MSRB Responds to Adoption of Volcker Rule by Federal Regulators.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) welcomed the harmonization of treatment of municipal securities under the so-called Volcker Rule on proprietary trading with how municipal securities are treated under existing federal securities laws. As passed, the provisions of the Volcker Rule avoid making artificial distinctions between municipal securities issued by state and local governments and those issued by their agencies or authorities. The MSRB believes that such distinction would not have served the purposes of the Volcker Rule and would have created regulatory complexity due to divergent treatment under the various applicable federal securities laws.

"The MSRB is pleased that the federal financial regulators agreed with the MSRB's analysis and amended the initial proposal to avoid an unnecessary bifurcation of the municipal market," said MSRB Chair Dan Heimowitz. "Exemption of all municipal securities as defined by the Securities Exchange Act ensures that the municipal market will not be splintered unnecessarily as a result of the Volcker Rule."

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 mandated the development of a federal rule to restrict an insured depository institution and its affiliates from engaging in proprietary trading, among other provisions.

In a January 2012 comment letter to the five federal regulators jointly developing the Volcker rule, the MSRB urged that all municipal securities be treated equally under the governmental obligations exemption. The regulatory agencies – the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation and the U.S. Department of the Treasury Office of the Comptroller of the Currency – adopted a final rule that reflects the MSRB's recommendation. The rule adopted today becomes effective April 1, 2014.

SIFMA Official: SEC Could be Flexible on MA Rule.

BOSTON — Additional guidance from the U.S. Securities and Exchange Commission should provide some clarity to how the proposed trading restrictions under its new municipal advisor registration rule apply to municipal issuers, according to a securities industry official.

"The SEC plans some additional guidelines on the rule and that's really going to provide some flexibility regarding how the rule will apply," said Michael Decker, a managing director at the Securities Industry and Financial Markets Association, which represents hundreds of securities firms, banks and asset managers. "We've talked with the SEC with regard to the rule, and they seem amenable to some flexibility."

"Looking as it stands, it puts some pretty severe restraints on bankers to provide deal ideas or comment to a specific issue," Decker said Thursday at the third annual Massachusetts investor conference at the Boston Convention and Exhibition Center.

Decker expects a statement from the SEC within days.

State Treasurer Steven Grossman gave the keynote address in the morning, citing the conference as a tool for enhanced disclosure. Grossman, a Democratic candidate for governor in 2014, has emphasized expanded disclosure since taking office in 2011. Related moves have included an annual investor conference and frequent investor calls, a new investor website and technical enhancements.

"Federal issues are overriding to all we do," said Scott Jordan, Massachusetts undersecretary of administration and finance.

Earlier in the day, investors discussed market trends in transportation, higher education and new variable-rate products such as floating rate notes.

Nat Singer, a managing director at Swap Financial Group LLC, said new instruments reflect a changing landscape.

"When I think of the short-term market, it's the opposite of what our parents told us about how tough they had it, how they had to walk five miles to school through the snow and the rain. Short-term is exactly the opposite," said Singer. "You used to be able to slap on an insurance policy and sell an asset. You could rate the security with a cheap letter of credit. Then, 2008 happened."

BY PAUL BURTON

DEC 13, 2013 11:26am ET

Volcker Rule Shift Lets Banks Continue Muni Bond Speculation.

U.S. financial regulations that curb banks' ability to speculate with their own money included an exemption for the $3.7 trillion municipal bond market after issuers complained the rules could increase borrowing costs.

The Volcker Rule, issued today by regulators, allows banks to invest in securities issued by states, localities and government agencies. A draft version would have barred the practice with debt sold by agencies and authorities. The Municipal Securities Rulemaking Board has estimated that such issuers account for about 40 percent of municipal bonds.

The change is a victory for borrowers and municipal securities dealers that pressed regulators to broaden the exemption. Without it, agencies that sell bonds for public works projects said they might have faced higher borrowing costs by eliminating banks as investors.

"That was a potential problem that has been avoided," said Matt Fabian, an analyst who tracks tax-exempt securities for Municipal Market Advisors, which is based in Concord, Massachusetts.

The ban on most types of proprietary trading — banks using their own money to speculate in securities markets — is part of the Dodd-Frank Act, approved by Congress in 2010 in response to the credit crisis. The limits are intended to prevent another taxpayer-funded bailout. The rules exempt securities that pose less risk than corporate stocks and bonds.

Regulators’ Proposal

Agencies that run water, mass transit systems and school districts often sell municipal debt. In 2011, regulators proposed barring bank investments in such debt. The step drew opposition from bond underwriters as well as government officials, who argued that investments in such securities pose little risk to banks.

Wall Street banks have been closing proprietary trading units in preparation for the rules, and the Federal Reserve gave them until mid-2015 to comply.

Bond underwriter trade groups applauded the decision to allow them to keep investing in municipal securities.

“Had all municipal bonds not been excluded from the rule, the result would have been a more difficult environment for communities raising capital and decreased liquidity in the municipal market,” said Kenneth Bentsen, president of the New York-based Securities Industry and Financial Markets Association, which represents banks, in a statement.

By William Selway and Darrell Preston December 10, 2013

MSRB Requests Comment on Continuing Education Proposal for Municipal Securities Dealers.

Alexandria, VA – Following a review of its professional qualification program for municipal securities dealers, the Municipal Securities Rulemaking Board (MSRB) today requested public comment on a proposal to require dealers to ensure that members of their staff primarily engaged in municipal securities business annually receive training in municipal securities.

The proposed change to the continuing education requirements for dealers set out in MSRB Rule G-3 would require a minimum of one hour of training focused on municipal securities for professionals primarily engaged in municipal securities activities. Currently, dealer firms are required to offer continuing education to their staff based on the firm’s assessment of its overall needs, but there are no existing obligations under MSRB rules to provide targeted training on municipal securities to dealer personnel.

“The MSRB recognizes that many dealers already offer continuing education programs that include municipal securities components,” said MSRB Executive Director Lynnette Kelly. “The MSRB’s proposal seeks to set a minimum baseline for this type of continuing education to ensure that firms consider the particular training needs of staff responsible for understanding municipal securities products and complying with MSRB rules.”

The request for comment seeks to reinforce the need for dealer staff primarily engaged in the municipal securities business to stay abreast of issues that affect their job responsibilities and informed about product and regulatory developments.

The MSRB also today provided notice of planned changes to two categories of municipal securities professional qualification. Upon approval by the Securities and Exchange Commission (SEC), the MSRB would no longer require the “Financial and Operations Principal” designation since it is a requirement imposed on dealers by other regulators and therefore duplicative of other regulation. Also, those individuals who have been qualified to engage in municipal fund securities activities, such as sales of 529 college savings plans, by passing a Limited Representative examination, would only be permitted to engage in sales-related activity, pending SEC approval.

The MSRB fosters competency of municipal market professionals and compliance with MSRB rules through professional examinations and continuing education requirements.

Date: December 13, 2013

Contact: Jennifer A. Galloway, Chief Communications Officer

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Congressman Asks SEC for MA Rule Clarification.

WASHINGTON — The Securities and Exchange Commission should provide guidance to broker-dealers assuring them that they will not be restricted from giving advice to issuers in their roles as underwriters, a congressman told SEC chairman Mary Jo White in a recent letter.

Rep. Ander Crenshaw, R-Fla., who chairs the House Appropriations Committee's subcommittee on financial services and general government, wrote to White to express concern that the SEC's recently-released municipal advisor registration rule will prevent dealers seeking to act as underwriters from giving advice to issuers about bonds for fear of being prevented from underwriting them later.

The MA rule, mandated by the Dodd-Frank Act, imposes a federal fiduciary duty on any entities that provide particularized advice about muni bonds to an issuing authority or conduit borrower, a duty to put the issuer's interests first, which dealer firms have long held to be incompatible with the role of an underwriter.

The rule takes effect Jan. 13.

"I encourage you to clarify that dealers who declare their roles as bond underwriters when initiating communication with an issuer in compliance with Municipal Securities Rulemaking Board rules, will not be prohibited from underwriting bonds as a result of providing specific recommendations to bond issuers," Crenshaw wrote.

MSRB Rule G-23 on the activities of financial advisors prohibits firms from serving as financial advisor and underwriter on the same bond issue, but some market participants contend it is unclear if registered MAs under the new regulatory regime would be prohibited from doing the same thing.

The issue has emerged as a central concern for dealer groups, non-dealer advisors, and the National Association of Bond Lawyers, though SEC officials have said the MA rule and G-23 are not the same thing.

The SEC's MA registration rule allows a dealer firm engaged as underwriter on a bond issuance to provide certain advice about that specific security. The rule also allows an underwriter to provide advice if an issuer has retained and is relying on the advice of its own MA. Many market participants are eagerly awaiting guidance from the SEC before the rule's effective date.

“A successful negotiated bond issuance relies on communication among the issuer, the underwriter, and other members of the financing team from the earliest stages,” Crenshaw wrote. “Issuers depend on underwriters to provide ideas, analysis, information and proposals that can minimize financing costs for state and local taxpayers. I appreciate your attention to this matter and I look forward to seeing the commission’s interpretive guidance on the MA rule.”

BY KYLE GLAZIER

DEC 9, 2013 4:03pm ET

Oppenheimer’s Sirianni Suspended for Muni-Bond Price Gouging.

David Sirianni, Oppenheimer Holdings Inc. (OPY)’s head municipal bond trader, was fined $100,000 and suspended for 60 days by the Financial Industry Regulatory Authority for overcharging customers.

Sirianni marked up bonds as much as 16 percent from July 2008 through June 2009, Finra said today in a statement. New York-based Oppenheimer also was ordered to pay a $675,000 fine and $246,000 in restitution. The brokerage and the trader settled the case without admitting to the allegations, Wall Street’s self-regulator said in the statement.

“Finra has no tolerance for firms or individuals who charge customers excessive markups,” Thomas Gira, Finra’s head of market regulation, said in the statement.

The investigation involved 89 transactions in which the brokerage added more than 5 percent to the cost of the bonds, Finra said. Oppenheimer didn’t disclose the markups to its customers, according to the regulator. The firm’s supervisory system didn’t flag the trades for review because it looks at same-day markups and in these cases the bonds were held at least overnight, Finra said.

Oppenheimer altered its procedures to make sure that customers get fair prices on municipal bonds, according to Mary Beth Kissane, a spokeswoman for the firm at WalekPeppercomm. Finra’s claims involve a small number of trades, she said.

Sirianni declined to comment when reached by phone.

In one instance cited by the regulator, Oppenheimer bought Dowling College revenue bonds for 52.35 cents on the dollar on Dec. 9, 2008, and then sold them the next day for 14 percent more. On Dec. 11, Oppenheimer bought more securities of the Oakdale, New York-based college for 52.85 cents and 52.5 cents, which it flipped at a 13 percent markup.

Oppenheimer’s stock fell 0.8 percent today to $23.28.

Judge Blocks Auction-Rate Arbitration against Goldman.

NEW YORK (Reuters) – Goldman Sachs Group Inc has won a court order blocking a North Carolina utility from moving forward with an arbitration before the Financial Industry Regulatory Authority over the extent the bank misled it about auction-rate securities.

U.S. District Judge Paul Engelmayer in Manhattan entered a preliminary injunction Monday preventing North Carolina Municipal Power Agency Number One from proceeding with the arbitration.

In making his ruling, Engelmayer pointed to decisions earlier in 2013 by two different judges in New York presiding over similar cases over auction-rate securities, in which the arbitrations were blocked because of forum selection clauses in broker-dealer agreements.

“The court agrees with their analysis and reasoning; and applies them here,” Engelmayer wrote.

Lawyers for Goldman and the North Carolina utility did not respond to requests for comment.

The case was one of a number filed in the wake of the global financial crisis of 2007 and 2008 by large institutions and investors seeking to bring cases before FINRA.

While arbitration has historically been seen by critics as defense-friendly, some plaintiffs viewed FINRA as attractive because of the speed it hears cases and the difficulty defendants face in overturning an arbitration award on appeal.

Of the 10 largest U.S. securities arbitration awards, seven were issued since 2008, according to Securities Arbitration Commentator Inc.

The case against Goldman stemmed from the North Carolina utility’s issuance of $149.7 million in auction-rate securities underwritten by the bank.

Auction-rate securities were a type of bond in which interest rates were set through bidding by investors. The market for the securities froze in February 2008 when banks ceased propping it up with support bids.

The agency, which provides wholesale power to 19 cities in North Carolina, filed the arbitration in December 2012 accusing Goldman of misrepresenting its role in supporting the market.

The bank, through lawyers at Sullivan & Cromwell, subsequently filed a federal lawsuit seeking to block the arbitration.

Among other arguments, the bank contended that the North Carolina utility waived its right to arbitrate by signing a broker-dealer agreement containing a forum selection clause requiring disputes to be litigated in federal court in New York.

‘PRECLUDE ARBITRATION’

In a 17-page decision, Engelmayer said the agreement “provides ‘positive assurance’ that the parties intended to preclude arbitration.”

Engelmayer also found the auction-rate securities issuance “constitutes a ‘transaction contemplated’ by the broker-dealer agreement and, as such, falls within the scope of the forum selection clause.”

He said the claims were also tied to the broker-dealer agreement. Goldman acted not just as underwriter but also broker-dealer, he said.

“NCMPAI cannot wish away the terms of the broker-dealer agreement when its claims are based on Goldman’s actions as a broker-dealer,” Engelmayer said.

The ruling follows a similar case in which Goldman blocked an auction-rate securities arbitration brought by Golden Empire Schools Financing Authority and Kern High School District in California.

Engelmayer relied in large part on that case, decided by U.S. District Judge Richard Sullivan in February, as well as a decision in May blocking an arbitration by a related North Carolina utility against Citigroup Inc.

The claimants in both Goldman cases and the Citigroup dispute are all represented by James Swanson, a lawyer at Fishman Haygood Phelps Walmsley Willis & Swanson.

The firm has brought several other big cases before FINRA against banks related to auction-rate securities. And while judges in New York have tended toward blocking the arbitrations, other courts have been receptive to the arguments of Fishman Haygoods' clients.

In January, the 4th U.S. Circuit Court of Appeals allowed Carilion Clinic of Roanoke, Virginia, to proceed with an arbitration against UBS AG and Citigroup over $234 million in auction-rate securities.

A month later, a judge in Minneapolis refused UBS AG's request to enjoin an arbitration by Allina Health System arising out of $125 million in auction-rate securities it issued in 2007.

The case is Goldman Sachs & Co v. North Carolina Municipal Power Agency Number One, U.S. District Court for the Southern District of New York, No. 13-01319.

For Goldman Sachs: David Braff and Matthew Schwartz of Sullivan & Cromwell.

For North Carolina Municipal Power Agency Number One: James Swanson of Fishman Haygood Phelps Walmsley Willis & Swanson; and Peter Mougey and James Kauffman of Levin Papantonio Thomas Mitchell Rafferty & Proctor.

By Nate Raymond

Bank of America Settles Municipal Bond Rigging Lawsuit.

NEW YORK (Reuters) – Bank of America Corp has agreed to pay $20 million to settle a lawsuit in which investors accused it of rigging bids for municipal securities, court papers filed on Wednesday show.

The settlement is part of litigation that began in March 2008, and that alleged Bank of America and other banks conspired to artificially fix prices and manipulate markets for so-called municipal derivatives.

Plaintiffs including the City of Baltimore, and the Central Bucks School District and Bucks County Water & Sewer Authority in Pennsylvania said this activity violated antitrust law, and caused them to receive lower interest rates than they would have in a competitive marketplace.

In a filing in the U.S. district court in Manhattan, lawyers for the municipal entities called the settlement "significant and of substantial benefit to the class."

They added that Bank of America faced less liability than other defendants because it cooperated sooner, including by reporting misconduct to the U.S. Department of Justice.

More than one dozen people have pleaded guilty in the Justice Department probe.

