them felt they were forced to do them, the Government Finance Officers Association said during a spirited panel discussion here Tuesday.

The cost estimate resulted from a survey that GFOA released in conjunction with an MCDC panel discussion at the group's annual conference here.

The survey's results showed that 79% of responding issuers had to hire outside consultants to help them at costs ranging from $2,500 to over $12,000. Some issuers spent as much as $18,000 or as little as $2,000 to do the disclosure reviews. The survey results also showed issuers spent between 25 and 250 hours responding to the initiative. In addition, 65% of issuers who responded to the survey self-reported potential violations under the MCDC, and 69% felt that responding to the initiative was required, not voluntary.

That initiative encouraged issuers and dealers to voluntarily report to the SEC any time in the last five years in which they sold or underwrote bonds with offering documents that did not identify recent failures to comply with issuers' continuing disclosure agreements as required by the SEC's rule 15c2-12. The MCDC reporting period expired on Sept. 10 last year for underwriters and on Dec. 1 for issuers.

Ben Watkins, the director of Florida's division of bond finance and chair of the GFOA's debt committee, said the average cost for issuers was almost $6,000, but warned that the sample size was not large enough to be scientific.

Watkins sparred over the initiative with LeeAnn Gaunt, chief of the SEC enforcement division's municipal securities and public pensions unit. "There was nothing either voluntary or cooperative about the initiative," Watkins said, labeling the MCDC "an abuse of power" by the SEC.

Watkins said the initiative was especially problematic for issuers because they effectively were forced to dig through voluminous lists of potential violations supplied to them by their underwriters. Some of these violations occurred in the pre-EMMA era, Watkins said, meaning that issuers had to comb through a user-unfriendly system riddled with inaccuracies to try to prove their innocence.

"That doesn't seem right to me," Watkins said.

But Gaunt responded strongly to Watkins' words, calling his criticisms "red herrings." Gaunt said issuers shouldn't expect the SEC to tailor its activities to what is convenient for them.

"The enforcement division is here to prosecute historical violations of securities laws," she said.

Gaunt posed a rhetorical question to the crowd, asking them whether they had really been thinking about their disclosure compliance when they signed off on official statement language that said they had been in material compliance. If they had been sloppy, that was their fault, she said.

"How is that my problem?" Gaunt asked.

Kristi Kordus, finance director at Marathon County, Wisc. said on the panel that her county participated in the MCDC at a cost of $7,500 but that she got "priceless" peace of mind as a result.

John McNally, a partner at the law firm of Hawkins Delafield & Wood in Washington, said the MCDC was the result of the SEC's lack of authority to regulate issuers beyond the antifraud provisions of the securities laws. The Tower Amendment, added to the securities laws in the mid-1970s, forbids the SEC from requiring issuers to directly or indirectly file reports or documents with it before issuing bonds.

"I think you best view it as a product of that structure," McNally said, noting that the SEC had warned the market it could take action like this, particularly in a 2012 risk alert that warned underwriters about violations of 15c2-12.

Though there is some issuer concern that the SEC could seek repeal of Tower based on the potential violations reported under the MCDC, McNally said he guessed any such attempt would fail as it has before.

Dave Sanchez, an attorney at Sidley Austin in California who is a former SEC muni office lawyer, said the SEC carefully considers where to spend its scarce resources.

"Did it accomplish bang for the buck? I think, honestly, it did," Sanchez said. "Behavior is changing," he said, adding, "That's a positive thing."

But Sanchez said also that the SEC has to consider whether issuer disclosure is the most pressing problem in the market. He said the SEC might want to consider next turning to new rules, effective June 15, which require credit rating agencies to apply ratings universally to all securities they rate. As of now, munis default far less often than similarly-rated corporate debt.

The GFOA conference concludes on Wednesday.

THE BOND BUYER

BY KYLE GLAZIER

JUN 2, 2015 1:13pm ET

NABL Seeks Board Nominees.

At the recent May meeting, the NABL Board of Directors selected the following members to participate on the 2015 Nominating Committee: Matthias Edrich, Kutak Rock LLP, Denver, CO; Kathleen Orlandi, Hawkins Delafield & Wood LLP, New York, NY; Victoria Ozimek, Bracewell & Giuliani LLP, Austin, TX and Jeff Qualkinbush, Barnes & Thornburg LLP, Indianapolis, IN. They join Committee Chair, Allen Robertson, Robinson Bradshaw & Hinson, P.A., Charlotte, NC; Vice Chair; Antonio Martini, Hinckley Allen, Boston, MA and Kenneth Artin, Bryant Miller Olive P.A., Orlando, FL in selecting the 2015-2016 Board of Directors and Executive Committee for election by the NABL membership.

NABL members are encouraged to submit nominees for Board positions to Linda Wyman, NABL COO, no later than Wednesday, June 17, 2015. Submissions should include a description of the nominee's qualifications and past and current NABL committee and/or project participation. The Committee will consider all qualified nominations from the membership. The list of the current Board of Directors can be found here.

The candidates selected by the Nominating Committee for the 2015-2016 Executive Committee and Board of Directors will be sent to the membership by August 10, 2015, thirty days prior to the Annual Membership Meeting, in accordance with the NABL By-Laws. (Additional nominations from the floor are accepted only if provided in writing to the Chief Operating Officer and the President, not less than 14 days prior to the Annual Meeting.) The election will take place on Wednesday, September 9, 2015 during the 40th Bond Attorneys' Workshop at the Fairmont Chicago.

SEC Approves Additional Post-Trade Data Collection.

WASHINGTON – The Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's proposal to collect additional post-trade data for EMMA, the MSRB announced late Tuesday.

The new data reporting requirements, which take effect on May 23, 2016, are included in amendments to MSRB Rule G-14 on trade reporting and the MSRB's facility for its Real-Time Transaction Reporting System (RTRS).

The amendments will require dealers to report new information through the RTRS, such as whether a trade occurred on an alternative trading system or involved a non-transaction based fee. They also would eliminate the requirement for dealers to report the yield for trades with customers.

"The MSRB's EMMA website provides an unrivaled window into the trading of municipal securities for investors and other market participants," said MSRB executive director Lynnette Kelly. "With the addition of useful new data points, the market – regulators included – will gain a better understanding of the ever-evolving practice of trading municipal securities, particularly the growing use of ATSs."

The MSRB first floated the proposal back in August. At that time the amendments included a provision that would have required dealers to flag trades that occurred as a result of conditional trade commitments.

CTCs occur when dealers solicit, accept, and conditionally allocate orders prior to the signing of the bond purchase agreement. The prices agreed upon do not necessarily reflect market conditions at the time of the formal award of the bonds. But because trades cannot officially be executed until the bond purchase agreement is signed and the bonds are formally awarded to the underwriter, conditional commitments appear on EMMA the same day as the day the bonds are issued and initially sold. There is no way to distinguish bonds sold via CTCs and bond sold the day the purchase agreement is signed.

During the comment period late last year, dealers said the new reporting requirements could be costly and operationally difficult, particularly a CTC indicator. The MSRB determined during its

October 2014 board meeting to move forward with the proposal, but to leave the conditional trade commitment indicators out.

The SEC received three comment letters on the proposal, from the Bond Dealers of America, Securities Industry and Financial Markets Association, and the Financial Services Institute, with the dealers reiterating concerns about burdens.

However, the SEC said in its approval order that the “MSRB considered carefully and responded adequately to comments and concerns regarding the proposed rule change.” While the commission acknowledged that the new requirements impose some burden on dealers, it said it does so evenly to all dealers and gives them a long implementation period.

THE BOND BUYER

BY KYLE GLAZIER

MAY 27, 2015 10:06am ET

MSRB Makes Moody's Public Finance Ratings Available on EMMA Today.

The Municipal Securities Rulemaking Board (MSRB) announced today that its Electronic Municipal Market Access (EMMA®) website now includes public finance ratings from Moody’s Investors Service, Inc., giving investors and the public free access to ratings from all major agencies together with other key information about municipal bonds.

View the full press release.

The MCDC Initiative: December Was Just The Beginning - Butler Snow

As many of our issuer clients know, as a result of perceived wide-spread violations of post issuance reporting compliance, in 2014 the SEC conducted its “Municipal Continuing Disclosure Compliance Initiative” or the “MCDC Initiative.” Under the MCDC Initiative, each investment bank was required to look back five years to all of the issues it underwrote and self-report to the SEC any material misstatements made in an offering document (the “Official Statement”) regarding an issuer’s compliance with prior continuing disclosure undertakings made pursuant to SEC Rule 15c2-12. Investment banks were required to report their transgressions to the SEC by September 9, 2014. Similarly, any issuer who had publicly offered bonds in the municipal market in the last five years were “encouraged” to review its Official Statements for any material misstatements relating to the issuer’s compliance with its continuing disclosure obligations and to self-report any findings to the SEC. Issuers had until December 1, 2014 to self-report.

So now what? Now we wait for the SEC to sort through all of the information received from the investment bankers and issuers. It is unclear when the SEC will begin to enter into cease and desist proceedings with investment banks or issuers. The SEC has stated that it will address investment bank filings first and, with respect to issuers, will address the most egregious transgressions first. But how it will make those determinations and what it deems to be a “material misstatement” with respect to continuing disclosure compliance is still unclear.

Many issuers chose to self-report to the SEC under the MCDC Initiative. If an issuer did self-report, the only thing to do right now is to wait to hear from the SEC. ONE NOTE OF CAUTION: when (and if) an issuer hears from the SEC, whether it is a simple request for additional information or something more formal, we would recommend that you contact your bond counsel in connection with any responses to be made to the SEC. You may tell the SEC that you prefer to get advice from your counsel before responding to questions or providing additional information. Get the name and contact information from the SEC caller. SEC rules and procedures are complex and it would be to your advantage to be fully informed when you respond to any requests from the SEC.

Whether your entity participated in the MCDC Initiative or not, the SEC is very focused on continuing disclosure compliance. In order to ensure that your entity is in compliance, you should consider the following:

1. **Determine whether your entity is currently in compliance with your continuing disclosure obligations.** At the time of issuance of publicly offered securities, each issuer is required to enter into an agreement to provide ongoing disclosure. An issuer should review the information that it agreed to provide in all of its prior continuing disclosure undertakings and determine whether it has been providing the required information on a timely basis. If not, the issuer may want to consider doing a "catch up" filing.
2. **Consider whether to adopt policies and procedures relating to continuing disclosure compliance.** The SEC is serious about post issuance reporting compliance. While an issuer may not have been required to self-report under the MCDC Initiative, it is still important for the issuer to make sure it will comply in the future. Butler Snow has prepared suggested "form" policies and procedures an issuer can adapt to its needs and then adopt to assist with ongoing compliance. We would be happy to assist you with this process.
3. **Follow up.** Once the issuer is current in its filings and has adopted policies and procedures, it is crucial to make sure that the ongoing continuing disclosure obligations are met and that the issuer complies with any policies or procedures it has adopted. Remember that so long as the issuer has publicly offered securities that are outstanding, the issuer has obligations to continue to update the market.

May 21 2015

Article by Kimberley K. Crawford and John F. England

Butler Snow LLP

NASACT Joins Other Groups in Supporting Legislation to Treat Investment Grade Municipal Securities as High Quality Liquid Assets.

View Letter.

BDA Submits Comment Letter on Proposed Rule G-42 to Establish Core

Standards of Conduct for MAs.

BDA submitted a comment letter on the MSRB's rule filing with the SEC on its proposed Rule G-42. Proposed Rule G-42 would establish core standards of conduct for municipal advisors, provide guidance on the obligations and prohibitions that accompany their federal fiduciary duty to state and local governments, and clarify their duties of care and fair dealing to all clients.

BDA's letter focuses on the following issues:

- Timing of disclosure of conflicts of interest
- Principal transactions
- Documentation of recommendations
- Reference to Rule G-23
- Reference to bank loans

The letter is available here.

05-29-2015

GFOA Leads Effort to Support Legislation to Classify Municipal Securities as High Quality Liquid Assets.

On May 27 the GFOA joined with the National League of Cities, National Association of Counties, U.S. Conference of Mayors, National Governors Association, National Association of State Treasurers, the National Association of State Auditors, Comptrollers and Treasurers and others to urge members of the U.S. House of Representatives to cosponsor legislation that would classify investment-grade municipal securities as High Quality Liquid Assets (HQLA). The joint letter is available below. The bipartisan legislation (HR 2209), authored by Congressman Luke Messer (R-I--6), comes in response to a new rule that was approved by the Federal Reserve Board, Federal Depository Insurance Commission and the Comptroller of Currency in September of 2014, which established new liquidity standards for banks. The new standards, which went into effect in January of 2015, require financial institutions with at least $250 billion in total assets to maintain prescribed levels of liquid assets that can quickly be converted into cash in times of national economic stress. These asset classes included foreign sovereign debt, but failed to classify municipal securities as HQLA.

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 resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86 percent since 2009.

Congressman Messer's legislation would protect municipal securities issuers from such cost increases by directing the Federal Reserve, FDIC and OCC to admit municipal securities into accepted HQLA classes outlined under last September's rule. The GFOA is extremely grateful to Congressman Messer for his leadership on this important issue, and will be engaging GFOA members in the coming weeks in the advocacy effort to advance consideration of this legislation in the House this summer.

Download:

[HR 2209 Support Letter]

Wednesday, May 27, 2015

MSRB to Require Additional Post-Trade Data for Display on EMMA.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to enhance the transparency of municipal securities transactions by collecting additional post-trade data for display on the MSRB's Electronic Municipal Market Access (EMMA®) website. Municipal securities dealers will soon be required to use a new indication for trades that occurred on an alternative trading system (ATS), among other changes.

"The MSRB's EMMA website provides an unrivaled window into the trading of municipal securities for investors and other market participants," said MSRB Executive Director Lynnette Kelly. "With the addition of useful new data points, the market – regulators included – will gain a better understanding of the ever-evolving practice of trading municipal securities, particularly the growing use of ATSs."

The new data reporting requirements for dealers are included in amendments to MSRB Rule G-14 on trade reporting and the MSRB's facility for its Real-Time Transaction Reporting System (RTRS). The requirements take effect on May 23, 2016, giving dealer firms one year to implement the necessary system changes. The MSRB will provide updated technical documentation to assist firms with this process.

In a reflection of current market practices, the amendments expand the application of existing list offering price and takedown indicators as well as add a new indicator to identify trades involving non-transaction-based compensation arrangements. Additionally, the MSRB is eliminating the requirement for dealers to report yield on customer trade reports and, instead, enabling the MSRB to calculate and disseminate yield on customer trades.

The new data will be collected from dealers through RTRS and made available to the public by paid subscription and for free on the EMMA website, the official repository for information on virtually all municipal securities. EMMA provides free public access to official disclosures, trade data, credit ratings, educational materials and other information about the municipal securities market.

Date: May 26, 2015

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To Disclose Or Not To Disclose – That Is The Bank Loan Question: Butler Snow

Anyone involved in public finance for the last few months has asked themselves this question:

Should a state or local government voluntarily disclose on EMMA the terms and conditions of a private bank loan transaction? The answer seems to be "yes" according to many industry groups involved in public finance. But is that truly the best answer for the municipal issuer? Oh dear, another question and we haven't even answered the first one! So let us go back to the beginning.

Bank loan financings1 are entered into directly with a bank without the involvement of an underwriter and are not subject to the continuing disclosure rules of Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule"). As such, no offering documents are generally prepared and municipal issuers are not required to provide any information about bank loans via the Electronic Municipal Market Access website ("EMMA"), which is a service of the Municipal Securities Rulemaking Board ("MSRB") (although information regarding these financings is typically included in a municipal issuer's audited financial statements, which generally are filed on EMMA).

In April 2012, the MSRB released Notice 2012-18, Notice Concerning Voluntary Disclosure of Bank Loans to EMMA, encouraging municipal issuers to voluntarily disclosure bank loan financings on EMMA in order to provide "timely access for investors and other market participants to key information useful in making informed investment decisions." The MSRB was concerned that investors needed the bank loan disclosure because of the lack of timeliness of information that is only included in the annual financials, covenants which could cause acceleration of the bank loan to the detriment of bondholders, and the dilution of bondholder's security due to the creation of additional parity debt.

The MSRB is not alone. Since 2012, the Government Finance Officers Association, the National Federation of Municipal Analysts, Standard & Poor's, and Moody's Investors Service have all released white papers or best practice statements echoing the MSRB's concerns and recommending that municipal issuers voluntarily disclose bank loan financings.2 In addition, in March 2012, a Bank Loan Disclosure Task Force comprised of numerous industry groups issued a paper entitled "Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans."

Fast forward three years. According to remarks made by Lynnette Kelly, Executive Director of the MSRB, during the National Association of Bond Lawyers 13th Annual Tax & Securities Law Institute held in New Orleans in March 2015, extremely few (less than a 100) bank loans have been disclosed on EMMA since 2012. In January 2015, the MSRB published a Market Advisory on Disclosure of Bank Loans again reiterating the necessity for municipal issuers to voluntarily disclose bank loan information. The MSRB also sent a comment letter to the SEC requesting a thorough review of the Rule to enhance the quality and timeliness of information made available to the municipal securities market, including requiring the disclosure of bank loan financing.

Issuers should carefully consider whether to voluntarily disclose bank loan information. If the bank loan does not materially increase the issuer's overall debt profile or does not include covenants or other features that would materially, negatively impact existing bondholders, it is arguable that no disclosure is needed. Factors weighing in favor of disclosure may include increases in overall debt that may impact the issuer's credit position, covenants or events of default that prefer the bank lender over other bondholders, or structures that may negatively impact payment streams available to bondholders.

Issuers must also decide what information to provide in a voluntary disclosure, keeping in mind that any items posted on EMMA, including voluntary information about bank loans, must not be materially inaccurate or misleading in the context in which it is provided. It is easiest to file the complete loan financing document; however, lenders may wish to redact information they consider proprietary. In some instances, the requested redactions may cause concern about materially misleading disclosures. Issuers can also file a summary of some or all features of a bank loan;

however, issuers should carefully consider the information included in the summary due to concerns about material omissions or inaccuracy.

The answer to the question posed at the beginning of this article is “maybe.” Since disclosure is not required, municipal issuers and their counsel should carefully consider their responsibilities under the federal securities laws in determining whether (and what) to voluntarily file with respect to bank loans.

Footnotes

[1] We are assuming for the purposes of this blog that the bank loan is a municipal security. Whether or not a bank loan is or is not a “municipal security” is a discussion for another day and another blog post.

[2] See: http://www.gfoa.org/understanding-bank-loans,
http://www.gfoa.org/understanding-bank-loans ;
http://www.bondbuyer.com/media/pdfs/BBCal13-Reining.pdf ,
http://www.treasurer.ca.gov/cdiac/seminars/2014/20140205/sp.pdf ,
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Last Updated: May 21 2015

Article by Maria Prevedel Harwood and Elizabeth E. Thomas

Butler Snow LLP

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.

Fed Proposes Limited Muni HQLA Rule.

WASHINGTON – The Board of Governors of the Federal Reserve System has proposed a rule that would amend the Fed’s liquidity coverage ratio requirement (LCR) to include some uninsured investment-grade general obligation municipal securities as high-quality liquid assets (HQLA) — a move market participant have said matters little unless other regulators follow suit.

The Fed proposal would partially modify a rule jointly adopted by the Fed, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation late last year that requires the country’s largest banks and other financial institutions to maintain a certain LCR to ensure they can better deal with periods of financial stress. An LCR is defined as the ratio of HQLA to total net cash outflows. Assets would qualify as HQLA if they could be easily and quickly convertible to cash with or no loss of value during a period of liquidity stress.

The regulators failed to include munis as HQLA in the rules, contending that they are not liquid or easily marketable. They also said banks don’t hold munis for liquidity. The rule, which banks have to comply with by Jan. 1 2017, is designed to protect the U.S. financial system during times of stress by ensuring that banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion have the flexibility to weather a financial storm. However, the Fed's proposal does not change the rules of the Comptroller (OCC) or the FDIC.

The Fed is proposing to treat munis as level 2B liquid assets under the LCR as long as they meet the same requirements as corporate bonds, being liquid and readily marketable. Level 2B assets cannot account for more than 15 percent of the total HQLA amount, but the Fed is also capping the muni amount at 5% of an institution's total HQLA holdings.

This would be less favorable treatment than proposed under legislation introduced by Rep. Luke Messer, R-Ind. earlier this month, which would treat certain munis as 2A assets, which could account for up to 40% of a bank's HQLA under the rule.

"Although the board has concluded that certain U.S. general obligation municipal securities are sufficiently liquid to be included as eligible HQLA, the board proposes to limit the aggregate amount of all U.S. general obligation municipal securities that may be included in the HQLA amount to ensure appropriate diversification of asset classes within a board-regulated institution's HQLA amount," the Fed said in its proposal.

The Fed also made clear that bonds guaranteed by insurers should not be able to qualify as HQLA.

"Under the proposed rule, U.S. general obligation municipal securities would qualify as HQLA only if they are not obligations of a financial sector entity and not obligations of a consolidated subsidiary of a financial sector entity," the Fed said. "Thus, if a bond insurer insures the general obligation municipal securities of a U.S. public sector entity, the securities would not be eligible for inclusion in HQLA."

The Fed reached that conclusion, the proposal explains, because such guarantees could be risky during periods of financial stress and that stipulation is consistent with requirements imposed on corporate bonds and other 2B HQLA.

Market groups and lawmakers have warned that the exclusion of munis as HQLA will raise borrowing costs for issuers, as well as decrease liquidity and increase volatility in the muni market.

But sources told The Bond Buyer last month that a unilateral move by the Fed without the OCC or the FDIC would probably not do much to resolve the HQLA problem, because most of the banks big enough to impact liquidity are nationally-chartered institutions primarily regulated by the OCC. According to Fed data, all but two of the nine institutions with more than $250 billion in holdings at the end of 2014 were banks primarily regulated by the OCC: Bank of New York Mellon/Bank of New York Mellon Corp. and State Street Bank & Trust Co/State Street Corp-.

Fed officials who hosted a conference call Thursday acknowledged that banks under OCC supervision would still not be free to hold munis as HQLA under this proposal, but said it remains unclear how that could impact the banks or the market. In a press release, the Fed touted the proposal as a way to "maintain the strong liquidity standards of the LCR while providing banks with the flexibility to hold a wider range of HQLA."

The Fed is soliciting comments on the proposed rule until July 24.

THE BOND BUYER

BY KYLE GLAZIER

MAY 21, 2015 2:40pm ET

Jessica Kane is New SEC Muni Chief; Rebecca Olsen, Deputy.