Wednesday's unopposed settlement requires court approval. It follows earlier settlements of $44.6 million by JPMorgan Chase & Co, $37 million by Wells Fargo & Co and $6.5 million by Morgan Stanley, court papers show.

Bank of America, JPMorgan, Wells Fargo, General Electric Co and UBS AG have settled related claims brought by various state attorneys general, the papers show.

The total payout for Bank of America is $82.5 million, including the earlier settlement, court papers show.

Bank of America, the second-largest U.S. bank, is based in Charlotte, North Carolina. A spokesman declined to comment.

The case is In re: Municipal Derivatives Antitrust Litigation, U.S. District Court, Southern District of New York, No. 08-02516.

(Reporting by Jonathan Stempel in New York; Editing by Steve Orlofsky)

[FINRA Fines Oppenheimer $675,000 and Orders Restitution of More Than $246,000 for Charging Unfair Prices in Municipal Securities Transactions and for Supervisory Violations.]

WASHINGTON — The Financial Industry Regulatory Authority (FINRA) announced today that it has fined Oppenheimer & Co., Inc. $675,000 for charging unfair prices in municipal securities transactions and for failing to have an adequate supervisory system. FINRA also ordered Oppenheimer to pay more than $246,000 in restitution, plus interest, to customers who were charged unfair prices. In addition, FINRA fined Oppenheimer's head municipal securities trader, David Sirianni, $100,000, and suspended him for 60 days.

Thomas Gira, FINRA Executive Vice President and Head of Market Regulation, said, "FINRA has no tolerance for firms or individuals who charge customers excessive markups. Oppenheimer charged customers unfair prices in numerous municipal securities transactions and failed to properly supervise municipal securities transactions with its customers."

FINRA found that from July 1, 2008, through June 30, 2009, Oppenheimer, through Sirianni, priced 89 customer transactions from 5.01 percent to 15.57 percent above the firm's contemporaneous cost. In 54 of those transactions, the markups exceeded 9.4 percent. Sirianni purchased municipal securities from a broker-dealer on Oppenheimer's behalf, held the bonds in inventory for at least overnight, and then made the bonds available for resale at an unfair price to the firm's customers. Sirianni was responsible for determining the prices paid by customers in the 89 transactions.

Oppenheimer failed to detect the unfair prices charged. Oppenheimer's supervisory system was deficient because supervisory personnel relied solely on a surveillance report that only captured intra-day transactions to review the fairness of markups/markdowns in municipal securities transactions. From at least 2005 through June 30, 2009, if an Oppenheimer trader purchased municipal securities and held those securities in inventory for a day or longer, the subsequent sales to customers would not populate the firm's surveillance report or be subjected to a fair pricing review.

In concluding this settlement, Oppenheimer and Sirianni neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Ex-GE Bankers Win Reversal of Convictions for Bid-Rigging.

Three former General Electric Co. (GE) bankers won an appeal of their convictions for defrauding cities and the federal government in a bid-rigging scheme involving municipal bonds.

The federal appeals court in Manhattan reversed the 2012 convictions of Steven Goldberg, Peter Grimm and Dominick Carollo on Nov. 26, without immediately providing a reason. The men were ordered released from prison the next day.

The three were found guilty in May 2012 of conspiracy to commit fraud by manipulating auctions for municipal bond investment contracts. U.S. District Judge Harold Baer sentenced Goldberg to four years and Grimm and Carollo to three years in federal prison.

The defendants appealed, claiming the government waited too long to charge them and that Baer should have declared a mistrial after a key prosecution witness disappeared and tried to kill himself before defense lawyers were able to complete their cross-examination. The witness, Adrian Scott-Jones a former broker for Tradition NA, was later sentenced to 18 months in prison for his role in the case.

A three-judge panel of the appeals court reversed the convictions, saying an opinion will be issued "in due course."

The government claimed that from August 1999 to November 2006 the men gave kickbacks to brokers hired by local governments to solicit bids, win auctions and increase their profits. The charges grew out of a five-year investigation by antitrust prosecutors into the $3.7 trillion municipal bond market.

Bond Money

The case focused on guaranteed investment contracts, which cities buy with the money raised from selling bonds. The arrangement lets the cities earn money on the funds until they're used for projects such as waste treatment plants, hospitals and roads.

The appeals case is U.S. v. Grimm, 12-04310, U.S. Court of Appeals for the Second Circuit (Manhattan). The lower-court case is U.S. v. Carollo, 1:10-cr-00654, U.S. District Court, Southern District of New York (Manhattan).

By Bob Van Voris – Dec 2, 2013 1:19 PM PT

NYT: Playing Pension Games.

Pity the municipal bondholder. Between Detroit's bankruptcy and the rising concerns over unfunded pensions in Illinois and elsewhere, it has been a rough year for many muni bond investors. While the Standard & Poor's municipal bond index has recovered from its September lows, it is still off 2.7 percent for the year.

A big problem for investors in this $3.7 trillion municipal market — mostly individuals — is that financial disclosures by states, cities and other issuers of tax-exempt debt can be decidedly inadequate.

Securities laws require issuers of municipal debt to provide the information investors need to make informed decisions when buying or selling these instruments. But lax disclosure practices remain, making it hard to spot signs of problems like those hobbling some states and cities. Disclosures about the soundness of public pensions, for example, can be essential to weighing the health of municipal bond issuers that are responsible for funding them.

Investors aren't the only ones who need more information. This was on full display last week, when a judge in Detroit suggested in a groundbreaking ruling that the city's pensioners would not get priority in the city's bankruptcy, and their retirement pay could be considered an unsecured obligation.

John R. Mousseau, executive vice president and director of fixed income at Cumberland Advisers, a money management firm in Sarasota, Fla., said: "Detroit's pensioners may be as eligible to take a haircut as the city's bondholders or vendors. This development should demand more disclosure."

But better disclosure practices among tax-exempt issuers are slow in coming, investors say.

If issuers make material misstatements or omit information, they can face civil or criminal penalties. The Securities and Exchange Commission has brought eight cases contending disclosure failings by municipal issuers this year.

A large case last March involved accusations that the state of Illinois misled investors about its unfunded pension. From 2005 to 2009, a period when the state issued $2.2 billion in bonds, the S.E.C. said Illinois failed to warn investors about the pension system's woes and "the resulting risks to the state's financial condition."

Among the details missing from the state's offering statements and filings, the commission said, were those relating to the contributions made by the state to its various pension funds. The commission said investors were not told that the state was contributing far less to the pensions than was required each year. Last week, the Illinois Legislature voted to shore up the pensions by raising the retirement age for some workers and lowering cost-of-living adjustments. The state is facing a pension shortfall of $97 billion.

Illinois settled with the S.E.C., but the agency did not impose fines or penalties. The S.E.C. doesn't typically exact penalties in such cases, its officials said, because the money would come out of a state or city budget, making matters worse.

Disclosures about pensions in the muni arena rank high as an S.E.C. concern, according to John J. Cross III, director of its Office of Municipal Securities. "Our office expects to take a good hard look at pension disclosure issues," he said. "It is a major concern because of the magnitude of unfunded municipal pension liabilities and the size and opaqueness of the investment portfolios."

But the S.E.C. can't dictate disclosure rules related to accounting, Mr. Cross explained. "We can't mandate line-item things, but we could highlight more of what we think is appropriate to address material disclosure issues in the pension area as simply and clearly as possible."

If issuers took the initiative on greater transparency, they'd most likely benefit from reduced borrowing costs, Mr. Mousseau said. Investors who feel confident that they understand the risks in a muni bond will accept a lower interest rate on that security, he explained. "Fewer unknowns in a world fraught with headline risk are a good thing," he said.

Many people who put money in municipal securities are individual investors looking for a small but safe return, not a big gain on a risky investment. So investors not only need more information from tax-exempt issuers, they also need that information to be relatively simple. That's the view of Chris Tobe, a public pension consultant and a former trustee of the Kentucky Retirement System. He is also author of "Kentucky Fried Pensions — Worse than Detroit." He added: "Bad financial practices are a signal of stress down the road and should be disclosed. Investors need to be able to discern between good actors and bad actors."

A crucial metric that should be found in issuers' offering statements and filings is one cited by the S.E.C. in the Illinois case: the shortfall in annual contributions that are needed to keep a pension fully funded. Known as annual required contributions, or ARC, many states fail to meet them.

This has the effect of masking an issuer's financial troubles, Mr. Tobe said. "There almost needs to be a bold statement saying the state is not paying 100 percent of its ARC payments," he said.

He cites a December 2011 offering statement for $72 million of bonds issued by the University of Illinois. Nowhere does it detail the shortfalls in state contributions to the university system's pension fund in recent years. Investors seeking this information must go to the Illinois State Universities Retirement System website.

On that website are annual reports and other revealing filings. The fiscal 2012 report shows that for the last five years, Illinois has contributed only 60 percent of the university system's annual required contributions, on average. With each year the state pays less than the required contributions, the pension fund goes deeper into the hole.

The system has 200,000 members in the defined-benefit plan, 45,548 of whom are retired. The pension's assets available to pay out benefits fell from 44.3 percent to 42.1 percent in 2012, the report said. The system's actuarial liability is $19.2 billion.

I asked officials at the Illinois State Universities Retirement System if they planned to offer investors more clarity in future bond offering statements, given the S.E.C.'s recent case against the state.

Thomas Hardy, executive director for the office of university relations, said the pension's unfunded liability is not the obligation of the university under current state law. But, he said, the Illinois university system's filings would start including figures on unfunded pension liabilities in its 2015 fiscal year, which begins next July. It will do so to comply with new accounting rules issued by the Governmental Accounting Standards Board, he said.

That's a good thing. But many pension problems remain hidden from view. Bondholders lose because "they don't get the interest rate they deserve for the risks they are taking," Mr. Tobe said. "While issuers play these games, it's investors who feel the losses."

By GRETCHEN MORGENSON

Published: December 7, 2013

Obama Threatens to Veto Bill Exempting Private Equity Advisors From

Registration.

H.R. 1105 is a step backward from the Dodd-Frank progress made to date, administration says

The Obama administration told members of Congress Tuesday that it would veto H.R. 1105, the Small Business Capital Access and Job Preservation Act, which would amend the Investment Advisers Act of 1940 to exempt nearly all private equity fund advisors from registration.

The bill is up for a vote Wednesday afternoon on the House floor.

There is much more to compliance examination survival than knowing all of the rules. It helps to understand why the rules were put in place—and to recognize that examiners are not the enemy.

Differences Between State and SEC Regulation of Investment Advisors

States may impose licensing or registration requirements on IARs doing business in their jurisdiction, even if the IAR works for an SEC-registered firm. States may investigate and prosecute fraud by any IAR in their jurisdiction, even if the individual works for an SEC-registered firm.

"The legislation effectively provides a blanket registration and reporting exemption for private equity funds, undermining advances in investor protection and regulatory oversight implemented by the Securities and Exchange Commission under Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act," the administration told Rep. Robert Hurt, R-Va., the bill's sponsor, and its 12 co-sponsors.

The administration said that it was "committed to building a safer, more stable financial system," and that H.R. 1105 represented "a step backwards from the progress made to date, given that private equity fund advisors have been filing reports with the SEC for over a year."

Moreover, the administration said that the bill's passage "would deny investors access to important information intended to increase transparency and accountability and to minimize conflicts of interest." H.R. 1105 "would exempt private equity funds from the disclosure requirements that the Congress laid out in Wall Street Reform to allow regulators to assess potential systemic risks."

Private equity funds are already subject to less stringent reporting requirements than other types of private funds and to an annual, rather than quarterly, filing requirement.

In addition, private fund advisors with less than $150 million in assets under management are exempted from registration and subject only to recordkeeping and reporting requirements.

By Melanie Waddell, ThinkAdvisor

Washington Bureau Chief

Investment Advisor Magazine

SIFMA Submits Comments to SEC on Issues Regarding Securities Industry Processors, Provides Industry Views on Critical Market Structure Reviews.

New York, NY, December 5, 2013 – SIFMA today submitted a letter to Mary Jo White, chair of the

Securities and Exchange Commission (SEC), in response to her recent statement on the SEC's review of Securities Industry Processors (SIPs) following the August 22nd SIP outage that led to a halt in trading of NASDAQ-listed securities.

SIFMA commends the SEC's leadership in examining this vital market structure issue and its call for the self-regulatory organizations (SROs) to work with broker-dealers as they craft proposals for enhancing SIPs. In addition, SIFMA appreciates the SROs' initial engagement with our members as they formulated their preliminary proposals. SIFMA's letter provides the Association's viewpoint on the five workstreams for enhancing SIPs.

SIFMA's letter also notes more broadly that the August 22nd SIP outage is a symptom of the outdated system by which critical market data is controlled and distributed. SIFMA urges the SEC to work with the SROs and industry members to examine SIPs more broadly and develop action plans that (1) revamp governance, (2) increase transparency in operations, and (3) provide for increased efficiencies.

"The events of August 22nd highlight the critical nature of the SIPs in maintaining fair and orderly markets and the need for regulators and market participants to collaborate to make sure the markets are operationally resilient," said Randy Snook, executive vice president, business policies and practices. "Further, we believe the time is time is right for a broader review of SIPs to address concerns with transparency and governance. The current system for distributing market data was developed over 30 years ago. It's time to reevaluate what's best for the markets."

SIFMA believes it is imperative that the broker-dealer and investment communities play an active and substantive role with the SROs as the SIP enhancement process moves forward from identifying preliminary concepts to developing concrete proposals. Collaboration between SROs and the broker-dealer community is essential to crafting comprehensive proposals that strengthen the resiliency of equity market structure in the United States.

SIFMA's letter, which includes detailed comments on the five SIP workstreams identified by the SEC, is available here:

http://www.sifma.org/issues/item.aspx?id=8589946502

MSRB: Advancing Municipal Advisor Regulation.

The MSRB is advancing a regulatory framework for municipal advisors that includes rules for professional conduct, professional qualification examination requirements as well as education and outreach to municipal advisors. In light of the September 18, 2013 final registration rule from the Securities and Exchange Commission (SEC) defining who is a municipal advisor, which takes effect January 13, 2014, the MSRB has prioritized the development of municipal advisor rules in five key areas. They are: fiduciary duty and fair dealing standards of conduct of municipal advisors to municipal entities and obligated persons; supervision requirements for municipal advisory firms and their employees; rules to address the potential for pay-to-play activities by municipal advisors; limitations on gifts and gratuities to employees of municipal securities issuers and other market participants; and duties of solicitors.

The MSRB will seek public comment before proposing rules to the SEC for approval. The MSRB also is continuing to work with the municipal advisory industry to develop a professional qualification exam to establish standards of competency for municipal advisors.

5 Big Regulatory Changes Coming in 2014.

Want to prepare your practice for potential changes in the year ahead? Keep your eye on these five areas

As I attempt to look at what's on the 2014 horizon in terms of regulation, compliance and other best practices, I can't overcome the feeling of déjà vu. Or perhaps I am just repeating myself.

Many of the topics here — a fiduciary standard, industry reorganization, arbitration methods — are not new. Yet, after years of effort, the months ahead might finally lead to changes in these hotly debated areas. Or not. Here are my predictions:

1. FIDUCIARY STANDARD

Sticks and stones may break my bones, but a fiduciary will never hurt me.

Acting in the best interest of the client does not have to be to the detriment of the financial advisor. A commission-based product may be in the best interest of the investor. A fee-based product may be in the best interest of the investor. Whether a financial advisor makes a fee or a commission, the financial professional is being compensated for services.

Fiduciaries can break laws and steal client money. Commissioned reps can have the highest of ethics. (And vice versa.) So it is not the label or the law that makes one honest; it is if one is actually honest that counts.

Let's get beyond the in-fighting. The SEC should adopt a fiduciary standard for all financial services professionals, albeit with allowances for differences between investment advisor representatives and broker/dealer representatives. All financial advisors should have full disclosure of services, fees, conflicts of interest, and act in the best interest of the client. Send the lawbreakers to jail.