WASHINGTON — The Securities and Exchange Commission has announced that Jessica Kane has become director of the SEC's Office of Municipal Securities and Rebecca Olsen the deputy.

Kane, its former deputy director, and Olsen, its former chief counsel, each spent time representing the office publicly since the departure of former director John Cross late last year.

SEC watchers in the muni market had said the two women were strong contenders for the top job. Both joined the muni office in 2013, Kane moving from the SEC's office of legislative and intergovernmental affairs and Olsen from the law firm of Ballard Spahr.

SEC chair Mary Jo White praised both attorneys.

"Jessica is a strong leader with sound judgment and great dedication, who will work tirelessly on behalf of investors," White said. "She is the right person to lead the Office of Municipal Securities as the agency continues to play a crucial role in overseeing the municipal securities market."

"Rebecca's extensive experience in municipal securities will be invaluable as she takes on this new leadership role," White said of Olsen. "We will continue to rely on her very sound judgment and expertise in this important area."

Both women said they were honored to take on new leadership roles in the office, which is responsible for providing the commission with muni market expertise. The office took the lead role in developing the SEC's municipal advisor registration rule, and continues to provide guidance on SEC rules and coordinate with other divisions of the commission as well as other regulators.

"I am honored to have the opportunity to serve as director of the Office of Municipal Securities," said Kane, who first joined the SEC in 2007. "I look forward to continuing to work with Chair White, the commissioners, and the extraordinary staff in the Office of Municipal Securities to carry out the SEC's important mission in a market that is so essential to financing our country's public infrastructure."

"I am honored to take on this new leadership position," said Olsen. "It is a privilege to work with the talented professionals in the office and advance the commission's important investor protection efforts in our municipal securities market."

Cross, now associate tax legislative counsel at the Treasury, said he is pleased to hear about the promotions and thinks very highly of both Kane and Olsen.

"Jessica Kane is a truly exceptional rising star, whose rock-solid good judgment, consensus-building approach, broad securities expertise, and principled commitment to the SEC's mission make her an ideal choice to lead the SEC's Office of Municipal Securities," Cross said. "Jessica is highly regarded by her colleagues and she made invaluable contributions to the municipal advisor rules and other municipal policy issues during my SEC tenure."

"Further, Rebecca Olsen is a superb municipal securities law expert with a depth of municipal transactional experience, who has brought insightful perspective and rigorous analysis to all of her

SEC work," Cross added. "The SEC is very fortunate to have such a strong talented leadership team in Jessica Kane and Rebecca Olsen to move forward to ensure effective SEC oversight of the municipal securities market."

John McNally, a partner at Hawkins Delafield & Wood in Washington, said the muni office originally existed prior to the Dodd-Frank Act to provide muni expertise to the SEC's enforcement division, which now has its own specialty municipal securities and public pensions unit. The new office was directed by Dodd-Frank to report directly to the SEC chair. The primary focus of the office is now the implementation of the recommendations in the SEC's 2012 Comprehensive Report on the Municipal Market, McNally said.

"John Cross assembled an excellent team in Jessica and Rebecca, and they have the experience and the expertise to make them both excellent choices for their new positions and for the current role of the office," McNally said.

Bond Dealers of America general counsel and managing director of federal regulatory policy Jessica Giroux praised Kane and Olsen.

The BDA is very pleased that both Jessica Kane and Rebecca Olsen have been named director and deputy director of the Office of Municipal Securities," Giroux said. "The BDA has worked with both women in their former capacities at the Office of Municipal Securities and while working under John Cross. Specifically, we found our experience working on the municipal advisor rule [frequently asked questions] to be productive and we hope to continue that working relationship into the future. We look forward to continuing to work with them in their new roles and especially as the Office of Municipal Securities continues to expand its breadth."

Leslie Norwood, managing director and associate general counsel and co-head of municipal securities for the Securities Industry and Financial Markets Association, also congratulated the two women.

"Jessica brings many years of experience at the SEC to her new role, along with a willingness to listen to the concerns of SIFMA members, and we are pleased with the announcement that she will be leading the Office of Municipal Securities at the SEC. We also congratulate Rebecca Olsen on her promotion from chief counsel to deputy director."

THE BOND BUYER

BY KYLE GLAZIER

MAY 20, 2015 4:11pm ET

Canadian Firm DBRS Plants Its Flag in U.S. Rating Territory.

DBRS Ltd., the Canadian credit rating agency, made its first full foray into the U.S. market last week when it rated the North Carolina Department of Transportation's $100 million private activity bond deal.

While the rating agency had been involved in the American market before, the move marked the first time DBRS has assigned a rating to a public-private partnership PAB issue.

“We are pretty excited by this,” said Grant Headrick, DBRS Managing Director for Infrastructure Finance. “It’s an important step. We’re planting our flag in the soil.”

Formed in 1976, DBRS is an independent credit rating agency and the fourth largest in the world. It is based in Toronto and has offices in New York, Chicago and London. DBRS doesn’t participate in any trading or underwriting activities. The Carlyle Group and Warburg Pincus, along with individual Canadian investors, acquired the firm earlier this year.

DBRS has been registered as a Nationally Recognized Statistical Rating Organization with the U.S. Securities and Exchange Commission since 2003. The company was accredited under the U.S. Transportation Infrastructure Finance and Innovation Act in 2013.

Before rating the NCDOT deal for the I-77 HOT Lanes project, DBRS had been involved in 17 different bids for U.S. issues. The firm was either not selected to rate the issue or was working with a team that did not win in the bidding process.

“We can now point to this as evidence as to what we have done,” Headrick said, who joined DBRS in 2009 and leads the infrastructure finance team, concentrating on public-private partnerships, airports, ports and other infrastructure-related issuers.

Previously, he worked in the global infrastructure finance group at Moody’s Investors Service, where he was involved with rating P3s. He began his financial career at RBC Capital Markets and before that was an officer with the Canadian Navy.

In regard to the I-77 deal, Headrick said that it was a very solid credit, underpinned by a strong construction contractor and good traffic. DBRS assigned a rating of BBB with stable trends to both the $100 million PABs and a $189 million loan to be issued under TIFIA, that will partly fund the design and construction of the I-77 managed toll lane project.

“They can survive a pretty sizeable downtown and still be able to make debt service payments,” he said. Citi and Goldman, Sachs received the written award on PAB sale on May 14.

NCDOT picked I-77 Mobility Partners as the private consortium headed by Cintra Infraestructuras S.A. to build the $655 million 26-mile express lane project. NCDOT is providing a $91.4 million subsidy toward construction, with the remaining funds coming from the PABs, TIFIA loan and $250 million in equity from the main sponsors Cintra and Aberdeen Global Infrastructure II LLP. I-77 Mobility Partners will design, construct, finance and operate the project under a 50-year concession agreement. Construction is expected to start this summer and is slated for completion in 2018.

Catherine Chiarot, DBRS Assistant Vice President of Global Corporate Business Development, said the firm has been working with local DOT officials all across America.

“We have been attempting to change the grandfathered language in many bond and contract documents that specifies only the three big rating agencies may be used in a deal — Moody’s Investors Service, Standard & Poor’s and Fitch Ratings.”

She said the firm plans to further expand its reach into the U.S. by meeting with even more DOT officials.

“Going forward, we are going to be making more of those introductions,” she said.

Chiarot said DBRS will continue to track the big new infrastructure works, such as the Illiana corridor and the Maryland Purple Line projects. She said the firm is also looking to see the outcome of projects such as the I-70 East in Colorado and the I-66 corridor in Virginia.

DBRS is very familiar with other areas of project financing, such as social infrastructure projects, she said. “We know Green.”

Meanwhile, the firm recognizes that there has been some pushback about the expanding use and total effectiveness of public private partnerships. But it thinks that wise planning and forethought, along with public education, is key.

“P3s are not a panacea — but some can provide good value for the money,” Headrick said. “All the benefits should be shown to the taxpayers.”

THE BOND BUYER

BY CHIP BARNETT

MAY 19, 2015 3:05pm ET

MSRB Report: Muni Trades Dip in First Quarter.

WASHINGTON — Municipal market trading volume fell 13% from the first quarter of last year, according to statistics released by the Municipal Securities Rulemaking Board on Tuesday.

Trading volume fell to $618.5 billion, down from $709.8 billion in the first quarter a year ago, the MSRB said. That drop is a bit greater than the historical trend of first quarter muni trading volume declining an average of 12.4% annually since 2008.

A total of 2.24 million municipal trades occurred in the first quarter, down 6% from 2.39 million in the first quarter of last year.

The number of interest rate resets on municipal variable-rate demand obligations also hit a new low of 133,896 in the first quarter of 2015, the lowest quarterly number since the MSRB began collecting VRDO reset information in April 2009, the board said. Previous MSRB reports have noted a decline in the VRDO market since 2009.

Customer purchases decreased to an average daily par amount of $5.0 billion in the first quarter of 2015, down from $5.5 billion in the previous year. They accounted for 49% of the overall par volume during the quarter, compared to 47% a year ago. Trading of fixed-rate securities accounted for approximately 68% of the total par traded in the first quarter, compared to 57% in the first quarter of 2014. Fixed-rate securities accounted for 94% of the overall number of trades.

The number of continuing disclosure documents received by the MSRB was up, on a year-over-year basis, and totaled 48,450 in the first quarter of this year compared to 43,487 documents during the same period of 2014. Annual financial disclosures accounted for 48 percent of all disclosures.

The first quarter of 2014 would not have reflected increased attention to continuing disclosure brought on by the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative, which was launched in March 2014.

That program, which expired last year and was designed to improve continuing disclosure agreement compliance, offered issuers and dealers lenient settlement terms if they self-reported instances over the past five years in which they sold bonds without properly disclosing in offering documents past failures to comply with their self-imposed CDAs.

The new quarterly MSRB report also tracks the most popular securities by par amount and by number of trades. Puerto Rico's general obligation bonds led in par amount for the first quarter, with more than $1.84 billion trading in 781 transactions.

The most actively-traded bond, by number of trades, was a New Jersey State Transportation Trust Fund Transportation Program bond, which changed hands 4,337 times to the tune of $411.5 million in trade volume. It was traded twice as much as the second most-traded bond, which was the Pocono Mountains, Pa., Industrial Park Authority bonds.

THE BOND BUYER

BY KYLE GLAZIER

MAY 19, 2015 3:20pm ET

Fed Rule Would Let Banks Hold Some Munis as Crisis Buffer.

The Federal Reserve, in a split from other financial regulators, plans to let banks hold investment-grade municipal bonds to comply with a rule aimed at keeping lenders safer during a crisis.

The Fed's proposal released Thursday would ease the burden on bank-holding companies, which are required to hold enough assets that can be easily converted into cash during a financial meltdown. While two other U.S. bank supervisors didn't think municipal debt was easy enough to sell when they approved a liquidity rule last year, the Fed said it was willing to reconsider the bonds in a future action.

The proposed rule would allow investment-grade U.S. state and municipal bonds to be counted as high-quality liquid assets "if they meet the same liquidity criteria that currently apply to corporate debt securities," the Fed said in a statement. "The limits on the amount of a state or municipality's bonds that could qualify are based on the specific liquidity characteristics of the bonds."

The Fed's proposal makes strict demands on the investment-grade munis that can be held, insisting they not total more than 5 percent of a bank's liquidity buffer. The agency didn't elaborate on the scope of the muni market it thinks will fit the criteria, but the general-obligation munis must have a track record of stability when riding out previous crisis periods.

Qualifying Bonds

The proposal, open for public comment until July 24, could exclude a segment of the market because it disqualifies general obligations backed by bond insurers, which the Fed points out could have the same risks as banks during times of financial distress.

States and localities have issued about $1.1 trillion of general obligations, according to data compiled by Bloomberg. Of those bonds, about $226 billion are insured, the data show.

"While we appreciate the Fed moving to include munis as high-quality liquid assets and believe it is a step in the right direction, it is important to also ensure the other regulators involved do the same," said Jessica Giroux, general counsel for the Bond Dealers of America, which represents municipal securities dealers and banks. She said the group is "contemplating the limitations" the Fed's proposal puts on munis.

When the Fed, Office of the Comptroller of the Currency and Federal Deposit Insurance Corp. passed the so-called liquidity coverage ratio rule in September, the central bank indicated that it was open to tweaking it to give lenders flexibility to use some municipal debt as part of their easy-t--sell assets.

Large Banks

The proposal released Thursday amends the Fed's part of the September rule and will have the most impact on bank-holding companies with $250 billion or more in assets.

Banks, local governments and lawmakers including U.S. Senator Charles Schumer have pushed for the change, warning that limiting the use of state and local debt could spur an exodus from the $3.6 trillion municipal bond market and make it more expensive to build schools, roads and bridges. The FDIC and OCC haven't agreed to soften the rule.

The September rule was among the measures regulators have taken to try to prevent a repeat of the 2008 financial crisis, when markets froze and large banks including Citigroup Inc. needed government bailouts. It requires lenders to hold enough assets that are deemed high-quality — such as Treasuries, highly-rated corporate bonds and foreign government debt — to be able to endure a 30-day squeeze.

Infrastructure

Many bonds backing infrastructure projects are bought and sold infrequently, but Fed officials are now proposing that banks shouldn't face restrictions on holding munis that trade more often.

Schumer, a New York Democrat, has been a vocal critic of the decision regulators made. At a September hearing, he told officials from the Fed, FDIC and OCC that the rule would undermine "the lifeblood of development in this country."

The prior exclusion of munis as high-quality liquid assets hasn't quelled demand from U.S. banks for the securities.

U.S. banks owned $452 billion of munis as of Dec. 31, twice their holdings at the end of the recession in June 2009, according to Fed data. Banks own about 13 percent of munis, making them the third-largest holder after households and mutual funds.

Municipal market analysts have said inclusion in the new rules would be a boost, though far from essential, for state and local debt.

"Banks almost always buy municipals for their income and safety, not for their liquidity," according to a report last month from Municipal Market Analytics, a Concord, Massachusetts-based research firm.

Bloomberg

by Ian Katz, Jesse Hamilton, and Brian Chappatta

May 21, 2015

Fed to Allow Some Muni Bonds in Banks' Liquidity Levels.

Law360, New York (May 21, 2015, 3:38 PM ET) — The Federal Reserve on Thursday proposed allowing banks to include top-rated municipal and state-issued bonds in their accounting of liquid assets needed to meet regulatory requirements, in a change to a policy that had been blasted by local governments and federal lawmakers.

The central bank's proposal to include some municipal and state-issued debt into banks' calculations of what are known as high-quality liquid assets, under a regulation requiring them to maintain required levels of assets that could easily be converted into cash, comes after an outcry from lawmakers when such debt was excluded from the Fed's final liquidity coverage ratio rule adopted in September.

The new proposal, which is open to comments until July 24, would allow banks that are regulated by the Fed with $250 billion in total assets to include municipal and state debt in their HQLA calculations if those bonds have liquidity characteristics comparable to corporate debt, the Fed said.

Any limits on the amount of municipal and state debt securities banks could hold under the proposal would be based on the bonds' liquidity characteristics, the Fed said.

The liquidity coverage ratio adopted by the Fed, the Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency in September requires the largest U.S. banks to hold enough liquid assets to survive a major financial shock by implementing the so-called liquidity coverage ratio, or LCR, requiring banks to hold enough easily convertible, high-quality liquid assets to cover their cash needs for 30 days in case a sudden crisis strikes.

The final rule excluded municipal and state debt, with regulators at the time saying that such securities were not sufficiently liquid to be included in the calculation of liquid assets despite concerns from financial reform advocates that the rule would be watered down.

That stance was applauded by advocates of tough financial regulations even as it was derided by backers of local government bonds, who said that not including top-rated muni bonds among high-quality liquid assets made them less attractive for banks to underwrite and investors to purchase, and driving up costs for infrastructure projects.

However, the Fed said Thursday that a recent study found that some state and municipal securities do have "liquidity characteristics sufficiently similar to investment-grade corporate bonds and other HQLA asset classes" and should be included in the calculation.

Rep. Carolyn Maloney, D-N.Y., said that the proposed change was a welcome about-face from the Fed.

"The Fed's change helps ensure that municipal bonds — which are among the safest investments available — are treated fairly by the regulators. We should not be discouraging financial institutions from investing in our communities, and the Fed's proposed rule will help level the playing field for our states and cities," she said in a statement.

The New York lawmaker, a member of the House Financial Services Committee, urged the FDIC and OCC to follow suit. Thursday's change only applies to banks regulated by the Fed, and neither the FDIC nor the OCC have shown any inclination to make a change to date.

By Evan Weinberger

–Additional reporting by Andrew Westney and Daniel Wilson. Editing by Philip Shea.

UBS Ordered to Pay Retiree $1 Million Over Puerto Rican Bond Losses.

UBS AG's U.S. wealth-management has been ordered to pay a Puerto Rican retiree $1 million in compensation for unrealized losses in the island's municipal-bond funds.

A Financial Industry Regulatory Authority arbitration panel ruled that the closed-end bond funds UBS brokers recommended for their client Juan Burgos were unsuitable.

Mr. Burgos was 66 years old when he invested in the funds that were popular on the island because of their favorable tax status. He had no experience in buying securities.

"The account was grossly overconcentrated…any proper UBS branch office or other review should have detected such obvious unsuitability," the panel said in its award document posted on Finra's website Wednesday.

Mr. Burgos opened his brokerage account at UBS in 2011, and over the next two years UBS persuaded him to invest more than $1 million—his entire savings—in the municipal bond funds, the arbitration panel said.

At that time, Puerto Rico had already been in a recession. But two years later, its government's troubled fiscal situation began to worry bondholders, and the market for the funds dried up and their value started to decline.

Mr. Burgos as well "was greatly concerned," but was reassured by UBS. A UBS branch manager "explained that even a skinny cow could give milk," according to the panel.

"While he knew that he did not have what he had thought, he reasonably did no know or understand what he in fact had," the panel said.

The value of Mr. Burgos's fund holdings ultimately fell by $737,000, and he held on to the investments because selling them would have generated even more losses, the panel said.

Mr. Burgos had sought more than $2 million in compensation and punitive damages from UBS. His lawyer, Harold Vicente, said the award "gives justice" to Mr. Burgos. "We consider it to be a triumph for all the investors on the island."

Mr. Vicente also said he has filed municipal bond arbitration cases for more than 150 clients, mainly against UBS.

A spokesman for UBS said the firm "is disappointed with the decision, with which we respectfully disagree."

Mr. Burgos's case is the second win by a UBS client within a week. Last week, a Finra arbitration panel ordered UBS to pay Yolanda Bauza $200,000 in compensation for her poorly performing closed-end bond fund investments. She had sought between $357,000 and $625,000 in damages.

Unlike court rulings, arbitration decisions aren't precedent-setting for other panels. However, UBS and other brokerage firms in Puerto Rico currently face hundreds of arbitration claims from clients who invested in such closed-end funds, which are largely stacked with bonds issued by the Puerto Rican government and its agencies.

Some executives in the Puerto Rican brokerage industry have said it was difficult to persuade clients to diversify because the tax advantage, and in many cases the tax-exemption, of such funds had long made their returns difficult to replicate with other investments.

In its ruling Monday, the panel acknowledged that UBS brokers were under pressure to sell the funds, as the firm underwrote many of them.

The UBS spokesman said investors in Puerto Rican municipal bonds and closed-end funds "received excellent returns that frequently exceeded the returns available through investments in other bonds or bond funds" over the past 20 years.

"The funds have continued to pay a monthly dividend," he added.

THE WALL STREET JOURNAL

By MATTHIAS RIEKER

May 20, 2015

Write to Matthias Rieker at matthias.rieker@wsj.com

[Fed Proposes Relaxing Rules Affecting Municipal Bonds.]

WASHINGTON—Large U.S. banks will be able use some municipal bonds to meet new postcrisis rules aimed at ensuring they have enough cash during a financial-market meltdown under relaxed rules proposed by the Federal Reserve.

The long-awaited move reflects a change of heart by the central bank, which had excluded debt sold by cities and states when approving new postcrisis rules last fall aimed at fortifying banks against market turmoil.

Big banks such as Citigroup Inc. and Wells Fargo & Co., which underwrite, buy and sell the bonds, had been pushing for the move because they want more flexibility in meeting the new rules related to the safety of their funding mix. The banks, along with state and local officials and top lawmakers such as Sen. Charles Schumer (D., N.Y.) warned that excluding all municipal bonds would make the bonds less attractive for banks to hold, potentially making it more expensive for municipalities to issue debt that finances roads, schools and other infrastructure projects.

The Fed's decision is only a partial victory for Wall Street since many banks may not benefit from the policy shift. Two other bank regulators, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp., haven't committed to follow the Fed. As a result, it is unclear how many big banks, which typically have large subsidiaries regulated by the OCC or FDIC, would take advantage of the regulatory change.

"Most of the banks that have to deal with this are regulated by the OCC," making the Fed move "somewhat of a nonevent," said Tom Metzold, senior portfolio adviser at Boston-based Eaton Vance.

The Fed proposal relates to how municipal bonds are treated under new liquidity requirements that the banking agencies adopted last September. The rules call for large banks to hold enough "high-quality liquid assets" to fund their operations for 30 days. The Wall Street Journal reported in April that the Fed planned to reverse its prior stance and let some municipal bonds qualify as safe assets.

The Fed said its proposal "would maintain the strong liquidity standards" of its current rules, "while providing banks with the flexibility to hold a wider range of" high-quality assets that could be sold for cash in a crisis.

Thursday's proposal "is solely a Fed action," said a spokesman for the OCC, which regulates national banks. OCC officials don't believe municipal bonds can be traded easily enough to be included as assets that could be sold quickly in a pinch, people familiar with their thinking have said.

A spokeswoman for the FDIC, which plays a smaller role in regulating the institutions affected by the rule, said the agency "is closely monitoring the municipal securities markets to assess the impact of the liquidity coverage rule. The FDIC will consider adjustments to the rule, which was designed to strengthen the liquidity position of our largest financial institutions, if necessary."

In March, Comptroller Thomas Curry noted banks have increased their holdings of municipal securities since the liquidity rules were issued last fall, suggesting worries that the rules would drive banks from the markets are overblown. Michael Decker, co-head of municipal securities at the Securities Industry and Financial Markets Association, said that could change when interest rates rise and banks alter their investment strategies.

The Fed proposal would allow some banks and bank holding companies—but not their OCC-regulated national bank subsidiaries—to count some municipal bonds toward their required funding buffer under the new liquidity rules. The proposed rule wouldn't affect banks' ability to invest in municipal bonds. But it could make those investments more attractive by allowing the bonds to count toward meeting a bank's liquidity requirements.