2. HARMONIZATION

Brokerage and advisory services are indistinguishable to investors.

Here is my ideal futuristic shape of the industry: We will be under one regulatory regime. No longer will we have the broker/dealer and registered investment advisor industries. There will be one registration for the company, one fee, one filing. One registration for reps, one fee, one grand-slam exam. One full-disclosure document used by all to replace the Form ADV.

Wealth management, life planning, financial planning, asset management, or simple buy-and-sell securities recommendations will be done under one roof. There will be a choice of fee structures, based on client suitability. Some specialist firms will continue to exist — with wealth management on one side of the spectrum and traditional brokerages on the other — but they will all fall under one regulatory scheme. The Financial Advisory and Investment Transaction Services Act of 2023 (FAITS Act) and its rules and regulations will be streamlined. Under this imaginary FAITS Act, some rules will apply for transactional trades, and other rules will apply for services that are advisory in nature — but all under one coordinated act.

Hmmm … I actually made this prediction 10 years ago. So I am adding on another 10 years to my dream regime.

3. ARBITRATION CLAUSES

You may believe arbitration is the civil way to resolve a dispute, but it could bring on the wrath of the state regulators.

When your client wants to pick a fight with you, would you rather get your day in court in front of a jury, or face a panel of arbitrators? It is not uncommon to see mandatory pre-dispute arbitration agreements in broker/dealer and investment advisor contracts.

It is not my job, in the space of this article, to counsel you on your choice of forum. Broker/dealers utilize arbitration clauses under the good graces of FINRA. Federally covered registered investment advisors will find the SEC sitting on the fence on this matter. State registered investment advisors may find that these clauses are (or soon will be) prohibited in some states.

The North American Securities Administrators Association (NASAA) announced its strong support for the Investor Choice Act of 2013 (H.R. 2998), which would (if passed) prohibit the use of mandatory pre-dispute agreements by broker/dealers and registered investment advisors.

The Investor Choice Act would not in any way prevent investors from voluntarily electing to resolve a dispute through arbitration or mediation after the facts and circumstances of the dispute have been discovered. The Investor Choice Act may die in committee.

The SEC has authority, under the Dodd-Frank Act, to either ban arbitration clauses in advisory contracts or, at a minimum, commence a study of the use of pre-dispute arbitration. The SEC has not acted in the three years since the Dodd-Frank Act was passed, much to the dismay of NASAA.

4. BUSINESS CONTINUITY PLANS

How will you get back up and running if your office becomes uninhabitable? Your files disappear? Your staff can't get to work? Your phone lines go down?

It has been approximately 10 years since both the SEC and FINRA adopted rules for investment advisors and broker/dealers to implement a business continuity plan (BCP). The BCP addresses events that could cause a significant business disruption and how the business will regain functionality within the shortest possible time span.

Yet, year after year, disaster after disaster (think Katrina and Sandy), financial advisors are still getting caught off guard without a viable BCP in place. The SEC, CFTC and FINRA recently issued a joint advisory to suggest effective practices. The SEC Office of Compliance Inspections and Examinations issued a separate risk alert for investment advisors.

5. IDENTITY THEFT

Can you spot the red flags for identity theft and prevent losses from your client accounts?

The Federal Trade Commission's (FTC) Red Flags Rule implemented obligations imposed by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Many firms are already in compliance based on this original FTC rule; others firms hesitated to adopt policies, believing the FTC rule did not apply to them.

SEC Regulation S-ID recently implemented provisions in the Dodd-Frank Act, which amended the FACT Act and directed the SEC (and the CFTC) to adopt rules for identity theft red flags. For those firms that now need to come into compliance with the SEC rule, it was effective May 20, 2013, with a final compliance date of Nov. 20, 2013.

The Red Flags Rule requires specified firms to create a written identity theft prevention program (ITPP) that is designed to identify, detect and respond to red flags — patterns, practices or specific activities — that could indicate identity theft.

The Red Flags Rule requires firms to prepare an ITPP if they are either a “financial institution” or a “creditor” and offer “covered accounts.” It’s important to look closely at how the rule defines “financial institution” and “creditor” because the terms apply to groups that might not typically use those words to describe themselves.

An investment advisor who directly or indirectly holds transaction accounts and is permitted to direct payments or transfers out of those accounts to third parties is an example of an SEC-regulated entity that could fall within the meaning of the term “financial institution.”

Investment advisors who have the ability to direct transfers or payments from accounts belonging to individuals to third parties upon the individuals’ instructions — or who act as agents on behalf of the individuals — are susceptible to the same types of risks of fraud as other financial institutions. And individuals who hold transaction accounts with these investment advisors bear the same types of risks of identity theft and loss of assets as consumers holding accounts with other financial institutions. If such an advisor does not have a program in place to verify investors’ identities and detect identity theft red flags, another individual may deceive the advisor by posing as an investor.

By Nancy Lininger

SEC Puts Fiduciary Duty on 2014 Agenda as "Long-term action."

DOL’s fiduciary rule for retirement plans due out in August

The Securities and Exchange Commission is pursuing a rule that would raise investment-advice standards for brokers — just not in the near future.

But that is enough to give fiduciary-duty advocates hope.

The SEC put the rule on a 2014 regulatory agenda that included 43 items.

It was slated for “long-term action” without a specific timetable. Topics in the “proposed-rule stage” and “final-rule stage” were higher on the priority list.

Meanwhile, the Labor Department indicated on its 2014 priority list that in August it would re-propose its fiduciary-duty rule for investment advice pertaining to retirement plans. The measure was first floated in 2010 but withdrawn after fierce financial industry protest that its requirements would drive brokers out of the market for individual retirement accounts.

The SEC took off its list for next year a rule regarding mutual fund distribution fees.

The regulatory outlook, which was released last week by the Office of Management and Budget, covers a time period from now until next October. Neither agency has to follow the agenda strictly.

It can act on items that don’t currently appear.

The Dodd-Frank financial reform law gave the SEC the authority to promulgate a regulation that would require brokers to act in the best interests of their clients when providing retail investment advice — a more stringent standard than the suitability requirement that now governs sales of investment products. Investment advisers must act in the best interests of their clients.

The SEC is conducting a cost-benefit analysis of a potential fiduciary-duty rule.

Although action isn't imminent on a proposal, one advocate noted that it is one of the few non-mandatory Dodd-Frank provisions that appears on the 2014 regulatory agenda.

"There is real interest in this at the SEC," said Neil Simon, vice president for government relations at the Investment Adviser Association.

"It is a priority but not a top priority," he said. "I do believe in time they will proceed."

The SEC Investor Advisory Committee on Nov. 22 urged the commission to advance a fiduciary-duty regulation. That move, however, didn't appear to move fiduciary duty up on the SEC's regulatory agenda.

For 2013, it was listed under the heading of "pre-rule stage" – a designation that is about the same as "long-term action."

"They've been looking at it for long time," said Nancy Lininger, founder of The Consortium, a compliance consultant for investment advisers and brokers.

"Obviously, it's not high on the list," she said. "I thought [the IAC vote] would be the kick in the butt that would get the SEC going, but I guess not."

The SEC and Labor Department agendas demonstrate that each regulator continues to move at its own pace regarding their fiduciary-duty rules. In October, the House passed a bill that would require the Labor Department to delay its rule until the SEC has acted.

"Maybe extending the timeline just a bit will allow them to get their ducks in a row and line up support for the proposal," Mr. Simon said.

By Mark Schoeff Jr.

DOL Fiduciary Redraft Likely Out by May.

The Department of Labor's redraft of its fiduciary rule was said to be on Labor Secretary Thomas Perez's desk in mid-November, so it's likely the redraft could be at the Office of Management and Budget by year-end, with a proposed regulation out by April or May, said Brian Graff, executive director of the American Society of Pension Professionals and Actuaries (ASPPA) and the National Association of Plan Advisors (NAPA).

As Phyllis Borzi, assistant secretary of labor for DOL's Employee Benefits Security Administration, said Oct. 29 at ASPPA's annual conference, EBSA is coming "very close" to finishing its work on the reproposed rule.

Even if the SEC had a larger budget and more resources, it is doubtful that the Commission would have the resources to regularly examine all RIAs. Therefore, the SEC is likely to continue relying on risk-based oversight to fulfill its mission of protecting investors.

Advertising Advisor Services and Credentials

Section 206 of the Investment Advisers Act contains the anti-fraud provision of the statute and ensures that RIAs' advertising and marketing practices are consistent with the fiduciary duty owed to clients and prospective clients.

In his comments at the Schwab IMPACT conference in Washington, Graff noted the problems he sees with the DOL's fiduciary reproposal.

"It's not so much that more people will be fiduciaries" under the proposal, Graff said, "but how they will get paid." From an enforcement standpoint, DOL will get at the fiduciary problem "by limiting forms of compensation."

The potential limit on compensation will affect the small-business market in that if a small business "doesn't have a [401(k)] savings plan, who's going to sell them a plan if they won't get paid?"

Another problem, Graff said, is DOL including IRAs in the reproposal—which Borzi has confirmed will happen. If the definition of fiduciary advice is the same for retirement plans and IRAs, the DOL "will not have the authority to enforce" the IRA portion, Graff said, as IRAs are the jurisdiction of the Internal Revenue Service. The IRS, he said, has six employees devoted to IRAs.

"If there's no enforcement teeth, [DOL] could be creating a Wild West."

By Melanie Waddell, ThinkAdvisor

SEC Loudens Drumbeat On FA Conflict Of Interest, Fee Warnings

The Securities and Exchange Commission loudened the drumbeat on the importance of conflict of interest and fee compliance at a meeting of financial advisory firm internal and external lawyers Friday in Washington, D.C.

Amplifying warnings regularly voiced for months, these two issues are what the SEC sees as the biggest problem areas for advisors, officials with the agency's Office of Compliance, Inspections and Examinations and the Investment Management and Enforcement Division told the session.

In a rebuke to the industry, OCIE Chief Counsel and Chief Compliance and Ethics Officer Paula Drake said she could never understand the "paranoia" advisory firms have when Enforcement Division people are with OCIE staffers in on-site inspections.

"It is one SEC," Drake said.

She noted 11 percent to 14 percent of OCIE exams find violations that are referred to Enforcement.

The OCIE executive said the unit is halfway through its plan to have specialized focus exams of 25 percent of the 1,600 private fund advisors who were required to register with the SEC for the first time by the Dodd-Frank Act.

While Dodd-Frank ordered the SEC's Division of Investment Management to have its own exam staff, Investment Management Division Deputy Director David Grim said the chances of an advisor having an exam by Investment Management or seeing an IM staffer along with OCIE on an inspection are minimal. The primary reason, he noted, is that OCIE has 1,000 examiners while IM only has 10.

"You're not going to get one of our examiners knocking on your door after [OCIE examiners] are there," he told the investment advisor attorneys.

The SEC officials spoke during the American Bar Association Business Law Section's annual fall conference in Washington, D.C.

During the meeting, new SEC Democratic Commissioner Kara Stein said the agency's Dodd-Frank mandated Office of Investor Advocate is beginning to get established.

"It can be a powerful force for investors," she said.

Stein said that while the JOBS Act rules have opened the door to mass advertising of hedge funds and other private offerings, it is important that those investment vehicles are only sold to accredited investors who can truly bear the risks.

Speaking to the technology glitches that have roiled the markets, the commissioner said investors need to know a computer error won't wipe out their retirement accounts.

Recently departed SEC Republican Commissioner Troy Parades told the gathering that interpretive guidance by SEC divisions is not a perfect substitute for rule-making by commissioners because guidance doesn't have the benefit of public comment before the directives are issued.

NOVEMBER 25, 2013 • TED KNUTSON

Missouri Brings New Case Against Moberly Bond Underwriter.

CHICAGO — The Missouri Secretary of State filed a civil enforcement action against Morgan Keegan & Co. Inc. accusing the firm of securities fraud in its role as underwriter of $39 million of defaulted bonds issued by a Missouri city.

The action is the latest attack on Morgan Keegan's performance as underwriter of the bonds issued with an appropriation backing from the city of Moberly to finance a sucralose artificial sweetener plant by Mamtek US Inc., a subsidiary of a Chinese firm. The company abandoned the half-built plant several years ago and the city defaulted on the bonds.

Andrew Hartnett, securities commissioner in Secretary of State Jason Kander's office, seeks in the filing full restitution for Missouri bondholders and a $15 million civil penalty from the firm. It also asks that civil penalties be imposed on 10 individually named defendants who are charged with various counts of state securities violations tied to their work on the bond sale.

The complaint, filed last week, alleges that the defendants failed in their fiduciary duty to "satisfy basic due diligence standards" on the project, its developers and their companies and claims "which would have revealed to Moberly and Missouri investors that Mamtek's promises were false."

The civil enforcement action marks an escalation of Kander's effort to penalize Morgan Keegan. In April, the office issued a cease-and-desist order in a less punitive administrative action seeking full restitution. The new action seeks much stiffer civil penalties and fines, adds new defendants, and provides more documents and communications on Morgan Keegan's marketing of the bonds.

Morgan Keegan has denied any wrongdoing or responsibility for investor losses, citing the city's backing on the bonds. The firm filed a complaint in the state courts seeking to dismiss Kander's administrative action, arguing there's no factual evidence to warrant it and challenging the commissioner's authority to impose any civil fines or order restitution under state securities laws.

The new case is a civil enforcement action. It was filed on Nov. 21 in Boone County Circuit Court where the largest single state bondholder is located. In addition to the company, the complaint targets William Kevin Thompson, Richard Temple Murray, Kevin Lee Edwards, Robert Baird, Elizabeth Gail Tyler, Chloe Baker Plunk, Chip Peebles, Kevin Giddis, Casey O'Brien, and Kevin Potter. Morgan Keegan became a subsidiary of Raymond James Financial Inc. in April 2012.

Giddis is president of fixed income capital markets at the firm and the others were bankers, traders, underwriters, or sales professionals. It appears from the filing that all are being represented by Morgan Keegan's attorneys at Stinson Morrison Hecker LLP.

The complaint accuses the defendants of defrauding their clients by misrepresenting the facts about the offerings, including falsely stating that Moberly had promised to pay for the bonds; and omitting material facts, including that the defendants had not thoroughly investigated Mamtek, the only entity who investors could expect to pay for the bonds.

"Some of the defendants' acts, practices, and courses of business included providing false information to those defendants who were selling the bonds to Missouri investors which in turn operated as a fraud on those investors," the filing alleges.

In a statement the firm again firmly denied responsibility for the losses suffered by Missouri taxpayers. It noted the project's review by local and state officials months before it was hired, the city's backing, and ratings that supported the bonds.

"The city of Moberly failed to honor its moral obligation to appropriate funds, and passed a resolution changing the credit structure of the documents after default by Mamtek, over a year after the bonds were issued," the statement read. The firm also noted that criminal charges are pending against Mamtek's former president.

The new action seeks $6.7 million in restitution for Missouri-based investors, and asks that Morgan Keegan pay $15 million in civil penalties and cover the division's investigation and prosecution costs. Additional penalties are being sought of between $100,000 and $800,000 from the other named defendants.

The commissioner also asks that Morgan Keegan be blocked from underwriting any further bond issues — beyond those they currently have been hired to manage — until the firm hires an independent consultant to review its due diligence policies and compliance. The consultant would also be charged with making recommendations to ensure the firm meets industry best practices.

The civil enforcement filing marks the latest development in a tale that has drawn the attention of state lawmakers and local, state, and federal regulators, and resulted in a series of bondholder lawsuits that have raised questions over how the project won borrowing assistance and state financial incentives.

The Moberly Industrial Development Authority sold bonds backed by a city appropriation pledge to help finance the sucralose plant in 2010. The firm in August 2011 defaulted on a payment to Moberly needed for debt service and the city informed trustee UMB Bank that it wouldn't honor its pledge to repay the debt. Mamtek then abandoned the factory.

The bonds had carried an A rating from Standard & Poor's based upon the city's pledge. Moberly lost its investment-grade rating from Standard & Poor's after it declined to make good on its pledge. The sucralose plant bonds are rated D. The trustee auctioned off the assets for about $2 million last year.

Local and state prosecutors and federal regulators have filed a mix of civil and criminal complaints alleging theft, fraud and securities violations against Mamtek's former head, Bruce Cole, who had told city and state officials the company had operational facilities in China, which it did not.

The trustee and other creditors forced the company into involuntary bankruptcy. Various bondholder lawsuits are also pending against Morgan Keegan. State lawmakers held hearings on the project last year as it had been in line to receive $17.6 million in state subsidies.

In another recent development involving a lawsuit led by a large bondholder, Columbia, Mo.-based Shelter Life Insurance Co., the city settled with bondholders for $95,000. Shelter filed a lawsuit in Cole County Circuit Court accusing Morgan Keegan of securities fraud. It did not name the city but Morgan Keegan moved to bring the city into the lawsuit. The judge then dismissed the city from the case, but the firm filed what's known as a writ of prohibition with the Missouri Supreme Court challenging the lower court's decision.

Moberly decided the best course of action was to settle with bondholders given the lengthy challenge that could have ensued as Morgan Keegan sought to bring the city back into the litigation. The bondholder lawsuit had been set for a December trial date but it was put on hold pending the outcome of Morgan Keegan's challenge.

BY YVETTE SHIELDS

NOV 26, 2013 7:31am ET

[MSRB Provides Education for Issuers on Disclosure of Bond Ballot Campaign Contributions.]

The Municipal Securities Rulemaking Board (MSRB) has prepared a new educational resource to assist state and local governments in understanding the information that will be made public regarding municipal securities dealers' contributions to bond ballot campaigns and any resulting municipal securities underwriting business. The MSRB began requiring additional disclosures in July 2013 to promote greater transparency surrounding dealers' involvement in bond ballot campaigns, which secure voter approval for taxpayer-funded public projects.

http://msrb.org/msrb1/pdfs/Public-Disclosure-of-Bond-Ballot-Campaign-Contributions.pdf

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[WSJ: SEC Weighs Altering Rule on Private Deals.]

Individuals With Financial Training Could Buy Into Nonpublic Stock, Bond Offers Without Meeting Income Threshold

Securities regulators are weighing whether to allow financially sophisticated investors with only moderate wealth to buy significant stakes in startups, as part of a review of 30-year-old rules that could ease constraints on investing in private companies.

Currently, only individuals who meet certain wealth or income standards are allowed to invest in private stock and bond offerings that are issued outside the public markets by companies.

But the Securities and Exchange Commission disclosed in a letter to lawmakers that it may alter standards for “accredited investors,” which could allow individuals who don’t meet the income threshold to invest in such deals if they have specialized training in finance, economics or accounting.

“Holding a particular license or degree may provide an individual with the knowledge and sophistication necessary to qualify as an accredited investor,” SEC Chairman Mary Jo White wrote Friday in a letter to Reps. Patrick McHenry (R., N.C.) and Scott Garrett (R., N.J).

Lawmakers seeking the change say it would help fuel demand for private shares of technology firms and other startups. They argue existing constraints have shut out many financially sophisticated investors from some of the fastest-growing market sectors, since shares in private companies are generally available only to investors whose individual net worth is at least $1 million—excluding their primary residence—or who make at least $200,000 annually.

The SEC is expected to update those thresholds as early as next summer, when it is required by law to report to Congress on the issue.

The existing thresholds, which stem from the 1980s and weren’t pegged to inflation, are widely viewed as outdated. The agency sought comment earlier this year on whether the existing net worth and annual income criteria are the best ways to measure financial sophistication, as part of a larger rule proposal. SEC officials also have discussed the idea of determining sophistication based on the amount of money an individual has invested, rather than on their income or wealth levels.

The review comes as the SEC has advanced rules, required by last year’s Jumpstart Our Business Startups Act, that aim to make it easier for startups and hedge funds to advertise private offerings, as long as they only sell the investments to accredited investors. About 8.5 million U.S. households currently qualify, though only a small portion of those households participate.

The agency also last month proposed rules allowing startups to raise as much as $1 million using online “crowdfunding” techniques to sell small shares to lots of ordinary investors. The agency is expected to complete those rules next year.

Broadening the standards would likely increase the pool of eligible investors, encouraging more firms to raise money privately at a time when the market for such offerings already eclipses that of public offerings. Last year, companies raised more than $900 billion in private placements, nearly four times the amount raised through public stock offerings, according to a report released by the SEC this summer. The private placements were sold to just 234,000 investors.

Messrs. McHenry and Garrett say the SEC must modernize the accredited-investor criteria in a manner that doesn’t reduce the pool of qualifying investors by simply raising the existing income and wealth thresholds. Last month, they asked the SEC to broaden the standards to include those who work as certified public accountants, financial analysts and licensed securities traders.

“It’s time the SEC abolished its biased policy of shutting out everyday Americans from investment opportunities exclusively reserved for the top three percent,” Mr. McHenry said in a statement

Monday. "A modern fix that offers all Americans merit-based access to the benefits of being an accredited investor will level the investment playing field and expand access to capital for aspiring entrepreneurs."

In her letter Friday, Ms. White told Messrs. McHenry and Garrett that SEC staff have begun a "comprehensive review" of the accredited definitions, and that staff would consider and evaluate "alternative criteria" as part of that review. She acknowledged broadening the criteria the way they envision could boost liquidity for private offerings while also increasing "the extent of the expert review of the issuances."

Ms. White cautioned that some argue criteria should factor a person's ability to absorb the potential loss of an investment, and therefore favor standards based on net worth and income. She added it is possible many of the individuals who might qualify based on their professional credentials already meet the existing income and wealth thresholds.

Investor advocates agree the criteria are outmoded. Barbara Roper, director of investor protection at the Consumer Federation of America, said the existing thresholds are "inadequate."

"We're looking at ways to improve that definition," including ways to account for financial sophistication, she said.

By ANDREW ACKERMAN

U.S. Court Questions ex-GE Bankers' Bid-Rigging Convictions.

NEW YORK (Reuters) – A U.S. appeals court on Tuesday questioned the convictions of three former banking executives at a unit of General Electric Co for being involved in a conspiracy to rig bids for contracts to invest municipal bond proceeds.

A three-judge panel for the 2nd U.S. Circuit Court of Appeals in New York appeared open at times to arguments by lawyers for the executives that the indictments were filed too late and that the convictions should be thrown out.

As part of a broad investigation into the $3.7 trillion municipal bond market, the government had accused the three GE Capital bankers of conspiring with brokers to submit artificially low bids for municipal finance contracts.

Following a three-week trial that ended in May 2012, a federal jury in Manhattan found Dominick Carollo, Steven Goldberg and Peter Grimm guilty of conspiracy to commit wire fraud and to defraud the United States.

The case began after a grand jury indicted the three men on July 27, 2010. Lawyers for the defendants argued that because the contracts at issue were awarded before July 27, 2005, the alleged conspiracies fell outside the five-year statute of limitations.

The government claims the conspiracy continued when the defendants' employers paid artificially low interest rates to municipalities on their bond proceeds.

Judges on the 2nd Circuit panel on Tuesday peppered the government's lawyer with questions over how long such payments could be considered as falling within the statute of limitations.

"Is it definite or indefinite?" asked Judge Dennis Jacobs.

Judge Chester Straub also questioned how the conspiracy could be considered ongoing when the co-conspirators were in no position to withdraw from it.

"There is nothing to withdraw from," he said. "Everything has been accomplished other than the flow of money."

ECONOMIC BENEFITS

James Fredericks of the U.S. Justice Department's Antitrust Division said economic benefits continued to flow to General Electric, which was named a co-conspirator in the case.

"If the economic benefits stop accruing, the conspiracy is over," Fredericks said.

Fredericks said that a ruling for the defendants could hamstring the government in other corporate fraud cases.

Lawyers for the defendants also faced tough questions from the panel. Straub voiced concern over the economic benefits that accrued as a result of obtaining the investment contracts.

Howard Heiss of O'Melveny & Myers, an attorney for Grimm, told the appeals court that the interest payments, which are still being made today, were not acts in furtherance of the conspiracy, but the result of the conspiracy. The government's interpretation "makes no sense," he said.

"It means that this conspiracy is ongoing today despite the fact that (the defendants) are in jail," he said.

The government's probe into the manipulation of the municipal bond market has led to guilty pleas or convictions of 19 individuals, the government said in July. It has also ensnared such major financial institutions as JPMorgan Chase & Co and Bank of America Corp, which agreed to pay millions in fines to resolve their roles.

Last October, Goldberg was given a four-year prison term, while Grimm and Carollo were each sentenced to three years.

The case is U.S. v. Peter Grimm, et al, 2nd U.S. Circuit Court of Appeals, Nos. 12-4310, 12-4365, 12-4371.

(Reporting by Andrew Longstreth; Editing by Howard Goller and Leslie Adler)

MSRB Restates Rule G-29 Interpretive Notice.

The Municipal Securities Rulemaking Board (MSRB) today issued a restated interpretive notice to MSRB Rule G-29, on the availability of MSRB rules. As the MSRB has transitioned to using primarily digital communications, the MSRB will no longer be printing and distributing its Rule Book on an annual basis. The MSRB will continue to maintain the "Rules" section of its website, at msrb.org, which contains the current version of every MSRB rule, as well as any related interpretive guidance and resources, and details of any upcoming rule changes. The restated Rule G-29 interpretive notice continues to provide that dealers may make the MSRB's rules available to customers by a number of other means, including providing access to the MSRB's website, using printed versions or software products produced by other companies.

To ensure that the digital availability of MSRB rules meets the needs of municipal securities dealers and municipal advisors, the MSRB will provide beginning January 2, 2014, a link on its website to a comprehensive PDF format of the Rule Book that will be updated on a quarterly basis with any new MSRB rules and amendments that have become effective. The PDF version of the Rule Book allows municipal market participants to search the entire library of MSRB rules for particular keywords, and print a full version of MSRB rules effective as of the publication date. However, msrb.org contains the most frequently updated version of MSRB rules, and should be consulted for the current status of all rules.

Read the full notice at:

http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-29.aspx?tab=2

NAIPFA to SEC: MA Rule Won't Hurt Issuers.

The National Association of Independent Public Finance Advisors has sent an open letter to Securities and Exchange Commission chairman Mary Jo White insisting the municipal advisor rule the SEC adopted in September will not restrict the flow of information between issuers and other parties to a bond deal.

SEC Investor Advisory Committee to Vote Friday on Fiduciary Plan.

While SIFMA ‘strongly supports’ some recommendations, others are ‘incongruous’ with Dodd-Frank’s intent, says SIFMA’s Carroll

The SEC’s Investor Advisory Committee plans to vote Friday on one of its subcommittee’s recommendations on how the SEC should craft its fiduciary rule for brokers.

The draft proposal by the Investor as Purchaser Subcommittee, which is headed by Barbara Roper, director of investor protection for the Consumer Federation of America, was scheduled to come up for a vote at the Investor Advisory Committee’s Oct. 10 meeting, but that was postponed because of the government shutdown.

Roper told ThinkAdvisor that the subcommittee’s hope is that “by weighing in early in the [fiduciary rulemaking] process, we can help to shape the form that commission rulemaking takes.”

The subcommittee says that a fiduciary duty for investment advice should include, “first and foremost, an enforceable, principles-based obligation to act in the best interest of the customer.”

In approaching this issue, the subcommittee says that the SEC’s goal “should be to eliminate the regulatory gap that allows broker-dealers to offer investment advice without being subject to the same fiduciary duty as other investment advisors but not to eliminate the ability of broker-dealers to offer transaction-specific advice compensated through transaction-based payments.”

The subcommittee adds that “Though it may require both regulatory flexibility to permit the existence of conflicts of interest and some regulatory changes to reduce the most severe conflicts of interest in the broker-dealer business model, the Committee believes that advisory services offered as part of a transaction-based securities business can and should be conducted in a way that is consistent with a fiduciary standard of conduct."

While the SEC is not bound by any recommendations of the Investor Advisory Committee, which was created under Section 911 of the Dodd-Frank Act, Section 911 does require the SEC to "review the findings and recommendations of the committee" and "each time the committee submits a finding or recommendation to the commission, promptly issue a public statement assessing the finding or recommendation of the committee; and disclosing the action, if any, the commission intends to take with respect to the finding or recommendation."

While fiduciary advocates have voiced their support of the recommendations in comment letters to the subcommittee, some other groups have not. For instance, while the Securities Industry and Financial Markets Association says that "many if not most" of the subcommittee's recommendations "are in accord" with SIFMA's views on how to implement Section 913 of Dodd-Frank, some recommendations are "incongruous with the intent and requirements" of Section 913.

Kevin Carroll, SIFMA's managing director, told the subcommittee in his comment letter that the "incongruities" exist in preserving the broker-dealer business model and in the "intent to maintain forward progress under Section 913." These incongruities, he said, "may be attributable to the fact that the subcommittee (and indeed, the committee) does not have a single broker-dealer representative."

SIFMA "strongly agrees" with the subcommittee's recommendation that brokers should provide investors with up-front disclosures, similar to Form ADV, Part 2, about potential conflicts of interest, compensation arrangements, the scope of services, and other important details about the customer relationship, Carroll said.

However, SIFMA and the subcommittee "diverge" in their beliefs that investors can be harmed under the broker-dealer suitability standard, Carroll said.

"The subcommittee states that it is essential that the SEC's Section 913 cost-benefit analysis acknowledge the harms that can result from advice delivered under the current, broker-dealer suitability standard," he wrote.

The subcommittee's list of "alleged harms" include: an investor mistakenly believing that a financial advisor is acting in his best interest, when that is not the case, and thereby receiving advice that carries additional costs and risks; and failure to receive ongoing account supervision.

Carroll countered, however, that "there is no evidence that investors are being harmed by the current suitability standard," and that "there could never be an empirical showing of whether or not suitability-based advice harms investors because there are too many independent variables, including investors' choice to follow the advice or not, and the quality of the advice given, regardless of the best intentions of the giver."

Thus, he argued, "imposing a 'harm' requirement would only serve as an insurmountable obstacle to implementing Section 913 — which seems contrary to the subcommittee's stated goal."

By Melanie Waddell, ThinkAdvisor

Washington Bureau Chief

Investment Advisor Magazine

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http://www.msrb.org/msrb1/pdfs/Financial-Disclosure-Email-Reminders-Fact-Sheet.pdf

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[SIFMA Weighing Campaign Against Muni Advisor Rule Provisions.]

The Securities Industry and Financial Markets Association is considering launching a campaign urging municipal issuers to lobby federal regulators and lawmakers against underwriter restrictions contained in the Securities and Exchange Commission's final municipal advisor registration rule.

SIFMA has circulated a draft letter to member firms entitled "An Open Letter to the U.S. Municipal Community," warning that the SEC's rule, to take effect in mid-January, would "restrict issuers' access to market information and impact their access to the capital markets – delaying financings for schools, hospitals, public housing, and other critical infrastructure projects in communities across America."

The dealer group complains in the draft that the SEC "has done this by issuing the rule in final form with no chance for public review or comment."

The MA rule, slated to take effect by mid-January, would require anyone offering particularized advice about muni bonds, muni derivatives, or the investment of bond proceeds to an issuer or other municipal entity or conduit borrower to register as a municipal advisor. MAs owe a fiduciary duty to put the interests of the issuer or other municipal entity client above their own — something the underwriting community has long maintained is not consistent with the role of an underwriter.