The exact criteria for which kinds of municipal bonds would count toward a bank's funding requirement are likely to disappoint some proponents of the change. The proposal wouldn't count all investment-grade municipal bonds, only a subset of the bonds known as "general obligation" bonds. Insured debt wouldn't count. It also would treat the bonds on par with investment-grade corporate debt, meaning banks would be able to claim 50% of their face value when counting them as part of their funding buffers. Municipal officials and banks had pushed for a higher percentage. The proposal also says the municipal bonds, in total, could count as a maximum of 5% of a bank's total funding buffer.

"It's certainly welcome that the Fed has reopened this issue," said Mr. Decker of the securities industry group. "With that said, the proposal would impose pretty significant restrictions and limitations."

The Fed is soliciting public comment on the proposal and could make changes.

The market for municipal debt encompasses roughly 60,000 borrowers and 1.2 million individual bonds. A small slice of bonds from large states and cities are frequently traded, according to industry experts. That is because most investors hold the tax-exempt bonds until their maturity rather than selling them.

Over the past decade, banks have nearly doubled their ownership of municipal securities, to more than 12% of the total amount outstanding, according to Fed data.

— Aaron Kuriloff contributed to this article.

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THE WALL STREET JOURNAL

By RYAN TRACY and ANDREW ACKERMAN

Updated May 21, 2015

Moody's Public Finance Ratings Coming to MSRB's EMMA Website on June 1, 2015.

The Municipal Securities Rulemaking Board (MSRB) will make public finance ratings from Moody's Investors Service available on its Electronic Municipal Market Access (EMMA®) website on June 1, 2015. The addition will give investors ready access to ratings from all major agencies together with other key information about a municipal security.

Credit ratings on EMMA are displayed along with the trading and disclosure information for each municipal security, and are also integrated into EMMA's advanced search function and price discovery tool.

Read more about the ratings information available on EMMA.

Ex-Bank of America Executive Gets 26 Months in Prison for Muni Bond Scheme.

A former Bank of America Corp executive was sentenced to 2 years and two months in prison on Monday after pleading guilty to participating in a scheme to defraud cities and towns by rigging bids to invest municipal bond proceeds.

Phillip Murphy, 57, the former managing director of Bank of America's municipal derivatives products desk, was the last of 17 convicted defendants to be sentenced in a case spilling out of a broad bid-rigging investigation involving the $3.7 trillion municipal bond market.

The investigation resulted in five banks agreeing to pay $743 million to settle with federal and state authorities, including Bank of America, which reached a $137.3 million deal in 2010.

The U.S. Justice Department said Murphy conspired with brokerage CDR Financial Products and others to increase the quantity and profitability of investment and other municipal finance contacts awarded to Bank of America.

Prosecutors said Murphy won investment contracts thanks to the Beverly Hills, California-based CDR's manipulation of the bidding process to obtain losing bids from other banks.

In exchange, Murphy submitted intentionally losing bids for investment contracts and occasionally enabled CDR to receive kickbacks, prosecutors said.

Murphy was indicted in July 2012. On the eve of trial, he pleaded guilty in February 2014 to two counts of conspiracy and one count of wire fraud.

CDR founder David Rubin, who cooperated with authorities, was sentenced in 2014 to two years of probation and ordered to pay up to $5.65 million after pleading guilty to wire fraud and conspiracy.

The case is U.S. v. Murphy, U.S. District Court, Western District of North Carolina, No. 12-cr-00235. (Reporting by Nate Raymond in New York; Editing by Christian Plumb)

REUTERS

BY NATE RAYMOND

May 18, 2015

Feds Push to Make All Public Financial Data Open.

At a recent public finance conference at Indiana University, I found myself commiserating with a researcher who was muddling through public pension data. Governments file much of the data he needs in annual reports in PDF format. We joked about how, in such predicaments, the "Ctrl F" keyboard shortcut to find specific information in a 150-page file quickly becomes your best friend.

But that only helps so much. "Nothing is standardized," the researcher complained. Some PDFs, for example, aren't readable and the Ctrl F trick doesn't work. Or the information you are looking for may come in table form in some reports and paragraph form in others, which makes it difficult for computer programs that "read" PDF documents for data to get all the numbers right. In short, combing through these reports is extremely labor intensive and about as enjoyable as wearing wool on a hot day.

There are, however, some who want to make accessing public financial data easier. It's a push that is coming primarily from the feds, and it's rooted in a refrain heard often since the 2008 financial crisis: State aFeds Push to Make All Public Financial Data Opennd municipal financial disclosures should be more like corporate ones. California Rep. Darrell Issa is the latest to echo this sentiment. Last month, he previewed legislation that would standardize how data is reported at the state and local level.

Issa's proposal is called the MADOFF (Making All Data Open for Financial) Transparency Act and it builds off of last year's Digital Accountability and Transparency Act, which calls for a standard way for federal agencies to report their financial data. The section of the act that would affect state and local governments requires the Municipal Securities Rulemaking Board to adopt a standard data format in which a municipality would have to submit their financial information. "So instead of submitting a PDF document," says Hudson Hollister, "they submit a data file."

Hollister is the executive director of the Data Transparency Coalition, a big proponent of standardizing government data reporting to further transparency. Such a change wouldn't necessarily require any additional tech-savviness on the part of those preparing a government's year-end reports, Hollister says. Much like TurboTax has done for the individual tax filer, he says, software companies are capable of developing similar products for municipal governments.

So what exactly would standardizing data do, other than making researchers' lives a little easier?

The corporate market provides a good example. As Public Sector Credit Solutions' Marc Joffe recently noted in Governing, company financial reports have been available in textual form on the Security and Exchange Commission's website for the last 20 years. This means that analysts at firms like Yahoo Finance, MarketWatch and Morningstar can easily pull the raw data and work with it to address whatever questions they need answered. So, Joffe writes, corporate investors can readily compare the financial statistics of a safe company like Apple to an insolvent one like Radio Shack. But municipal investors who might want to perform the same exercise with Dallas and Detroit are out of luck. "The vast majority of investors and analysts lack the patience and/or technical skills needed to extract the valuable needles of insight from this haystack of disclosure," Joffe writes.

Joffe and Hollister say that making access to data easier could lower municipal borrowing costs and even reduce the market's vulnerability to negative headlines. Hollister envisions a whole industry of software built around standardizing data entry and reporting. "All of the information wrangling that state and local governments do today could be combined into a seamless process," he says. "That can dramatically reduce challenges for those governments while also reducing the cost of their bond financing."

All this stuff is great in theory, but in reality there's the practical matter that state and local governments are incredibly diverse in their size, operations and capabilities. That's why mandating financial reporting standards to governments can be difficult, says Lynnette Kelly, executive director of the Municipal Securities Rulemaking Board. Many wouldn't have a problem conforming; many more would. Usually the better route for these things, she says, is for governments to voluntarily adopt changes.

In fact, the Governmental Accounting Standards Board (GASB) launched an ongoing project in 2008 that explores how to improve government's electronic financial reporting. Among the project's tasks is to monitor how Extensible Business Reporting Language, a standardized digital language for business financial reporting, could be adapted for government reporting. GASB has not issued any standards related to the project but calls it a high priority issue.

Despite the slow progress, Kelly says, most governments are very much aware that there is a lot of room for improvement when it comes to reporting their financials. "I remember days of, should documents be in HTML code or PDF?" she says. "There have been conversations for a long time about data."

GOVERNING.COM

BY LIZ FARMER | MAY 14, 2015

MSRB Proposal to Establish the Standards of Conduct and Duties for Municipal Advisors Published in Federal Register.

The Municipal Securities Rulemaking Board's (MSRB) request for approval from the Securities and Exchange Commission (SEC) of a proposal to establish the core standards of conduct and duties of municipal advisors has been published in the Federal Register. Proposed Rule G–42, on duties of non-solicitor municipal advisors, is accompanied by associated proposed amendments to Rule G–8, on books and records.

Read the rule filing.

[Read the notice of publication in the Federal Register.]

The deadline for submitting comments to the SEC is May 29, 2015.

MSRB Report Shows Delayed Disclosures, MCDC Impact.

WASHINGTON – The annual average length of time between the end of the fiscal year and the date on which audited financial statements were submitted to EMMA was 448 days in 2014, sharply above the average of 342 days in 2013, a Municipal Securities Rulemaking Board report found.

The new study, released Wednesday, is an update to a similar report the board released in 2013. It is an analysis of issuer financial data submitted to EMMA between January 2010 and December 2014.

The second half of 2014 clearly showed increased filings as a result of the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, the MSRB said in a release.

The MCDC initiative offered both issuers and dealers a chance to get lenient settlement terms from the SEC if they self-reported any instances during the past five years in which they falsely claimed in official statements to be in compliance with the issuer's self-imposed continuing disclosure agreements. Issuers were expected to bring their continuing disclosures up to date as part of that, including submitting old audited financials to EMMA that had not been previously filed. The submission of those long-delayed documents pushed the average up, the MSRB concluded.

The SEC lacks the authority to directly require issuers to file information before selling securities, but the commission's Rule 15c2-12 requires that dealers seeking to underwrite bonds review issuers' official statements and reasonably determine that the issuers have contracted in writing to disclose annual financial and operating information, as well as material event notices.

The SEC announced the MCDC in March last year The deadline for MCDC voluntary submissions was Sept. 10 for dealers and Dec. 1 for issuers, and the market is awaiting the release of the first wave of settlement agreements.

The MSRB data showed a sharp increase in the submissions of overdue audited financial statements soon after the program began. The data set analyzed for the study includes approximately 145,000 audited financial statement submissions and over 115,000 annual financial information submissions the MSRB received from 2010 to 2014.

"The significantly higher average number of days in 2014 compared to earlier years coincides with a significant increase in the number of audited financial statement submissions to EMMA in the second half of the year," the report found.

Without the delayed submissions being counted, the average time between the end of the fiscal year and the filing of audited financial statements was 200 days in fiscal 2014, virtually the same as it has been every year since fiscal 2010.

The timing of all annual financial information submissions was 374 days in 2014 compared to 261 days in 2013 counting the delayed submissions, but was 188 days for reports submitted within a year of the end of the previous fiscal year. That number is also consistent with past years.

The SEC has repeatedly declined to discuss specifics of either issuer or dealer participation, but market participants have said they believe most dealer firms and thousands of issuers submitted requests to participate in the initiative.

THE BOND BUYER

BY KYLE GLAZIER

MAY 6, 2015 11:42am ET

[New York Gov. Andrew Cuomo Gave Bond Deals To His Wall Street Donors, Despite Federal Rules.]

New York Gov. Andrew Cuomo has since 2012 taken in more than $131,000 in campaign contributions from three major financial firms that were then tapped by his administration to manage state bond work, according to an International Business Times review of campaign finance documents and state bond prospectuses. The Democratic governor accepted the money — and his officials handed out the government business without competitive bids — despite federal rules that bar campaign contributors from receiving taxpayer-financed state bond work.

Last week, Cuomo officials designated the three banks that contributed the campaign funds — JPMorgan Chase, Citigroup and Bank of America — as the dealers for a $33 million bond issue, enabling the firms to reap lucrative fees. That came on top of the Cuomo administration assigning the firms to manage a $68 million bond issue last fall, even as federal law enforcement officials were investigating allegations that New York lawmakers were doing favors for political donors.