Under the Municipal Securities Rulemaking Board's fair-dealing rule, underwriters are required to disclose to issuers that they do not have any fiduciary duty and that the transaction will be at arm's length, with firms representing their own interests.

The problem is the interplay between the SEC's new MA rule and the MSRB's Rule G-23, which was recast in November 2011 to prohibit dealers from serving as financial advisors and underwriters on the same municipal bond deal.

"It is THE KEY issue for everybody – SIFMA, the National Association of Bond Lawyers, and the Government Finance Officers Association. Everything else is on the periphery," said one non-dealer source familiar with the controversy. "The question is can broker-dealers do what they've done for 30 years and present new financing ideas and refunding plans to issuers and underwrite any deals that result?"

"Dealers have been living with the G-23 prohibition since 2011," the non-dealer source said. But they've always viewed it in the context of a more formal situation, as a prohibition on a dealer trying to be a financial advisor and an underwriter for the same bonds.

The SEC's MA rule are less formal. Under those rules, if a dealer provides targeted advice to an issuer, it becomes an MA with a fiduciary duty to the issuer.

“The concern is that if a dealer gives targeted advice to an issuer, that’s going to make the dealer an MA and knock it out of the underwriting box by virtue of treating the MA rule and G-23 as congruent,” the non-dealer source said.

The MA rule allows underwriters to offer limited advice on bonds they have already agreed to underwrite, such as guidance on investor road shows. The rule also contains exemptions designed to allow more extensive communication between prospective underwriters and issuers under certain circumstances. If the municipality retains its own registered MA and certifies in writing that it will rely solely on the advice of that advisor, then underwriters and other professionals could offer advice more freely without fear of becoming MAs. Dealers also would be exempted from the MA rule if they are responding to a Request for Proposals or Quotations that is sent out by an issuer, providing the request is not sent out to only one firm.

But SIFMA does not consider these exemptions to be sufficient enough to avoid “impeding the relationship between underwriters and the issuer clients they serve,” its draft letter states.

“Many issuers, large and small, choose not to employ financial advisors for bond transactions for a variety of reasons,” the draft says. “Sometimes the issuer has sufficient internal resources to manage the transactions without an advisor. Sometimes the issuer may simply believe the value offered by a financial advisor does not justify the cost.”

While the draft is critical of the SEC’s decision to adopt the final rule without putting it out for public comment, the commission sifted through more than 1,000 comment letters in developing the final rule, several sources noted.

“ If the option of continuing to receive the free flow of information is important to the conduct of your debt program, the SIFMA draft concludes, “we urge you to consult with counsel and let the SEC, and members of Congress, know of your views.”

Michael Decker, co-head of municipal securities at SIFMA, confirmed that SIFMA remains concerned about these aspects of the rule. He said SIFMA circulated the draft letter to members in order to get reaction, but has not decided yet how to proceed with it. Decker said the SEC has indicated it will release more guidance and that a dialogue on the issues will continue.

“We’re hopeful through that process the rule will become more workable,” Decker said.

In fact, sources from several groups said that the SEC’s Office of Municipal Securities is currently collecting comments and concerns with the idea of eventually putting out a set of frequently asked questions and answers on the commission’s website. There is precedent for this. When the SEC finalized its Rule 15c2-12 on disclosure in late 1994, it worked with the National Association of Bond Lawyers to put out two sets of FAQs on the rule.

NABL , which is currently holding its board meeting in South Carolina, is expected to send the SEC Muni Office some draft FAQs next week, sources said.

Some muni securities experts say they do not understand the controversy, that the MA rule are very different from the MSRB’s Rule G-23. When the MSRB issued the final version of Rule G-23, it said: “Rule G-23 is solely a conflicts rule. Accordingly, this notice does not address whether provision of the advice permitted by Rule G-23 would cause the dealer to be considered a “municipal advisor” under the Exchange Act and the rules promulgated thereunder.”

Nathan R. Howard, counsel to the National Association of Independent Public Finance Advisors, said the potential SIFMA campaign is clearly more about protecting the interests of dealer firms and not those of issuers. Howard pointed to guidance issued by the GFOA which suggested that underwriter communication with issuers could still occur under the new rule.

"SIFMA's continued efforts to undermine the MA rule will have a direct negative impact on the very issuers that the rule seeks to protect," Howard said. "These concerted attempts to undue issuer protections appear to be aimed solely at protecting the interests of SIFMA's member firms. As the GFOA noted in its release yesterday, underwriters will have ample opportunity to provide ideas to issuers during the course of a transaction."

Another market participant familiar with the debate also attacked the SIFMA effort.

"The SIFMA letter is purposefully misleading and a great example of how broker-dealers feel they are above the law. If that letter is an example of the type of 'balanced' advice they give to issuers then perhaps the rule did not go far enough in constraining them. The municipal advisor rule does not limit the free flow of ideas — it just helps ensure that the ideas presented to issuers (and paid for by taxpayers) are fiscally responsible."

The MSRB is in the process of crafting rules stemming from the SEC's work. MSRB executive director Lynnette Kelly said the board may address the issue if appropriate, but is hopeful the SEC will do so in the meantime.

"The MSRB supports the need for clarity on the activities of municipal advisors," Kelly said. "The SEC is preparing guidance on its registration rule, which should address some of these concerns. The MSRB will evaluate the interplay between the registration rule and existing MSRB rules, and consider issuing guidance as appropriate."

BY KYLE GLAZIER

SIFMA Keeps Up Push to Delay Suitability Rule Implementation.

Dealers want to extend the implementation of the Municipal Securities Rulemaking Board's suitability rules and make clear that a different time of trade disclosure obligation exists when selling a bond vs. purchasing one. They also want it made clear that a broker-dealer has reduced duties to sophisticated municipal market professionals.

The Securities Industry and Financial Markets Association made the requests in a comment letter to the Securities and Exchange Commission, which must now consider whether to approve amendments the MSRB offered in an effort to cut down on voluminous interpretive guidance to several of its rules.

The package the MSRB sent to the SEC includes a proposed new Rule G-47 on time-of-trade disclosures that would consolidate existing requirements for dealers to disclose material information to customers in connection with purchases and sales of munis, as well as a proposal to consolidate dealers' fair dealing obligations to experienced investors, called sophisticated municipal market professionals, with new Rules D-15 and G-48.

In addition, the MSRB is asking the SEC to approve a proposal to revise and harmonize its Rule G-19 on suitability with the Financial Industry Regulatory Authority's suitability requirements by adding considerations for analyzing the suitability of a recommendation to a customer.

Dealers have expressed approval of the goal of consolidating guidance into more easily-digestable rules, but still want refinements.

"This rule should reflect that a substantially different time of trade disclosure obligation exists when a dealer is selling a bond to a customer vs. purchasing a bond from a customer," SIFMA managing director and associate general counsel David Cohen wrote of proposed rule G-47. Under current guidance contained in the MSRB's fair dealing rule, dealers must disclose to customers, at the time of trade, all material information they know about the bonds as well as material information reasonably accessible to the market.

"Customers should know the characteristics of the bonds they own," Cohen wrote.

SIFMA is also seeking clarifications on other aspects of the proposed rule, such as when providing a preliminary official statement to a customer would be a sufficient time of trade disclosure. SIFMA members feel that Rule G-47's 'disclosure obligations in specific scenarios "may not be applicable at all when a customer seeks to sell its holdings," Cohen wrote.

SIFMA is also seeking a one-year, rather than six-month, implementation period for the MSRB's proposal to revise and harmonize its Rule G-19 on suitability with the Financial Industry Regulatory Authority's suitability requirements by adding considerations for analyzing the suitability of a recommendation to a customer. The MSRB's Rule G-19 currently requires dealers to collect information about a non-institutional customer's financial and tax status, as well as investment objectives, before making recommendations to him or her. The proposal would expand that information to include the customer's age, investment time horizon, liquidity needs, investment experience and risk tolerance.

"Any regulatory scheme takes time to implement properly. Municipal securities dealers that are not FINRA members, as well as FINRA members that only buy and sell municipal securities, will need a reasonable time to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, systems and controls, as well as training," Cohen wrote.

But when dealing with an SMMP, the revised rules should make clear that dealers should have far fewer obligations, as the existing guidance states, he said.

"Since a dealer does not have a time of trade disclosure obligation to disclose material information that is reasonably accessible to the market to SMMPs, we believe the omission of this statement within the new rule governing time of trade disclosure obligations risks unnecessary regulatory confusion," wrote Cohen.

The Investment Company Institute also commented, urging the SEC to make sure the rules make clear that they apply to 529 college savings plans.

"We recommend that, as part of this rulemaking, the MSRB incorporate all relevant suitability guidance into Rule G-19 – not merely the guidance for products other than 529 college savings plans, as is currently proposed," wrote ICI senior associate counsel Tamara Salmon

That approach would both help to eliminate confusion and ensure that dealers who violate suitability requirements are not sanctioned under multiple rules for a single violation, as might be the case if a separate suitability rule for 529 plans exists, as under the MSRB proposal.

"For these reasons, we again strongly recommend that the MSRB include within Rule G-19 all of its suitability guidance that applies when a dealer recommends a 529 plan," Salmon said.

The SEC could approve the MSRB proposals without changes or send them back to be changed.

BY KYLE GLAZIER

[New MSRB Video Addresses Roles in a Municipal Bond Issuance.]

The Municipal Securities Rulemaking Board (MSRB) today released a short video that explains the roles of key participants involved when a state or local government borrows money from the investing public by issuing a bond. The Issuance Process seeks to clarify for state and local government issuers the distinct roles of underwriters and municipal advisors so that they can understand the nature of their relationships with each of these entities throughout the issuance process. The video continues the MSRB's award-winning multimedia strategy to provide municipal market education to state and local governments and investors.

http://www.msrb.org/msrb1/events/Outreach/Issuer-Education.asp

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[For the SEC, a Continued Focus on the Municipal Bond Market.]

Municipal bond offering cases have become an enforcement priority for the SEC. In recent months the Commission has brought a series of actions against the City of Miami, the West Clark City School District and others.

Now the agency has brought two proceedings related to bonds issued by a municipal corporation in Washington State. In the Matter of Greater Wenatchee Regional Events Center Public Facilities District, Adm. Proc. File No. 3-15602 (Nov. 5, 2013) and In the Matter of Piper Jaffrey & Co., Adm. Proc. File No. Nov. 5, 2013). The former names as Respondents: a municipal corporation formed by nine cities and counties to fund a Regional Center; Allison Williams, the Executive Services Director of Wenatchee, Washington who executed the closing certificate for the bond issue; Global Entertainment Corporation, the developer of the Regional Center; and Richard Kozuback, Global's CEO and President. The latter names as Respondents the underwriter of the bonds involved here and Jane Towery, a Managing Director at Piper.

The underlying facts trace to 2005 when Mr. Kozuback made several presentations regarding potential funding sources to develop a Regional Center to interested groups. The next year the City of Wenatchee, Washington, along with eight neighboring municipalities and counties, formed the District which in turn entered into a development contract with Global, although the firm had limited experience in the area.

Global developed a series of financial projections for the operation of the Regional Center over the course of project. The projections were prepared for the budget and inclusion in the District's Official Statement. After the initial projections were prepared in the summer of 2006, the City Council requested that in independent consultant review them. The consultant determined that the Regional Center might operate at a deficit and that its projected annual net operating income could be overstated by as about 16% to 25%. The next month the City entered into a contingent loan agreement which would provide financial support for all or part of the project if necessary.

Construction began.

By early 2007 the facility had to be redesigned and reduced in size because of cost overruns and unexpected building costs. Global crafted new projections. Again, the City Council brought in a consultant. Again the Consultant raised questions about the projections although it concluded that the reduced project might be viable. In May 2007 the City Council voted to proceed with the Regional Center. Shortly thereafter the District authorized a lease agreement for the Center. Construction resumed.

By April 2008 Mr. Kozuback became concerned that sales of luxury seats were not proceeding as expected. Global provided new projections for the official bond statement which was in preparation.

Funds from the issuance needed to be available by the completion of the center in September 2008 for its acquisition by the District. Based on the projections, the underwriter advised that a bond issuance might be difficult. The Mayor, who had cast a decisive vote at the City Council meeting which approved continuation, demanded that the projections be revised to be more optimistic. The revisions were made. The revised projections were included in the Official Statement without revealing the issues surrounding the revisions. The underwriter was unable to complete the financing.

Piper Jaffrey was retained in late 2008. The City and the District were searching for financing avenues. While various options were considered, the only viable one called for the issuance of short-term Bond Anticipation Notes or BANs that would mature two years later. The short term instruments would be refinanced through the issuance of long-term bonds. At the time the District and Mr. Williams knew that that if the revenue from the Regional Center was not adequate to support a bond issuance to repay the short term instruments the support of the City would be necessary. In the offering materials for the short term bonds a section discussing the constraints on the financial ability of the City to assist was deleted.

In 2011 the District defaulted on the outstanding $41.77 million short term BANs which had been issued. The State legislature then passed a sales tax to assist. In late September the District sold the long term bonds secured by the sale tax revenues to refinance the short term instruments.

Order alleges that the Official Statement for the short term instruments was false and misleading as was the certification of full disclosure. The papers did not adequately disclose the facts regarding the projections for the project and the limitations on the City finances, according to the Order. It alleges violations of Securities Act Sections 17(a)(2) and (3).

The Respondents in both proceedings settled. The District undertook to establish appropriate policies, procedures and internal control, institute training and certify completion of these steps to the Commission. It also consented to the entry of a cease and desist order based on Securities Act Section 17(a)(2) and a directive to implement the undertakings and pay a civil money penalty of $20,000. Ms. Williams and Mr. Kozuback both consented to the entry of cease and desist orders but based on Securities Act Section 17(a)(3) and will each pay a civil penalty of $10,000.

Piper revised its due diligence procedures and Ms. Towery agreed to implement undertakings which include limiting her activities as an associated person of a securities professional and to retain a consultant to review Piper's municipal underwriting due diligence polices and procedures. In addition, the firm and Ms. Towery each consented to the entry of a cease and desist order based on the Sections cited in the Order and to a censure. The firm will pay a penalty of $300,000 while Ms. Towery will pay $25,000.

Dorsey & Whitney LLP

Thomas O. Gorman

Wenatchee, Wash. Issuer, Others Settle SEC Arena Fraud Case.

The Greater Wenatchee, Wash., Regional Events Center Public Facilities District has agreed to pay $20,000 — the first financial penalty the Securities and Exchange Commission has assessed against a municipal issuer — and take remedial actions to settle securities fraud charges that it misled bond investors.

The SEC announced the action on Tuesday. The sanctions revolve around $41.77 million anticipation notes the district issued in 2008 to finance the construction of an events center and ice hockey arena. The BANs defaulted in 2011 but the default was later cured and the BANs were refunded with refunding bonds secured by sales tax revenues.

The case is notable not only for being the first instance of the SEC collecting a penalty assessed against an issuer, but also for the wide scope of transaction participants sanctioned.

Underwriter Piper Jaffray & Co. and its lead investment banker on the deal, Jane Towery, agreed to be censured and pay penalties of $300,000 and $25,000, respectively to settle charges. Towery also agreed to refrain for one year from any business contact with any existing or prospective municipal issuer client, as well as from speaking to issuer clients for the purpose of making due diligence decisions on behalf of a broker-dealer.

In addition, the developer, Global Entertainment, and its then-president and chief executive officer, Richard Kozuback, agreed to pay penalties of $10,000 each. Allison Williams, a senior staff member of the district, who certified the accuracy of the official statement, consented to an order to cease and desist from further violations.

The SEC said the official statement for the bonds wrongly stated there had been no independent reviews of the financial projections for the center, when an independent consultant had actually examined the projections twice and questioned the economic viability of the project. The OS also failed to disclose that the financial projections were revised upward based on optimistic assurances by civic leaders that the community would support the project, the SEC alleged. In addition, the OS omitted key information about Wenatchee's remaining debt capacity of $19.3 million, which would limit its ability to support any future long-term bonds, the SEC found.

"The respondents negligently failed to act with reasonable prudence in the issuance of the BANs," the SEC's order against the district, Global, Kozuback, and Williams concludes, noting that all parties knew about the debt capacity issue. "It was thus unreasonable for the district to issue the BANs, for Williams to sign the closing certificate of the district, and for Kozuback to sign the certificate of Global Entertainment Corporation."

The commission historically has been hesitant to impose financial penalties on municipal issuers because that would burden taxpayers, but SEC enforcement co-director Andrew Ceresney said that was not an issue in this case.

"Financial penalties against municipal issuers are appropriate for sanctioning and deterring misconduct when, as here, they can be paid from operating funds without directly impacting taxpayers," Ceresney said. "This municipal issuer is paying an appropriate price for withholding negative information from its primary offering document and giving investors a false picture of the future performance of the project."

Municipal issuers have previously agreed to settle SEC charges by disgorging ill-gotten gains, and the financial penalty the SEC is seeking against Miami, Fla. has not been paid because the city is contesting the SEC case at trial.

The SEC's decision to charge Piper Jaffray, Global Entertainment, Kozuback, and Williams continues to reinforce the message that the commission will hold individuals accountable even if they are only negligent.

SEC chairman Mary Jo White said in an Oct. 9 speech that the commission's enforcement arm would strive to be "everywhere," and would take action even against even relatively minor fraudulent behavior. The SEC charged Miami's former budget director in connection with its case against the city, but he, too, is fighting the charges.

The SEC order against Piper Jaffray takes the firm to task for failing to perform proper due diligence, which might have uncovered information important to investors.

"Piper and Towery conducted a cursory inquiry into the projections provided by Global, did not inquire about prior projections or revisions, and did not ask to see an independent consultant's review of the projections despite being made aware of its existence, depriving BAN purchasers of material information relating to the revenue projections, the first source of payment for the majority of the BANs," the order states.

Mark Zehner, deputy chief of the SEC enforcement division's municipal securities and public pensions unit, said that as a result the firm could not be confident in the accuracy of the district's offering documents.

"An underwriter's due diligence obligation is critical, particularly when financing a startup revenue project," Zehner said. "Piper Jaffray & Co. failed to develop a reasonable basis for believing the accuracy of key representations made in the official statement."

The SEC's order requires Piper Jaffray to retain an independent consultant to conduct a review of the firm's muni underwriting due diligence policies and procedures as well as its supervisory policies and procedures relating to muni underwriting due diligence. The district also agreed to adopt written policies for disclosures in municipal offerings and continuing disclosure obligations, and to designate an individual responsible for ensuring compliance with those obligations. The respondents neither admitted nor denied the SEC's findings.

Victor D. Vital, a lawyer with Greenberg Traurig in Dallas, who is representing Global Entertainment and Kozuback, said, "My clients neither admitted nor denied the allegations. They believe the resolution was a positive one for them."

Other transaction participants and their lawyers could not be reached for comment.

BY KYLE GLAZIER

[WSJ: SEC Fines a Muni Bond Issuer for First Time; Underwriter Penalized.]

The Securities and Exchange Commission handed out its first-ever financial penalty against a municipal-bond issuer, fining an agency that developed an ice-hockey arena in Washington state for misleading investors.

The SEC charged the Greater Wenatchee Regional Events Center Public Facilities District with allegedly failing to disclose certain financial projections for a new regional ice rink and events center.

The district–which was formed by nine cities and counties in Washington in 2006 to develop the project–agreed to settle the charges and pay a $20,000 fine.

The district borrowed $42 million in 2008 and defaulted on its principal payments in December 2011. The SEC said the district failed to disclose to investors that an independent consultant had questioned the viability of the events center. A lawyer for the events-center district could not be immediately reached.

While the fine is relatively small, it represents another step in the SEC's ongoing push to police the sale of municipal bonds.

The SEC also fined the underwriter of the bonds, Piper Jaffray PJC -1.88% & Co., $300,000 and its lead investment banker on the deal $25,000—steps the agency didn't take in other recent municipal cases brought against the state of Illinois and Harrisburg, Pa.

The settlement included Piper Jaffray, which under the terms must hire an independent consultant to review the firm's municipal underwriting due diligence policies and procedures.

A spokeswoman for Piper Jaffray could not immediately be reached for comment.

The development company that built the facility—called the Town Toyota Center—and its former CEO were each fined $10,000. The events district agreed to train its staff involved in municipal-bond deals.

In an interview, Mark Zehner, deputy chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit, said many parties in the deal were negligent in preparing disclosures to investors.

"Municipal finance has a self perception of being a backwater and some people use that as an excuse for being sloppy," said Mr. Zehner. "The SEC is happy to go against sloppy, negligent conduct if need be."

In some municipal cases, the SEC has been reluctant to fine a government issuer because the penalties would ultimately be borne by taxpayers who are already paying the price of a shoddy bond deal.

But in the case of the Wenatchee facility, the costs of the penalty will effectively be borne by users of the ice rink and events center, who chose to pay to attend hockey games and other events there.

All of the parties charged in the case settled without admitting or denying the SEC's findings.

By MICHAEL CORKERY

SEC Charges Municipal Issuer in Washington's Wenatchee Valley Region for Misleading Investors.

The Securities and Exchange Commission today charged a municipal issuer in the state of Washington's Wenatchee Valley region with misleading investors in a bond offering that financed the construction of a regional events center and ice hockey arena. The SEC also charged the underwriter and outside developer of the project and three individuals involved in the offering.

The Greater Wenatchee Regional Events Center Public Facilities District agreed to settle the SEC's charges by paying a $20,000 penalty and undertaking remedial actions. It is the first time that the SEC has assessed a financial penalty against a municipal issuer.

The issuer is a municipal corporation formed by nine Washington cities and counties in 2006 to fund the Town Toyota Center, located in the city of Wenatchee. An SEC investigation found inaccuracies in the primary disclosure document accompanying the issuer's offering of bond anticipation notes in 2008. The document, called the "official statement," stated there had been no independent reviews of the financial projections for the events center. However, an independent consultant twice examined the projections and raised questions about the center's economic viability. The official statement failed to disclose that financial projections had been revised upward based in part upon optimistic assurances by civic leaders that the community would support the project. The document also omitted key information about the possibility that the City of Wenatchee's remaining debt capacity of $19.3 million would limit its ability to support any future long-term bonds.

"Financial penalties against municipal issuers are appropriate for sanctioning and deterring misconduct when, as here, they can be paid from operating funds without directly impacting taxpayers," said Andrew Ceresney, co-director of the SEC's Division of Enforcement. "This municipal issuer is paying an appropriate price for withholding negative information from its primary offering document and giving investors a false picture of the future performance of the project."

The Greater Wenatchee Regional Events Center Public Facilities District issued $41.77 million in bond anticipation notes in 2008, and defaulted on its principal payments in December 2011.

The SEC's settled administrative proceedings also name the developer Global Entertainment and its then-president and CEO Richard Kozuback, the underwriter Piper Jaffray & Co. and its lead investment banker Jane Towery, and Allison Williams, a senior staff member for the Greater Wenatchee Regional Events Center Public Facilities District who certified the accuracy of the official statement.

"An underwriter's due diligence obligation is critical, particularly when financing a startup revenue project. Piper Jaffray & Co. failed to develop a reasonable basis for believing the accuracy of key representations made in the official statement," said Mark Zehner, deputy chief of the SEC Enforcement Division's Municipal Securities and Public Pensions Unit.

In settling the SEC's charges, Piper Jaffray & Co. and Towery agreed to be censured and pay penalties of $300,000 and $25,000 respectively. Global Entertainment and Kozuback each agreed to pay penalties of $10,000. Williams consented to a cease-and-desist order and the issuer agreed to remedial actions, including training for personnel involved in the offering and disclosure process. The issuer also agreed to adopt written policies for disclosures in municipal offerings and continuing disclosure obligations, and to designate an individual responsible for ensuring compliance with those obligations. The respondents neither admit nor deny the SEC's findings.

The SEC’s order requires Piper Jaffray & Co. to retain an independent consultant to conduct a review of the firm’s municipal underwriting due diligence policies and procedures as well as its supervisory policies and procedures relating to municipal underwriting due diligence. Towery agreed to limit her activities as an associated person of a broker-dealer or municipal advisor for one year by refraining from any contact with any existing or prospective municipal issuer client for the purpose of conducting, maintaining, or developing business or for the purpose of making decisions on behalf of a broker-dealer in connection with any due diligence activities.

The SEC’s investigation was conducted by Monique C. Winkler in the San Francisco Regional Office, who is a member of the Municipal Securities and Public Pensions Unit. The case was supervised by Cary Robnett, an assistant director in the San Francisco office.

Commentary: Long-Awaited Municipal Advisor Regulation Should Not Restrict Issuers.

In response to a recent commentary on the Securities and Exchange Commission’s approval of a final rule defining municipal advisors, we agree with Ms. Rodgers Caruso on an important point.

The SEC’s final rule is long-awaited and welcome as it will permit the Municipal Securities Rulemaking Board to move forward on regulations governing the activities of non-dealer municipal advisors.

For too long, bond issuers have been poorly served by a regulatory scheme where municipal financial advisors are exempt from even the most fundamental level of oversight and regulation. With that said, Ms. Rodgers Caruso’s commentary is misleading in several key areas. First, the free flow of information and ideas between investment bankers and their clients is vital to ensuring the best possible transaction execution for municipal bond issuers.

Throughout the debate over the Dodd-Frank Act in 2009 and 2010, Congress’ attention with regard to municipal advisor regulation was directed exclusively at bringing unregulated financial advisors under the federal regulatory umbrella, not at impeding the relationship between underwriters and their clients.

Indeed, legislation approved by the U.S. House of Representatives in 2012 with unanimous bipartisan support, including former Rep. Barney Frank, would have clarified Congress’ intent in this regard.

Many issuers depend on their public finance bankers for ideas, market color, analysis and other value-added services during the time between transactions as much as they do when a transaction is being structured and brought to market. It is not in any issuer’s interest to limit their ability to communicate freely with any market participant.

Second, it is often difficult or impossible, due to constraints imposed by state and local procurement rules, for municipal issuers to formally engage underwriting firms when a new-issue transaction is in its early, formative stages. That is one reason why formal underwriter engagement letters are so rare in our market.

Third, since Dodd-Frank was enacted, the MSRB and SEC have made significant revisions to MSRB Rules G-17 and G-23, which for nearly two years have prohibited dealers from serving as both an advisor and an underwriter on the same transaction. Dealers are required to announce the role they are seeking (advisor or underwriter) at the time of first contact with the issuer. This is consistent with the intentions of the SEC's muni advisor rule. MSRB Rule G-17 mandates substantial disclosures on the part of underwriters as to their role in a transaction, conflicts of interest, transaction risks and other key factors, including that the dealer is an underwriter and not an advisor or fiduciary.

Finally, many issuers, large and small, choose not to employ financial advisors for bond transactions for a variety of reasons. Sometimes the issuer has sufficient internal resources to manage the transaction without an advisor. Sometimes the issuer may simply believe the value offered by a financial advisor does not justify the cost.

In any case, the choice should be left to the issuer and not become a matter of federal regulation. If Congress wanted to mandate the use of muni advisors on every bond sale, the Dodd-Frank Act would have explicitly included such a requirement as it effectively does for swap transactions. The Dodd-Frank municipal advisor provisions were never intended to be the "full employment act" for advisors.

As Ms. Rodgers Caruso recognizes in her commentary, the Securities Industry and Financial Markets Association strongly supported the municipal advisor provisions in the Dodd-Frank Act because we believe it is in issuers' interests for their advisors to be regulated.

In many cases, these firms have little or no financial capital. They regularly engage in "pay-to-play" behavior. Their employees usually have not passed any licensing or qualification examinations, and they are not required to manage or even disclose conflicts of interest.

In a large majority of cases, non-dealer municipal advisors are compensated only when a transaction closes, resulting in a huge incentive to advise a client to complete a transaction even if it's not in the client's interest, despite the municipal advisor's "fiduciary duty."

Today, well over three years after the enactment of the Dodd-Frank Act, non-dealer municipal advisor conduct remains unregulated. For that reason, we are pleased that the MSRB is now free to pursue appropriate municipal advisor regulation. We urge the board to move expeditiously in their rulemaking in this area.

The dealer community is not, as Ms. Rodgers Caruso states, trying to "undo the rules' issuer protections before they are even effective." On the contrary, we seek to preserve the ability of issuers to communicate freely with bankers, to receive ideas and analysis, and, as Ms. Rodgers Caruso states, to "control whether, why and how to issue securities."

Hopefully, the new municipal advisor rule will not inappropriately impede the ability of issuers to work with their bankers.

Michael Decker is a managing director and co-head of the municipal securities group at SIFMA.

Bingham McCutchen: A Guide to the Re-Proposed Credit Risk Retention Rules for Securitizations.

In light of efforts to exempt tender option bonds and nonprofit and state agency student loan organizations from risk retention rules imposed by the Dodd-Frank Act, we are reprinting Binghmam McCutchen LLP's Guide to the Re-Proposed Credit Risk Retention Rules for Securitizations.

https://www.bingham.com/Alerts/2013/09/~/media/Files/Docs/2013/A-guide-to-the-Re-pro-osed-Credit-Risk-Retention-Rules.ashx

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Municipal Market Participants Shocked By New LCR Definitions.

This article will focus on their perceptive views on the implications of the new NPR issued by the Fed regarding the Liquidity Cover Ratio for banks for municipal bonds in this paper: http://www.nabl.org/uploads/cms/documents/2012_10_25_Citigroup_Tax_Reform.pdf

Municipal market participants are aghast that the Fed's definition of 'High Quality Liquid Assets' – eligible assets that would determine a bank's ability to withstand a stress event – does not include even the highest quality municipal bonds. The Fed has probably heaped insult on injury by including, on the other hand, investment-grade corporate bonds and S&P 500 equity in HQLA.

Municipal bonds effectively get a 100% haircut

Citi analysts correctly call it 'draconian' that Munis are completely excluded from HQLA, pointing out that this is at odds with the Basel Committee Banking Supervision Guidance.

In fact, according to prior indications, municipals would have found a place in HQLA under Level 2A, but the Fed has apparently dispensed with this on the grounds of poor liquidity:

"…the agencies believe that, at this time, these assets are not liquid and readily-marketable in U.S. markets and thus do not exhibit the liquidity characteristics necessary to be included in HQLA under this proposed rule. For example, securities issued by public sector entities generally have low average daily trading volumes."

Since the average large bank would hold significant amounts of municipals, the authors point out that for the purpose of computing HQLA, these holdings are effectively being subjected to a 100% haircut.

This is patently unfair, given that in a stress event, good quality municipals would be more liquid than a medium, or lower-rated corporate bond.

Profound implications

The Fed's action has grave implications for the municipal bonds market.

This will severely cramp the ability of banks to invest in Munis.

As a result, market values and liquidity in the Muni bond market would deteriorate.

The larger banks would cease to function as liquidity makers in Munis. (The authors point out that banks absorbed much of the Muni paper that was offloaded by retail investors over the last 2.5 years).

State and local issuers will be hamstrung in their efforts to raise low-cost funding for their projects.

However, the new LCR is still in a comment period for some time, and therefore these are only proposals as of yet. Obviously, banks and muni issuers would have to bring these concerns before the regulators.

by Saul Griffith

[Dealers: Don't Confuse Investors With Too Much Data.]

Dealer groups are telling the Municipal Securities Rulemaking Board that they worry too much pricing data will confuse investors and hurt the secondary market.

The Securities Industry and Financial Markets Association and the Bond Dealers of America aired their concerns in the comments sent to the MSRB over its concept release on pre-trade and post-trade pricing data dissemination through a central transparency platform.