Federal rules bar states from awarding bond work to parties who have donated to gubernatorial campaigns within the last two years (more than $86,000 of the campaign cash from the firms flowed to Cuomo in the last two years). The rules aim to prevent financial firms from gaining influence over officials who have the power to select which firms receive the lucrative bond business. The rules explicitly seek to stop financial companies from circumventing those strictures: They prohibit firms from channeling contributions to bond overseers through PACs, which are giant pools of money distributed to multiple campaign war chests.

“The pay-to-play rules are very clear,” said Craig Holman, an ethics expert at the watchdog group Public Citizen. “If Andrew Cuomo’s receiving any money from a PAC controlled by a municipal dealer, he’d be in violation of pay-to-play rules.”

Cuomo’s office declined to answer IBTimes’ questions. Bank of America, Citigroup and JPMorgan Chase said they are in compliance with the federal rules. Though the banks acknowledge that their PACs have contributed to Cuomo’s gubernatorial campaign and also acknowledge that they received state bond work from the Cuomo-controlled New York State Housing Finance Agency, they maintain that the individual bond dealers did not contribute to the PAC that gave to Cuomo.

“Citi has two separate PACs, a state and a federal,” said Citigroup spokeswoman Molly Meiners. “To the extent anyone on our Muni team donates money, they are required to give to our Federal PAC only, which has never given to Cuomo.”

Bank of America and JPMorgan Chase echoed that portrayal.

The three banks declined to identify any of the professionals who work on their state and municipal finance deals, making it impossible to verify their claims.

Campaign finance experts and regulators say the banks' defense is dubious in any case, telling IBTimes that the federal rule bars financial institutions from using indirect means to achieve what is explicitly prohibited.

"Circumvention of the rule through indirect contributions is prohibited," said Lynnette Kelley, executive director of the Municipal Securities Rulemaking Board.

That interpretation is backed up by the Securities and Exchange Commission, which states that those prohibited from donating include "individuals who have an economic interest in seeing that the dealer is awarded municipal securities business." The rule itself says it covers "any political action committee controlled" by the bond dealer in question.

Former SEC Chairman Arthur Levitt, who oversaw the implementation of the original rules, questioned the banks' argument.

"If the entity that does the business has any relationship to the business and somehow or other gets campaign contributions to a political entity that controls the award of that business, it's certainly a violation of the spirit of the rule," he said.

The federal "pay-to-play" rule does contain one exception: If bond contracts are awarded by competitive bidding, then the prohibition on campaign contributions does not apply. But a spokeswoman for Cuomo's New York State Housing Finance Agency, Catie Marshall, told IBTimes that none of the deals in question had been awarded via competitive bid. The agency was headed until January by Bill Mulrow, a former Blackstone lobbyist who is now the governor's chief of staff.

The bond deals were announced by the Cuomo administration amid a sprawling federal corruption probe of Albany lawmakers' relationships with political donors in the real estate industry. That investigation has already resulted in the arrest of the state legislature's top Republican and top Democrat. In February, IBTimes reported that a Cuomo donor at the center of the probe saw his real estate firm receive subsidies from the same state housing agency that gave bond work to Cuomo's financial industry donors.

As state attorney general five years ago, Cuomo made headlines prosecuting so-called "pay-to-play" cases at New York's pension fund. His investigations ultimately led SEC officials to subject pension funds to the same "pay-to-play" rules that govern bond deals.

Those original rules, cemented in 1994, are now at issue in the Cuomo administration's new bond offerings.

Michael Kink, the executive director of the Strong Economy for All Coalition, which has criticized Cuomo's ties to the financial industry, slammed the governor for accepting the donations and then awarding the bond work to the banks.

"New Yorkers deserve careful compliance with rules against pay-to-play transactions from government officials," Kink told IBTimes. "These donations are the latest indication that Albany hasn't really changed under the Cuomo administration — and that top officials are so eager to help big-money Wall Street campaign donors that they'll bend or break rules, regulations and laws in the process."

International Business Times

By Matthew Cunningham-Cook

May 11, 2015

MSRB Publishes Updated Report on Timing of Annual Financial Disclosures by Issuers of Municipal Securities.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released an update to its 2013 report on how many days after the end of the fiscal year that issuers of municipal securities and other obligated persons make their annual financial information available to the public. Timing of typical financial disclosures remained largely unchanged year to year, although the data clearly reflected the effects of a federal enforcement initiative to encourage voluntary disclosure of overdue financial information in the latter part of 2014.

Today's report analyzes submissions of annual financial information and audited financial statements made by issuers and obligated persons to the MSRB's Electronic Municipal Market Access (EMMA®) website between January 2010 and December 2014. The EMMA website is the official repository for financial and other disclosures made by issuers of municipal securities.

Consistent with previous years, the timing of audited financial statement disclosures made in 2014 averaged approximately 200 calendar days after the end of the applicable fiscal year. Annual financial information submissions averaged 188 calendar days after the end of the applicable fiscal year. These averages exclude delayed, "catch-up" submissions made by issuers to correct a prior year's failure to make a timely submission.

The EMMA website experienced a significant increase in catch-up submissions in the second half of 2014 coinciding with the Municipalities Continuing Disclosure Cooperation Initiative, a voluntary program announced by the Securities and Exchange Commission in March 2014 to provide issuers and underwriters the opportunity to self-report previous instances of noncompliance with continuing disclosure obligations. Including these overdue submissions in the data set extended the annual average length of time between the end of the fiscal year and the date on which audited financial statements were submitted to EMMA to 448 days in 2014, up sharply from 342 days in 2013. Similarly, the timing of all annual financial information submissions was 374 days in 2014 compared to 261 days in 2013.

Audited financial statements and annual financial information report key financial and operating data for municipal bond issuers and obligated persons over time. The timeframe for issuers to make annual financial information available is set forth in continuing disclosure agreements. The MSRB does not regulate issuers of municipal securities or other obligated persons and therefore does not establish requirements or set recommended timeframes for the content or timing of disclosures. As part of its mission to protect investors and enhance market transparency, the MSRB provides educational resources and free tools such as a financial disclosure email reminder service to assist submitters in making timely and complete disclosures.

The MSRB's market data publications like today's updated report ensure municipal market stakeholders have access to objective, factual information about disclosure practices, trade activity and other aspects of the market.

Bipartisan Bill to Include U.S. Munis as High-Value Assets Introduced.

May 4 (Reuters) – A bipartisan group of U.S. lawmakers has introduced legislation that would require federal regulators to allow banks to include muni bonds as liquid assets, an issue that cities and states say could increase their borrowing costs.

In September, U.S. regulators tightened rules on which assets banks can sell in the event of a credit crunch. They also excluded debt issued by U.S. states and cities from banks' high-quality liquid assets, or HQLA.

Since then, many municipalities lobbied against the decision, arguing that if municipal debt is no longer considered a high-liquid asset, banks will have less incentive to buy their bonds, hiking borrowing costs.

On Friday, a group of five Republicans and five Democrats on the House Financial Services Committee introduced a bill that would require regulators to treat munis that are investment grade, liquid and readily marketable as a "2A" high-liquid asset.

The legislation was introduced by Republican Luke Messer from Indiana and New York Democrat Carolyn Maloney.

"We shouldn't allow Federal bureaucrats to promote policies that disincentivize investment in our local communities," Messer said in a statement.

Maloney said: "States and cities rely on municipal bonds to finance critical infrastructure, build schools, and pave roads. This important legislation ensures that municipal bonds, which are among the safest investments available, are treated fairly by the regulators."

The bill appears to have a good chance of passage out of the committee and onto the floor of the House of Representatives for a full vote, given that Maloney and another of the bill's co-sponsors, veteran Republican Peter King, are highly ranked.

Without legislation, there appears little prospect of regulators reversing course on the rule. A rule change would require agreement of three bank regulators: the Office of the Comptroller of the Currency (OCC); the Federal Deposit Insurance Corporation (FDIC); and the Federal Reserve.

The Fed has publicly said it wants to amend the rule to include munis, while the OCC appears most opposed to a rule change.

Retail investors are the largest holders in the $3.7 trillion municipal bond market. Households hold about 40 percent of all outstanding municipal bonds, $1.5 trillion, while banks hold about $485 billion, or around 12 percent, according to Federal Reserve data.

BY TIM REID

(Reporting by Tim Reid in Los Angeles; Editing by Grant McCool)

Bill Introduced to Require Bank Regulators to Treat Munis as HQLA.

WASHINGTON — A bipartisan coalition of House members has introduced legislation that would require federal banking regulators to treat certain municipal securities held by large banks and other financial institutions as high-quality liquid assets.

The bill, H.R. 2209, is sponsored by Rep. Luke Messer, R-Ind., with at least nine other co-sponsors, including several who have been prominent on muni issues such as: Rep. Steve Stivers, R-Ohio; Rep. Randy Hultgren, R- Ill.; Rep. Gwen Moore, D-Wisc.; and Rep. Michael Capuano, D-Mass. All 10 sponsors are members of the House Financial Services Committee, including high-ranking members Rep. Peter King, R-N.Y. and Rep. Carolyn Maloney, D-N.Y.

The bill is a response to a rule jointly adopted by the Federal Reserve, Comptroller of the Currency, and Federal Deposit Insurance Corporation late last year that requires the country's largest banks and other financial institutions to maintain a certain liquidity coverage ratio, or LCR, to ensure they can better deal with periods of financial stress. An LCR is defined as the ratio of HQLA to total net cash outflows. Assets would qualify as HQLA if they could be easily and quickly convertible to cash with or no loss of value during a period of liquidity stress.

Bank regulators failed to include munis as HQLA in the rules, contending are not liquid or easily marketable. They also said banks don't hold munis for liquidity.

The rule, which banks have to comply with by Jan. 1 2017, is designed to protect the U.S. financial system during times of stress by ensuring that banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion have the flexibility to weather the storm.

Market groups and lawmakers have warned that the exclusion of munis will raise borrowing costs for issuers, as well as decrease liquidity and increase volatility in the muni market.

The Fed has seemed receptive to amending the rule to include at least some investment grade munis as HQLA, and Fed chair Janet Yellen told the Financial Services committee earlier this year that Fed staff were working "very expeditiously" to identify the munis that could qualify. But the OCC and the FDIC have been reluctant to make the change, though they have not ruled it out.

The Messer bill would require that the LCR rule treat munis that are investment grade and actively traded in the secondary market as "2A" liquid assets, the same tier as some sovereign debt and claims on U.S. government entities like Fannie Mae and Freddie Mac. Securities and bonds in the 2A category can account for up to 40% of a bank's HQLA under the rule. It is the second highest level of HQLA, below federal government securities and the strongest foreign debt.

Market groups are welcoming the bill.

"Bond Dealers of America supports efforts by legislators and regulators to accurately define municipal bonds as high-quality liquid assets," said BDA chief executive officer Mike Nicholas. "In times of extreme market stress, as in 2008 and 2009, highly-rated municipal bonds were a solid store of value, and to exclude municipal bonds from the liquidity coverage ratio would negatively impact demand and raise the cost of infrastructure and other job-producing municipal projects for issuers."

Dustin McDonald, director of the Government Finance Officers Association's federal liaison center, said his group's members support the Messer bill.

"The GFOA applauds the introduction of this important legislation and appreciates Congressman Messer's leadership on this issue," McDonald said. "GFOA and a number of our association partners have presented a very strong case to regulators about the need to admit muni securities as HQLA, and the liquidity of munis. There is no reason why investment grade munis should not be classified as HQLA."

Michael Decker, managing director and co-head of municipals at the Securities Industry and Financial Markets Association, also applauded the bill.

"We are encouraged that Congress is focused on the issue of bank investment in the municipal market," Decker said. "Banks provide a key source of demand for municipal securities, and the liquidity coverage ratio rule as finalized last fall will over time discourage bank investment in the market, to the detriment of state and local governments."

Sources said that a unilateral move by the Fed to amend the rule to include munis as HQLA, without the OCC or the FDIC, would probably not do much to resolve the HQLA problem because most of the banks big enough to impact liquidity are nationally-chartered institutions primarily regulated by the OCC.

According to Fed data, all but two of the nine institutions with more than $250 billion in holdings at the end of 2014 were banks primarily regulated by the OCC, and sources said such institutions would probably not feel free to count munis as HQLA just because the Fed alone amended the rule.

"It doesn't solve for what the market needs," said one bank analyst who asked not to be identified. The banks that would get some flexibility from a unilateral Fed change are those that control "a much smaller portion of the liquidity," then the OCC-regulated institutions, the analyst said.

Messer's bill is awaiting action before the Financial Services Committee, and could have a bright outlook there due to the support of the high-ranking Republicans as well as Democrats who co-sponsor it.

THE BOND BUYER

BY KYLE GLAZIER

MAY 4, 2015 1:38pm ET

MSRB To Publish Best Ex Guidance.

WASHINGTON – The Municipal Securities Rulemaking Board plans to publish interpretive guidance on its best execution rule no later than July, MSRB chair Kym Arnone said Monday.

Arnone, a managing director and head of municipal securitization initiatives at Barclays Capital, made the comments during a press call following the board's quarterly meeting at its Alexandria, Va. headquarters late last week.

The meeting did not feature any formal regulatory action, but Arnone said staff updated the board on the development of the guidance, which will be in a frequently-asked-questions, or FAQ, format.

The best execution rule, G-18, will become effective on Dec. 7. It generally would require dealers to use "reasonable diligence" to determine the best market for a security and then buy or sell the security in that market so the resulting price to the customer "is as favorable as possible under prevailing market conditions."

Some dealers have voiced questions about how traders will be able to demonstrate due diligence. MSRB chief legal officer Robert Fippinger said the FAQs will purely be interpretive of the rule, and will not modify it in any way.

The staff also provided the board with an update on its exploration of adding certain pre-trade pricing information to EMMA. Arnone said the MSRB has been working with at least one alternative trading system to find out what kinds of data might be available as a useful addition to EMMA. Earlier this year the Financial Industry Regulatory Authority proposed requiring ATS' to provide information to FINRA "solely for regulatory purposes," and panelists at the National Municipal Bond Summit in Florida last month said they expected the MSRB would likely not be far behind

MSRB executive director Lynnette Kelly said it is premature to discuss a timeframe for when the board might make a decision about collecting and adding more pre-trade information, but that the MSRB could eventually either require it by rule or request that ATS' supply some set of information to EMMA.

"The goal is to review a broad spectrum of information," Arnone said.

The board also discussed comments it received on its proposal to require dealers, when acting as principals, to disclose to customers on their confirmations, a "reference price" of the same security traded that same day. The MSRB made that proposal jointly with a FINRA proposal for corporate bonds last year, and the Securities Industry and Financial Markets Association told the MSRB in a January comment letter that the approach is wrong and that enhancements to EMMA are a better way to inform investors about pricing information.

Arnone said the board spent "considerable time" discussing the reference price proposal, and agreed to continue evaluating the proposal in coordination with FINRA.

"There's no question that this is a very complex issue," Arnone said.

The next MSRB board meeting will be July 29-31, the last one of the fiscal year.

THE BOND BUYER

BY KYLE GLAZIER

APR 27, 2015 2:46pm ET

A Cautionary Tale For Bond Buyers.

We are all aware of sticker shock. We are aware of those pesky gummed price stickers on things we buy. Your kids and grandkids grew up with stickers that adorned their schoolbooks, art projects, hands and arms. You get the picture.

After 36 years of being a bond professional I was not acquainted with the process of stickering a municipal bond Official Statement until the week of April 20.

Stickering simply is amending, correcting, or supplementing information in a new issue Official Statement (OS) during the offering period. The amendment is supposed to clarify or correct information in the OS. Sounds simple, doesn't it? Read on.

Our firm purchased Beaumont Special Tax municipal bonds for some higher risk-taking clients. The city of Beaumont is 80 miles east of Los Angeles. This bond was a refunding issue, secured by revenues collected from a special tax levied on a specific group of homes in a designated area. We studied the area, the number of homes, loan-to-value, how much of the area is developed, and any overlapping debt. All the essential facts that needed to be studied before purchasing the new issue.

We purchased the bonds (yes, I personally did too), which had an extended settlement like many new issues. Fast forward to April 23. The brokerage firm that underwrote the deal contacted us. Bad news. The FBI and Riverside District Attorney's office raided Beaumont City Hall and Urban Logic Consults with search warrants. They also served warrants in Temecula and Palm Desert.

The investigation is about Urban Logic's business relationship with the city. Apparently Urban Logic has provided consulting and management services to Beaumont for more than 20 years.

Does this investigation affect the Special Tax bonds we purchased? Or the homes in the area whose tax revenues go to pay timely interest and principal? It doesn't matter. I've learned over my decades of investing in bonds that there's rarely ever one cockroach. Ever live in or visit the desert and see a big, fat cockroach skitter across the floor at night? If there's one, there is always, without fail at least another.

Because this FBI investigation was new information the underwriter had to initiate the stickering process. Investors who purchased the newly issued bonds—which had yet to settle—now had a choice of closing the purchase or canceling the trade. We cancelled out as an abundance of caution.

During the same week, Louisiana State University—which had already priced and offered municipal bonds—had to cancel their deal before it closed. The reason cited was Governor Bobby Jindal has to make deep budget cuts. Louisiana faces $1.6 billion in budget shortfalls, partly due to falling energy prices.

Since the LSU bond deal was cancelled school officials are crafting a financial exigency plan. This is similar to a bankruptcy plan. "Exigent" means immediate action or attention, urgent, critical—all words rarely seen in the municipal bond space. Clearly this was a exigent circumstance not covered in the OS. Some of the information disseminated in the aftermath of the LSU deal mentioned material declines in state support. I'll say! As a result LSU cancelled the deal.

The numerous lessons in telling these two municipal bond sagas are: Whether non-rated as were Beaumont's Special Tax bonds or LSU's rated bonds (A by Moody's and AA- by Fitch), things can happen. Do-it-yourself investors need to keep up on their municipal bonds as much as they do with their other investments. Buying municipal bonds with a set it and forget it mindset is like using an old Motorola flip phone and wondering why there's no text messages or news.

Forbes

Marilyn Cohen, Contributor

4/29/2015

Marilyn Cohen is president of Envision Capital Management, Inc., a Los Angeles fixed-income money manager.

MSRB Board of Directors Meeting Summary.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met April 22-23, 2015 where it discussed the following rulemaking topics:

Pre-Trade Information
The Board received an update from staff on the potential addition of pre-trade information to the Electronic Municipal Market Access (EMMA®) website and supports staff's plan to review data voluntarily provided by market participants as part of its continued analysis.

Best Execution Interpretive Guidance
The Board directed staff to continue developing interpretive guidance for municipal securities dealers for MSRB Rule G-18, on best execution, which is effective December 7, 2015.

Pricing Reference Information
The Board discussed comment letters received on its proposal to require dealers to provide pricing reference information on retail customer confirmations and agreed to continue evaluating the proposal in coordination with the Financial Industry Regulatory Authority.

MSRB Releases Long-Awaited MA Test Outline.

WASHINGTON – The Municipal Securities Rulemaking Board has released a "study outline" of its qualification exam for municipal advisors — the first mandatory competency exam for professionals giving bond-related advice to state and local governments.

The Series 50 exam testing muni advisor competency, which the MSRB plans to administer in a pilot program this year and to all MAs next year, will be required for MAs in or entering the profession.

According to the outline released Wednesday, the exam will contain 100 multiple choice questions, 12 of which will test knowledge of MSRB and Securities and Exchange Commission rules governing MAs. Thirty-five of the questions will test the understanding of muni finance, 12 will be related to credit analysis and due diligence, 31 will touch on structuring, pricing, and executing muni debt products, and 10 will test the understanding of the requirements for issuing municipal debt.

All MAs will be required to pass the Series 50 exam within one year of its launch. Some market participants had asked that certain MAs be exempt from the exam on the basis of having considerable experience or having passed broker-dealer exams testing much of the same knowledge, but the MSRB said all MAs will be required to take test.

"Today is an important day for the municipal advisor profession," said MSRB executive director Lynnette Kelly. "Requiring municipal advisor professionals to demonstrate a minimum level of knowledge of the business and applicable rules will help ensure that state and local governments are advised on municipal bond transactions and financial products by qualified advisors."

There will be four choices for each question, with each answer worth one point. Candidates will have three hours to complete the examination, after a thirty-minute tutorial about the exam's administration. Candidates should answer every question, even if they are unsure of them, the outline said. Any materials needed to complete the examination will be provided by the test center or within the test itself.

“The MSRB will publicly announce the passing score for the examination after a committee of municipal advisors determines the passing score, which reflects the level of performance the committee judges necessary for registration as a municipal advisor representative,” the outline said.

The outline also contains five sample questions covering topics such as swaps, private-activity bond rules, and other post-employment benefits besides pensions. It also provides an answer key.

To help municipal advisors prepare to take the exam, the MSRB has scheduled a webinar on June 11, to review the content outline, provide more information about participating in the pilot and discuss the administration of the exam.

The development of the competency test is another major step in the MSRB’s efforts to complete rulemaking to help implement the SEC’s MA registration rule. The Dodd-Frank Act subjected MAs to SEC and MSRB regulation and oversight. It also imposed on the advisors a fiduciary duty to put their state and local clients’ interests ahead of their own.

THE BOND BUYER

BY KYLE GLAZIER

APR 22, 2015 12:57pm ET

Katten: Municipal Advisors and "Bank Purchase" Bonds: What's All the Commotion About?

There has been a renewed focus in recent months on how to determine which regulatory regimes apply to the various parties involved in private placements of municipal debt. The very public controversy over the question of whether a municipal advisor that is not a registered broker-dealer may facilitate the purchase of a municipal loan by a bank directly from the municipality is an example of this renewed attention. This advisory summarizes the applicable legal tests and briefly describes their implications for stakeholders in a typical transaction.

As shown in the chart below, the determination of whether the debt instrument in a private placement should be treated as a loan or a security has significant legal and regulatory implications for borrowers, lenders and advisors:

PARTY	**REGULATORY IMPLICATIONS**
Issuer or Borrower	• Treatment as a security as opposed to a loan would invoke applicable federal securities laws, including anti-fraud provisions (SEC Rule 10b-5). • State and local law may treat a security differently from a loan for purposes of authorization, pledge of security, tax levy and many other pivotal considerations.
Lender	• Treatment as a security as opposed to a loan may have the effect of converting a loan participation or assignment into a transfer of securities, exposing the lender to federal securities laws (including anti-fraud provisions) and broker-dealer regulations.

Municipal Advisor	• Treatment as a security as opposed to a loan may subject municipal advisors to broker-dealer regulations, federal securities laws and several additional MSRB rules. • If a municipal advisor were to be reclassified as a placement agent its participation in the transaction may be restricted under MSRB Rule G-23.