The release requested industry feedback on what pre-trade and post-trade pricing information the MSRB should consider publicly disseminating over the CTP it plans to develop. There is currently no central location where muni market participants can access pre-trade pricing data. Such information is often available to institutional investors through broker's brokers, alternative trading systems, or other systems. But it is not really available to retail investors.

The MSRB collects and publicly disseminates secondary market trade data and prices over EMMA, but wants to know what improvements can be made.

The board has indicated that it is especially interested in whether it should require reporting of so-called "conditional trade commitments," which occur when dealers often solicit, accept, and conditionally allocate orders prior to the signing of a bond purchase agreement. The prices agreed upon at that time often do not reflect market conditions at the time of the formal award of the bonds.

Because trades cannot officially be executed until 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 easy way to distinguish between conditional commitments and bonds sold the first day. The board wants to know if it should develop a new indicator for conditional trading commitments, as well as indicators showing what venues trades occurred in.

While dealers said they have been and remain supportive of making the muni market more transparent, they harbor deep concerns about bewildering retail investors, compromising the strategies of brokers, and having to pay for the costs the new reporting requirements could impose on them.

"The BDA believes some additional data elements might be helpful to dealers in the way of securing high quality and timely bids and offers," BDA president and chief executive officer Mike Nicholas wrote in the group's comment letter. "However, we would suggest that the MSRB further consider the consequences of requiring dealers to produce this additional information and making this information available to investors without appropriate context and detailed educational materials for the investor to understand the value in the information."

"While the BDA believes increased transparency is ultimately better for the investor," his letter continues, "we would caution that some of the new data elements being considered by the MSRB for pre-trade reporting may undermine trading strategies resulting in the constriction of some market participants for fear that their trading strategies may be compromised, leading to depletion in liquidity."

Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at SIFMA, questioned whether the benefits of this transparency could ever outweigh the "astronomical" costs firms would incur setting up their systems in order to be compliant. She also said SIFMA fears investors would have trouble processing too much information.

"We have serious concerns about investors getting information overload," Norwood said.

The MSRB could choose to propose a rule or series of rules addressing pre-trade and post-trade disclosure, but is currently prioritizing rules stemming from the Securities and Exchange Commission's municipal advisor registration rule, as well as working on a muni market best execution rule.

BY KYLE GLAZIER

[Bloomberg: Banks Fret Over Fed's Planned Liquidity Requirement.]

U.S. banks led by JPMorgan Chase (JPM:US) & Co. and Wells Fargo (WFC:US) & Co. have bought a record amount of municipal debt. That demand is now at risk under a Federal Reserve proposal that excludes local bonds from a list of easy-to-sell assets.

Banks added $63 billion of the securities in the year through June, more than any category of buyer, helping lower state and city borrowing costs as individuals yanked a record amount of cash from muni mutual funds, Fed data show. The companies hold about $390 billion of munis, the most since at least 1945 and about 10.5 percent of the market. Three years earlier, they owned about 6 percent.

JPMorgan, the biggest U.S. bank, more than doubled its holdings in that period, to $37 billion, outpacing seven other banks reviewed by Bloomberg. The industry's appetite may drop and yields climb if the Fed plan is implemented, according to analysts from JPMorgan, Morgan Stanley (MS:US) and Municipal Market Advisors. Some banks may have bought on the assumption the bonds would satisfy liquidity rules, Peter DeGroot, a strategist at JPMorgan in New York, said in an Oct. 25 report.

"If it causes them to change the way they are accounted for in the bank portfolios, that could be significant for the muni market because it's reducing the demand," said Daniel Solender, director of munis in Jersey City, New Jersey, for Lord Abbett & Co., which manages $16.5 billion of local debt.

Cash Destination

Banks have directed more cash to state and local debt as they have fewer opportunities to extend commercial and home loans after the financial crisis, said Marty Mosby, a bank analyst with Guggenheim Securities LLC in Hernando, Mississippi.

The Fed on Oct. 24 said some banks should be required to hold enough assets that are easy to sell during a 30-day credit crunch. While the central bank included Treasuries, certain sovereign debt and publicly traded investment-grade corporate securities among assets that would meet the proposed rule, it excluded state and local debt.

The requirements are intended to satisfy global rules making the financial system less vulnerable to periods of stress similar to the credit freeze after Lehman Brothers Holdings Inc.'s bankruptcy filing in 2008.

January Deadline

"This is going to increase the market's reliance on a rebound in mutual-fund buying," said Matt Fabian, a managing director at Concord, Massachusetts-based research firm Municipal Market Advisors.

Under the proposal, the rule would phase in starting in 2015, with full compliance in 2017, according to the Fed notice. The public comment period ends on Jan. 31.

Barbara Hagenbaugh, a Fed spokeswoman in Washington, referred to the central bank's notice on the proposal.

"The agencies believe that, at this time, these assets are not liquid and readily marketable," the notice says. "For example, securities issued by public-sector entities generally have low average daily trading volumes."

About $10.4 billion of munis traded daily on average last month, according to Municipal Securities Rulemaking Board data. That compares with about $19.5 billion of investment-grade and high-yield corporate debt, data from the Financial Industry Regulatory Authority show.

Loss Feeder

The $3.7 trillion municipal market has already lost 2.4 percent this year, the worst performance since 2008, Bank of America (BAC:US) Merrill Lynch data show. Local debt has suffered along with other fixed-income assets amid bets a growing economy will lead the Fed to curb its bond-buying program.

"The rule raises the yield at which this important group of counter-cyclical buyers would provide liquidity," DeGroot said in his report. "General-obligation bond spreads may experience some pressure over the near term as these assets may have been positioned with the assumption that they would be included" among eligible assets, he said.

The proposal would consider corporate bonds rated one level above junk as liquid assets while excluding state general-obligation debt, Chris Mauro, head of muni strategy at RBC Capital Markets in New York, said in an Oct. 30 report.

Moody's Investors Service's average general-obligation rating among states it grades is one step below the top, according to David Jacobson, a spokesman.

Disruption Denial

"It's just hard to believe there would be no market for triple-A state general obligations during a period of credit disruption," Mauro said in an interview.

The Fed's proposal also excludes letters of credit that banks extend to variable-rate munis for additional security, Mauro said. Such a move may push up costs for that financing method, he said.

Well-known entities such as states and large cities and issuers rated one or two levels below top-rated borrowers trade frequently, Solender said.

"The higher-grade parts of our market have a lot of liquidity," Solender said. "There's a lot of demand for them right now."

Top-rated munis have lost 1.2 percent this year, about half the decline of the average city and state bond this year, Bank of America data show.

Individual Reliance

Individuals hold about 70 percent of munis either directly or through mutual funds, and decreased bank demand would extend the market's reliance on those buyers, Michael Zezas, chief muni strategist at Morgan Stanley in New York, said in an Oct. 29 report.

JPMorgan boosted its holdings from $14.7 billion three years ago, based on its securities portfolio and trading account, according to quarterly filings. The 152 percent increase is the biggest among the eight banks reviewed. Justin Perras, a spokesman, declined to comment.

San Francisco-based Wells Fargo, the fourth-largest U.S. bank, increased state and local debt to $43 billion from $17.8 billion in the same period. Ancel Martinez, a company spokesman, declined to comment.

Pittsburgh-based PNC Financial Services Group (PNC:US) Inc., the second-biggest U.S. regional bank, had $2.2 billion of munis as of June 30, up from $1.3 billion three years earlier. Fred Solomon, a spokesman, declined to comment.

Trend Buster

Some banks are going against the trend. Bank of America's muni assets fell 30 percent to about $5 billion during the period, even though the Charlotte, North Carolina-based bank has added in each of the last three quarters. Jerry Dubrowski, a spokesman, declined to comment.

Citigroup (C:US) Inc. held $21.8 billion of munis, down almost 2 percent from June 2010. Scott Helfman, a spokesman for the New York-based bank, declined to comment.

In the municipal market this week, issuers are set to sell about $5 billion in long-term debt with benchmark yields at a four-month low, data compiled by Bloomberg show.

The interest rate on AAA 10-year munis is 2.64 percent, the lowest since June 21. That compares with 2.55 percent on similar-maturity Treasuries.

The ratio of the yields, a gauge of relative value, is about 104 percent, compared with an average of 94 percent since 2001. The higher the figure, the cheaper munis are compared with federal debt.

Following is a pending sale:

Massachusetts plans to sell about $288 million in highway grant-anticipation notes backed by federal aid next week, Bloomberg data show.

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By Michelle Kaske November 01, 2013

[Reuters: U.S. House Passes Bill to Delay Fiduciary Rules at SEC, Labor Dept.]

The U.S. House of Representatives passed a controversial bill on Tuesday that would delay two government regulators from adopting rules requiring stock brokers and retirement account financial advisers to put their customers' interests ahead of their own.

The bill, which was approved in a 254-166 vote, has virtually no chance of becoming law, after the White House late Monday threatened to veto the measure.

Its passage, however, marks yet another symbolic effort by Republicans to express their discontent over the sweeping new regulations that stem from the 2010 Dodd-Frank Wall Street reform law.

The bill is one of two measures before the House this week that would amend the Dodd-Frank law.

On Wednesday, the House is also expected to pass a bill with some bipartisan support that would loosen a requirement for banks to spin off their risky derivative trading desks into separate legal entities.

Although the White House has cautioned against passage of the derivatives bill, it stopped short of a veto threat.

FIDUCIARY RULES DELAYED

The fiduciary bill, sponsored by freshman Republican Representative Ann Wagner of Missouri, targets rulemaking efforts at both the U.S. Securities and Exchange Commission and the Department of Labor that would impose a fiduciary duty on certain kinds of financial advisers.

The bill calls for the SEC to undertake additional study before writing any new rules to harmonize standards between investment advisers and stock brokers to determine whether regulatory changes would help or hurt retail investors.

It would also force the Labor Department to delay adopting any rules targeting retirement advisers until the SEC completed its own regulations first.

In voting to pass it, 30 Democrats joined ranks with Republicans in support of the measure.

"The Securities and Exchange Commission and the Department of Labor…are headed towards proposing two massive and inconsistent rulemakings that are going to hurt the ability of retail investors to get financial advice," said House Financial Services Committee Chairman Jeb Hensarling.

Maxine Waters, the ranking Democrat on the committee, voted against the measure, saying it "just goes too far…

"The bill holds the Labor Department hostage while throwing up road blocks for the SEC," she said.

The Dodd-Frank law required the SEC to study whether it should harmonize two different standards of care for stock brokers and investment advisers.

It also authorized, but did not require, the SEC the develop new standards.

Investment advisers are already held to a fiduciary duty, meaning they must put their investors' best interests first.

Brokerages, however, are only required to offer advice about investments that are “suitable” – a less stringent standard that some say leads to conflicts of interest because brokerages may be more likely to recommend products that generate higher compensation.

The SEC released a study on the issue in 2011 that called for imposing a harmonized fiduciary standard for advisers and brokerages.

Meanwhile, the Department of Labor has separately been pursuing its own proposal that would impose fiduciary responsibilities on advisers to workplace retirement plans and individual accounts.

To date, however, the SEC has not yet issued a proposal and the Labor Department in 2010 withdrew an earlier version amid heavy criticism from the brokerage industry.

The SEC solicited more data from the industry in a March 2013 request, in an effort to help inform whether it will proceed with writing the new rules.

Earlier this month, SEC Chair Mary Jo White told reporters the fiduciary rule was still a “major focus” and the SEC was working to resolve “where we’re going on it.”

The Labor Department has also been working toward issuing a revised proposal, but has yet to do so amid a strong push by Wall Street to delay the measure.

The Securities Industry and Financial Markets Association, the leading trade group for the brokerage industry, has opposed to the DOL’s efforts.

“The DOL should not act in this area until the SEC. Dodd-Frank made it very clear that it was the SEC’s responsibility,” SIFMA Chief Executive Judd Gregg told Reuters on the sidelines of a recent conference.

Proponents of strong fiduciary duty rules, however, have been out in force urging lawmakers to oppose the bill.

The bill is a “back door attempt to undermine investor protection provisions in Dodd-Frank,” the Financial Planning Coalition argued in a letter to Congress issued on Monday. (Reporting by Sarah N. Lynch; additional reporting by Suzanne Barlyn in New York.; Editing by Phil Berlowitz and Leslie Gevirtz)

SEC Judge Dismisses Commission’s Securities Fraud Suit Against UBS Executives.

The Securities and Exchange Commission’s chief administrative law judge has dismissed securities fraud charges the commission filed against two UBS Financial Services, Inc. of Puerto Rico executives for allegedly misleading mutual fund investors.

Brenda P. Murray ruled in an initial decision Tuesday that the SEC failed to adequately prove its case against Miguel Ferrer, chairman of the firm, and Carlos Ortiz, head of its capital markets trading desk.

The pair was charged in May 2012, along with their firm, with concealing a liquidity crisis and masking UBS’ control of the secondary market for 23 proprietary closed-end mutual funds. UBS previously agreed to settle the SEC charges for $26.6 million.

The SEC alleged that the firm knew about a significant “supply and demand imbalance” and discussed the “weak secondary market” internally, but made misleading statements to investors and increased its own holdings to keep prices up and maintain the appearance of a stable market.

“This case is unusual, Murray wrote in her initial decision. “The facts are undisputed and the witnesses were for the most part forthcoming and credible. The issue is a serious difference of opinion about the level of information required to be provided to investors about a policy decision by the parent company and whether Ferrer’s and Ortiz’s actions in response to that policy decision violated the antifraud provisions of the securities statutes.”

The SEC complaint rested heavily on whether Murray found that UBS concealed that it was reducing fund prices to sell inventory, and whether Ferrer and Ortiz’s communications with UBS financial advisors claiming that the fund shares were priced according to market forces represented a violation of federal securities laws.

Murray also considered allegedly misleading statements and prices published in a Puerto Rican newspaper and statements Ferrer and Ortiz made at investor conferences. The SEC would have to show that the pair made untrue statements with the intent to deceive or with negligence. Murray concluded that the SEC did not meet that standard.

“There is not one bit of evidence that UBS PR, Ferrer, and Ortiz engaged in a course of conduct to mislead or a scheme to mislead investors by hiding or disguising the fact that UBS PR was in a period when it was not buying fund shares and was reducing fund share prices,” Murray wrote. “The trading desk did not, and could not, keep its activities secret. FAs knew what the trading desk was doing through the inventory sheets, in phone conversations with the trading desk, in weekly sales meetings held in the branches, and communicated this information to customers.”

Murray said she found the SEC’s charge that Ferrer’s and Ortiz’s communications with FAs were fraudulent “unpersuasive.”

“The fund situation was odd compared to other securities in other markets, but the preponderance of the evidence is that in 2008-2009, there was a solid factual basis which showed the pricing of fund shares to be proper and legitimate,” she wrote. “For these reasons, I do not find that the preponderance of the evidence supports the division’s allegation that UBS PR, Ferrer, and Ortiz engaged in a fraudulent course of conduct or a scheme to mislead customers and FAs when they represented the funds as profitable, safe, and stable investments and that supply and demand were responsible for fund prices.”

Melvin A. Brosterman, with Stroock, Stroock & Levan in New York, which is representing Ferrer, said, “We are delighted by the decision ….It was thorough and thoughtful and [Murray] she was very careful to review all of the evidence.”

Ortiz’s lawyers could not immediately comment.

The trial was three weeks. The SEC staff has 21 days to appeal the decision to the full commission. If they don’t appeal, Murray’s initial decision becomes final and binding.

Two law firms have filed arbitration cases with the Financial Industry Regulatory Authority claiming $500 million in losses on their UBS PR Investments, and UBS has also done an internal investigation.

After ‘the switch,’ state regulators pounced on advisers changing jurisdiction

27% more state licensing applications were withdrawn in 2012 after letters of deficiency issued

BY KYLE GLAZIER

States Increase Scrutiny of Investment Advisers.