While the determination of whether a municipal debt in a private placement constitutes a loan or a security is based on many factors, as a whole, the factors that have been identified comprise a vague "facts and circumstances" test rather than a bright-line safe harbor. The Securities and Exchange Commission (SEC) has issued no-action letters[1] advising intermediaries to register as broker-dealers if they are engaged in making introductions to, or negotiating with, potential investors on behalf of an issuer of securities and receive transaction-based compensation from the issuer (e.g., fees conditioned on the closing of the transaction and/or representing a percentage of the transaction amount). Regarding whether a note does or does not constitute a security, the US Supreme Court[2] has held that a note would generally be presumed to be a security unless it (1) fell within a limited category of non-security notes[3] or (2) shared a strong "family resemblance" to such non-security notes based on an analysis of the following factors:

Family Resemblance Factors
1. Would reasonable parties be motivated to enter the transaction for commercial or investment purposes?
2. Does the plan of distribution involve common trading for speculation or investment?
3. What are the reasonable expectations of the investing public?
4. Are there any other risk-reducing factors, such as an alternate regulatory regime?

The first factor (commercial vs. investment purpose), oft-criticized for vagueness[4] and subject to varied interpretations by subsequent courts[5], is likely to be the most concerning for typical private placement structures—particularly those that relate to instruments secured by enterprise revenues. Regarding the second and third factors (plan of distribution; investor expectations), many common traits of private placements, including one-on-one negotiations[6], a lack of an offering prospectus[7] or CUSIP number and transfer restrictions, should weigh significantly toward the determination that the instrument in question is not designed for, and would not be viewed by the public as intended for, common trading. Additionally, insofar as it relates to the fourth factor (alternative regulatory protections), many private placements involve lenders that are qualified institutional buyers, entitled to only limited protections even if the transaction were subject to federal securities laws.

While the stakes in how the securities laws are applied to these transactions remain high, the standards for applying the laws are still unfortunately far from clear. We hope to keep you advised of developments as they occur.

Expanded Options for Qualified Management Contracts: IRS Notice 2014-67

Late last year, the IRS "amplified" the rules for qualified management contracts currently contained in Rev Proc 97-13 by, among other things, providing a new five-year term category for ordinary management contracts. This category now permits many types of compensation other than net revenue (replacing the specified compensation types that were permitted before) and eliminates the need for two- or three-year terms and early termination rights by the qualified user. Consumer Price Index and similar adjustments are permitted as are certain incentive and productivity rewards and renewals that can be vetoed by the qualified user. The chart below summarizes these changes.

Type of Compensation	Maximum Term
95% periodic fixed fee	Lesser of (1) 80% of project useful life and (2) 15 years (20 years in the case of certain public utility property)
80% periodic fixed fee	Lesser of (1) 80% of project useful life and (2) 10 years (20 years in the case of certain public utility property)
Any combination of a stated amount; periodic fixed fee; capitation fee; per-unit fee; or percentage of gross revenues, adjusted gross revenues or expenses of the facility (but not both revenues and expenses)	5 years

Please note that the IRS left the other principles of its management contract guidelines untouched. For example, the following tests must still be satisfied even if the terms of the contract satisfy the revised compensation and term provisions described above:

- compensation and expense reimbursement to service provider must be "reasonable";
- service provider (including directors, officers, shareholders and employees) may not control more than 20 percent of the voting power on the board of the facility owner;
- any overlapping board members may not include the chief executive officers of the service provider or the facility owner; and
- facility owner and service provider may not be related persons.
- And the following arrangements continue to be generally exempt from these guidelines entirely:
- services that are incidental to the primary function of the facility (such as janitorial, equipment repair and billing services);
- hospital admitting privileges on an equal basis to all qualified doctors;
- public utility property, where compensation is limited to reimbursement for the service provider's expenses (including overhead); and
- non-public utility property, where compensation is limited to reimbursement for the service provider's expenses (excluding overhead).

[1] See C&W Portfolio Management, Inc. (July 20, 1989); Davenport Management, Inc. (Apr. 13, 1993); John Wirthlin (Jan. 19, 1999); and Revocation of Prior No-Action Relief Granted to Dominion Resources, Inc. (March 7, 2000).

[2] Reves v. Ernst & Young, 494 U.S. 56 (1990).

[3] Notes evidencing consumer loans, mortgage loans, certain short-term secured small business loans, short-term accounts receivable loans, "character" loans to bank customers and notes formalizing open-account debt incurred in the ordinary course of business.

[4] See Cori R. Haper, Sometimes Promising Is Not So Promising: The Breakdown of the Family Resemblance Test, 29 Dayton L. Rev. 71, 71 (2003) describing it as "unpredictable," "confusing," "jumbled," and "haphazard."

[5] See, for instance, the US Court of Appeals for the Sixth Circuit decision in Bass v. Janney Montgomery Scott, Inc.,210 F.3d 577, 585 (6th Cir. 2000) which determined that a financing "to launch a new enterprise" was "a washout, since the motivation prompting the transaction on [borrower]'s end is one typical in commercial loan transactions … but from [lender]'s perspective looks more like a transaction for profit." A description that would likely fit almost every lending

transaction.

[6] See e.g. Marine Bank v. Weaver, 455 U.S. 551, 560 (1982) and Bass at585.

[7] See e.g. Marine at560.

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MSRB Releases Content Outline for First Municipal Advisor Professional Qualification Exam.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released the content outline for the first qualifying examination for individuals who provide municipal advisory services to state and local governments. The outline includes the topics that will be covered on the exam, sample questions and a list of reference materials to assist municipal advisor professionals in preparing for the Municipal Advisor Representative Qualification Examination, which will be introduced as a pilot later this year. For the first time, municipal advisors will be required by a regulatory organization to demonstrate competence in their field.

"Today is an important day for the municipal advisor profession," said MSRB Executive Director Lynnette Kelly. "Requiring municipal advisor professionals to demonstrate a minimum level of knowledge of the business and applicable rules will help ensure that state and local governments are advised on municipal bond transactions and financial products by qualified advisors."

All municipal advisor representatives and principals are required to pass the new exam, called the Series 50 examination, within one year of its launch. The MSRB expects to launch the permanent exam in 2016. The MSRB first will administer a pilot exam this fall for those municipal advisor professionals who volunteer to participate. The pilot exam helps to validate the bank of exam questions and determine the passing score for the Series 50 exam. Sign up to receive updates about the pilot exam.

As set out in the content outline, the exam will cover the roles and responsibilities of municipal advisor professionals as well as the rules governing their activities, and the content outline has been filed with the Securities and Exchange Commission for immediate effectiveness. To help municipal advisors prepare to take the exam, the MSRB has scheduled a webinar on June 11, 2015 at 3:00 p.m. ET to review the content outline, provide more information about participating in the pilot and discuss the administration of the exam. Register for the webinar.

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing professional standards as part of a comprehensive regulatory framework for municipal advisors. For up-to-date information on the MSRB's professional qualification program and other rulemaking for municipal advisors, visit the Resources for Municipal Advisors section of the MSRB's website.

Dealers Raise Some Concerns About New Trade Data Requirements.

WASHINGTON — The Municipal Securities Rulemaking Board's proposal to require dealers to submit new information through its trade reporting system has some support from the two major industry groups, but one is concerned about possible inefficiency and confusion and the other wants a longer implementation period.

SIFMA and the Bond Dealers of America made their comments in letters to the Securities and Exchange Commission late last week.

The proposed changes to Rule G-14, first floated by the MSRB last August, would require dealers to report new information through the Real-Time Transaction Reporting System, such as whether a trade occurred on an alternative trading system or involved a non-transaction based fee. It also would eliminate the requirement for dealers to report the yield for trades with customers.

Leslie Norwood, a managing director, associate general counsel, and co-head of municipals at SIFMA, told the SEC that the proposal to require dealers' trade reports to include an indicator for non-transaction based fees is potentially helpful for transparency, but operationally very difficult.

"Importantly, these non-transaction-based compensation arrangements are private agreements between the investment manager and its clients, and the information about the account and trade type is typically not resident in the systems that handle trade reporting," Norwood wrote, adding that the problem is especially difficult for third party agents who handle trade reporting on behalf of broker dealers.

“Upon further reflection, broker-dealers implementing this amendment are having a very challenging time conceptualizing automating this process,” Norwood wrote. “Potentially, each account and trade would need to be researched by the reporting entity and a flag manually put on the impacted trades. The infrastructure cost to provide such information would potentially outweigh any potential benefits.”

SIFMA members feel that the MSRB could provide this information itself because it already collects it, Norwood told the commission. The same holds true for a potential indicator on whether a trade was executed via an ATS, she wrote.

SIFMA supports the proposal to eliminate dealers having to calculate yield on trade reports, but is concerned that the change does come at a cost, Norwood wrote.

The questionable trade reports, however, alerted broker-dealers to trades where the dealer calculated yield was outside the acceptable tolerance from the MSRB calculated yield,” she wrote. This was typically due to reference database differences in call features or day count calculation due to questionable holidays or market closes, she continued.

“Broker-dealers could then reconcile these differences. It should be recognized that this control mechanism does get eliminated with these amendments,” she wrote.

Customers could be confused if the MSRB yields don’t match the dealer calculated yields, Norwood added.

BDA chief executive officer Mike Nicholas said the proposal will benefit the muni market, but is concerned smaller dealers may need more than the proposed six-month testing period before the effective date in order to make the necessary changes to their systems.

“The MSRB’s proposed six-month testing period in advance of the effective date may be sufficient time for larger dealers to make the required changes necessary for implementation without disruption to their information technology plans or budgets, however smaller firms with fewer IT resources require at least a nine-month testing period prior to implementation,” Nicholas wrote. “Operationally, dealers will have to create new data fields and integrate them into existing systems as well as provide training for sales, trading and operations staff. Smaller firms with more limited resources will need additional time to successfully implement the changes required by the proposed rule.”

The SEC must approve the proposal before it could become effective. The commission could accept the proposal as is, or require that the MSRB make changes.

THE BOND BUYER

BY KYLE GLAZIER

APR 20, 2015 2:55pm ET

[MSRB Trade-Reporting Proposal Prompts Questions, Concerns.]

The Municipal Securities Rulemaking Board has proposed changes to Rule G-14 requiring dealers to report whether a trade was executed on an alternative trading system, included a fee that wasn't based on the transaction, and other information. SIFMA supports parts of the proposal but is raising some concerns. Leslie Norwood, associate general counsel and co-head of municipal securities at SIFMA, said that operationally, it will be difficult to include an indicator for nontransaction-based fees in dealers' trade reports.

Read SIFMA's comments.

MSRB Reminds Municipal Advisors of the April 23, 2015 Effective Date of Amendments to MSRB Rule G-44 on Supervisory and Compliance Obligations.

The Municipal Securities Rulemaking Board (MSRB) reminds municipal advisors that amendments to MSRB Rule G-44 regarding supervisory and compliance obligations of municipal advisors, and related amendments to MSRB Rule G-8, on books and records, and MSRB Rule G-9, on preservation of records become effective on April 23, 2015. Municipal advisors are required to establish, implement and maintain a system to supervise their municipal advisory activities and those of their associated persons that is reasonably designed to achieve compliance with all applicable securities laws and regulations.

Read the approval notice.

View a recording of a webinar about the rule changes.