State securities regulators cracked down on more investment advisers last year after thousands of midsize advisers switched to state oversight from the Securities and Exchange Commission.

A total of 3,564 license applications were withdrawn in 2012 during the vetting process, a 27% increase from 2011, according to a new enforcement report from the North American Securities Administrators Association Inc. slated for release Thursday. In addition, the states denied or revoked another 736 licenses.

The trend reflects the fact that more than 2,100 investment advisers with assets under management between $30 million and $100 million transferred to state regulation from the SEC that year under a provision of the Dodd-Frank financial reform law. State regulators issued letters of deficiency to many of the advisers who had never been examined by the SEC, resulting in withdrawal of the application. The commission has said it has the resources to perform annual examinations of only about 8% of the nearly 11,000 advisers registered with the agency.

“Closer scrutiny of licensing applications has resulted in a noticeable increase in the number of licensing withdrawals in the past year,” said Andrea Seidt, NASAA President and Ohio Securities Commissioner.

“The added attention the states gave these advisers who switched brought to light some of the issues that may not have been identified by the SEC,” said Judith Shaw, Maine securities administrator and former chairwoman of the NASAA enforcement section.

The problems that came up included firms having unlicensed investment adviser representatives, failing to document suitability in their investment recommendations and not providing appropriate privacy notifications to clients.

It’s not surprising that more deficiencies would arise in midsize firms because they have bigger books of business and are more likely to have custody of client funds or deal with complex products, according to Ms. Shaw. For the most part, the problems did not indicate fraud.

“We’re not talking about intentional efforts to violate the law,” she said.

The results demonstrate the volume of reviews more than a spike in malfeasance, according to Keith Woodwell, director of the Utah Division of Securities and vice chairman of the NASAA enforcement section.

“I don’t think there was a particular problem with the switching advisers,” he said. “It was a function of an increased quantity of audits that led to an increased quantity of enforcement actions.”

Overall, the number of state securities investigations dropped to 5,865 in 2012, from 6,121 in 2011, and enforcement actions declined to 2,496, from 2,602 in 2011. The 2012 actions resulted in $694 million in restitution, and $115 million in fines and penalties, compared with $2.2 billion and $126 million, respectively, in 2011.

The declining numbers reflect the fact that cases related to the 2008 financial crisis are concluding, according to Mr. Woodwell.

“We’re seeing the number of compliance and enforcement cases come down to pre-recession levels,” he said.

The two products at the center of the most enforcement actions in 2012 were unregistered securities and oil and gas investments.

The trend is a sign that investors are losing faith in traditional Wall Street companies because of their own compliance problems, Mr. Woodwell said.

“They’re looking for alternative investments vehicles and, frankly, that’s where people get themselves into trouble,” he said. “We try to get people to deal with the licensed industry, but the headlines don’t always help in that regard.”

By Mark Schoeff Jr.

Bond Dealers of America Submits Comment Letter to MSRB Re: Concept Release on a New Central Transparency Platform.

Today, the BDA submitted a comment letter addressing the MSRB’s concept release on pre-trade and post-trade pricing data dissemination through a new Central Transparency Platform.

The comment letter focused on the following items:

- Keeping certain end of day reporting exceptions intact for list offering transactions and RTRS takedown transactions.
- Warned that the dissemination of too many new data elements may confuse the investor.
- Cautioned against the potential to undermine trading strategies.
- Reiterated a previous concern that shortening the 15 minute reporting cycle could be overly burdensome.

You can find the final letter here:

http://origin.library.constantcontact.com/download/get/file/1105697510106-307/Final_BDA_letter_CTP2.+11+1+13.pdf

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MSRB Holds Quarterly Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting October 23-25, 2013 where it established priorities for implementation of a regulatory framework for municipal advisors and agreed to develop and solicit public comment on a “best execution” rule for the municipal market, among other decisions affecting municipal market transparency and integrity.

In light of the Securities and Exchange Commission’s (SEC) September 2013 final registration rule for municipal advisors, which addresses interpretative issues relevant in determining whether a firm or individual is engaging in municipal advisory services, the Board agreed to proceed with the development of a regulatory framework for advisors that prioritizes five rules aimed at protecting municipal entities and investors. They are: fiduciary duty and fair dealing standards of conduct of municipal advisors to municipal entities and obligated persons; supervision requirements for municipal advisory firms and their employees; rules to address the potential for pay-to-play activities by municipal advisors; limitations on gifts and gratuities to employees of municipal securities issuers and other market participants; and duties of solicitors. Additional conforming rule changes will also be proposed as appropriate.

The Board directed staff to focus immediately on a proposed rule that will provide guidance on the statutory fiduciary duty owed by municipal advisors to municipal entities and the duty of fair dealing owed by municipal advisors to municipal entities and obligated persons. The Board will request public comment as soon as it has completed its review and development of a proposed rule.

"We are proceeding with municipal advisor rulemaking in a thoughtful and thorough manner, and one that acknowledges the challenges of writing rules for a newly defined class of financial professionals," said MSRB Chair Daniel Heimowitz. "While we diligently develop rules, we will also put in place a professional qualifications program, and conduct targeted education and outreach for advisors to address the full scope of our responsibilities."

At its meeting, the Board also discussed comments received on the MSRB's concept proposal about establishing a best execution rule for the municipal securities market. The Board directed MSRB staff to develop and publish for public comment a rule proposal modeled on Financial Industry Regulatory Authority's (FINRA) best execution rule for the equity and corporate fixed income markets, Rule 5310. The Board said it would ensure that any rule proposal takes into consideration the unique characteristics of the municipal market.

"A best execution rule in the municipal market would improve market efficiency by assuring the flow of information in support of fair pricing for investors," said Heimowitz.

Taking up earlier work, the Board will proceed with two proposals to simplify existing rules – one to consolidate municipal securities dealers' fair pricing obligations and one to consolidate the MSRB's multiple registration rules and forms for municipal securities dealers and municipal advisors. The Board reviewed comments received and approved filing both of the proposals with the SEC.

The Board also conducted a thorough review of its professional qualifications regime, which consists of examinations and continuing education requirements. In connection with this review, the Board agreed to request public comment on potential changes to the continuing education requirements for municipal securities dealers.

Finally, the Board met with SEC Chair Mary Jo White and FINRA Chairman and Chief Executive Officer Richard Ketchum to discuss top issues facing the municipal securities market. These conversations with the leadership of the SEC and FINRA support coordination and informed policymaking in areas of mutual interest, including enforcement.

MSRB Announces Expanded State Outreach.

The Municipal Securities Rulemaking Board (MSRB) today announced a national, multi-year campaign to increase its outreach to state and local governments that issue municipal securities. The effort aims to share with municipal entities how the MSRB's Electronic Municipal Market

Access (EMMA®) website is a resource for evaluating municipal finance options, complying with disclosure requirements and communicating with investors.

Read the full press release:
http://www.msrb.org/News-and-Events/Press-Releases/2013/MSRB-Announces-Expanded-State-Outreach.aspx

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MSRB Prioritizes Best Execution, Fiduciary Duty Rules.

The Municipal Securities Rulemaking Board will request comment on a best execution rule for the municipal market as early as this calendar year, and has also decided to prioritize rules governing municipal advisors, beginning with a fiduciary duty rule.

MSRB leaders announced the decisions Monday in a conference call following the board of directors' meeting in Alexandria, Va. last week. The meeting was the first for the fiscal year 2014 board, and the first since the release of the Securities and Exchange Commission's final rule on municipal advisor registration. MSRB Executive Director Lynnette Kelly said the board directed staff to develop a best execution rule based on the Financial Industry Regulatory Authority's rule governing corporate bonds, and would tackle fiduciary duty, supervision, political contribution, gifts and gratuities, and conduct rules for MAs in the coming months.

Kelly said that the best execution rule could be put out for public comment prior to the board's next meeting in January, and though based on the FINRA rule, would take the unique characteristics of the muni market into account. Broker-dealers have been wary about such a rule, which would require them to make an effort to execute transactions with prices as favorable as possible for their customers, as required in the corporate bond marketplace. Dealers have warned that copying the FINRA corporate rule would not work for the municipal bond market because munis are traded infrequently and there is no central platform where dealers can check prices quickly.

MSRB chairman Daniel Heimowitz, who assumed the role Oct. 1, said the board had a very robust discussion about municipal advisor rulemaking. He said that the MSRB would attempt to "define and clarify" the obligations of MAs under the fiduciary standard mandated by the Dodd-Frank Act, with particular attention to when that duty begins and ends for the advisor. Heimowitz said that while underwriters have a fair idea of when their roles begin and end on a particular transaction, the timing is a bit more unclear for MAs.

"We want to be as precise as we can be," Heimowitz said.

The chairman declined to be specific about when a fiduciary duty rule could be put out for comment, but said he was optimistic it could be well before next summer. Both Kelly and Heimowitz said the board would not be recycling rule proposals issued two years ago under the SEC's first crack at municipal advisor, proposals that the MSRB withdrew after the SEC decided not to move forward with its original MA rule.

"This is a new board," Heimowitz said. He added that as the MSRB moves forward, it will continue to host webinars and publish educational materials for MAs, who have not been subject to MSRB regulation before.

"We committed to an educational process," Heimowitz said.

Kelly said the new rules will be subject to the MSRB's new policy of formally incorporating economic analysis into the process, which will be visible in the requests for comment. She said the analysis does entail more work for MSRB staff "on the front end", but would not be the cause of any delay in the process.

The board also decided to file with the SEC its proposals to consolidate existing rules and guidance on both fair pricing and MSRB registration. One proposal would consolidate guidance from the MSRB's fair dealing and prices and commissions rules into a single fair-pricing rule. The other seeks to create a single rule, A-12, governing MSRB registration. That would allow the board to eliminate its Rules A-14 on an annual fee, A-15 on notification to the board of a change in status, name or address, and G-40 on electronic mail contacts, as well as Forms RTRS and G-40, according to the MSRB. The SEC has the authority to approve the rules, reject them, or seek further comment.

Kelly said the board also conducted a comprehensive review of professional qualifications exams and continuing education requirements for municipal securities dealers, and will issue a proposal seeking to amend the continuing education requirements sometime before the next meeting.

BY KYLE GLAZIER

MSRB Proposal to Consolidate Guidance Under MSRB Rule G-17 Published in Federal Register.

The Municipal Securities Rulemaking Board (MSRB)'s request for approval from the Securities and Exchange Commission (SEC) of a package of rule proposals to consolidate existing interpretive guidance under MSRB Rule G-17 related to three key fair dealing obligations for municipal securities dealers has been published in the Federal Register. The proposals establish or revise stand-alone rules on time-of-trade disclosures to investors, dealings with sophisticated municipal market participants and suitability of recommendations.

Read the MSRB's rule filing in the Federal Register at:
http://www.gpo.gov/fdsys/pkg/FR-2013-10-22/pdf/2013-24549.pdf

The deadline for submitting comments to the SEC is November 12, 2013.

MSRB Proposal to Amend Rule G-11 Published in Federal Register.

The Municipal Securities Rulemaking Board (MSRB)'s request for approval from the Securities and Exchange Commission (SEC) of a proposed rule change to MSRB Rule G-11 to clearly prohibit, except in limited circumstances, dealers from providing consents to changes in bond authorizing documents has been published in the Federal Register.

Read the MSRB's rule filing in the Federal Register at:
http://www.gpo.gov/fdsys/pkg/FR-2013-10-22/pdf/2013-24558.pdf

The deadline for submitting comments to the SEC is November 12, 2013.

MSRB Announces Topics For Board Meeting.

Municipal Securities Rulemaking Board's board of directors will discuss a possible best execution rule and municipal advisor regulation during their meeting in Alexandria, Va. this week, the MSRB said in a recent notice.

The Oct. 23-25 meeting at MSRB's headquarters will be the first for the new board members who took their seats this month. Led by new chairman and RBC Capital Markets managing director Daniel Heimowitz, the board members will discuss pricing, registration of regulated entities, and professional qualification exams for dealers in addition to best execution and municipal advisors.

The board's discussion of a possible best execution rule will be centered around public input received following a request for comment the MSRB issued in August. Broker-dealers have been skittish about such a rule, which would require them to make an effort to execute transactions with prices as favorable as possible for their customers, similar to a rule that already exists in the corporate bond marketplace. Dealers have warned that copying the corporate rule written by the Financial Industry Regulatory Authority would not work for municipal bonds because munis are traded infrequently and there is no central platform where dealers can check prices quickly.

The Securities Industry and Financial Markets Association has repeatedly suggested its own version of a best execution rule, called "execution with diligence," which would require dealers to use "reasonable diligence" to determine the market for a bond so the price it provides to a customer is "fair and reasonable under prevailing market conditions."

The Securities and Exchange Commission's 2012 report on the municipal market recommended that the MSRB develop a best execution rule, noting the relative "opacity" of the market and that prices have tended to run higher for smaller "retail" trades than those obtained on larger institutional trades.

The board also will discuss the SEC's recent adoption of a permanent municipal advisor registration rule, and talk about the possibility of an MSRB rule codifying the duties of MAs to their clients. The Dodd-Frank Act bestows a fiduciary duty on MAs to act in their clients' best interests. The SEC defines MAs as individuals giving specific advice to a municipal entity or conduit borrower about the issuance of bonds, the investment of bond proceeds, or muni escrow funds.

The MSRB is considering proposing a Rule G-42 that would "set basic standards for the conduct of municipal advisory activities by municipal advisors," but would not include duties of solicitors, according to an MSRB release.

Other items on the board's plate for the upcoming meeting include proposals to streamline existing rules and guidance, including the possibility of consolidating guidance from the MSRB's fair dealing and prices and commissions rules into a single fair-pricing rule. The consolidation would not alter the substance of existing requirements, MSRB officials have said, and public feedback on the proposal has been generally supportive.

The board will also discuss public feedback on creating a single rule, A-12, governing MSRB registration. That would allow the board to eliminate its Rules A-14 on an annual fee, A-15 on notification to the board of a change in status, name or address, and G-40 on electronic mail contacts, as well as Forms RTRS and G-40, according to the MSRB.

The meeting will also include a discussion of professional qualifications exams and continuing education requirements for municipal securities dealers.

BY KYLE GLAZIER

Senator: FINRA Too Weak to Go After Deadbeat Brokers.

In letters to Ketchum and SEC Markey calls for tougher expungement rules and more effort to throw out rogues

Sen. Edward J. Markey, D-Mass., is pushing the SEC and Finra to tighten the screws on rogue

The lawmaker who 20 years ago wrote the legislation that led to the creation of a database containing background information about brokers is calling on financial regulators to crack down on brokers who violate securities rules and continue to practice.

In a letter Friday, Sen. Edward J. Markey, D-Mass., told Securities and Exchange Commission Chairman Mary Jo White that the commission should take “remedial regulatory action” to address what he calls weaknesses in the Financial Industry Regulatory Authority Inc.’s ability to protect investors from “unscrupulous brokers.”

Mr. Markey said that it is too easy for brokers to clear their records of disciplinary actions in the BrokerCheck database and avoid paying arbitration awards to harmed investors.

“Plainly, the Finra rules need to be strengthened,” Mr. Markey wrote. “[A]ll arbitration awards and settlements should be reported by BrokerCheck. Expungement should truly be rare, and arbitrators should not be allowed to decide that an award should be expunged. Rather, Finra should establish an internal process that determines whether a particular award or settlement meets stringent expungement criteria.”

The SEC, which has authority over Finra, also should prevent brokers from wiggling out of paying arbitration awards by shutting down their operations or declaring bankruptcy. He cited Finra statistics which show that $51 million in arbitration awards from 2011 have not yet been fulfilled.

“Current regulations allow brokerages to open with far too little capital — certainly not enough to pay an arbitration award,” Mr. Markey wrote. “The SEC needs to investigate these deadbeat brokers and amend existing or promulgate new rules to address this problem.”

In calling for the reforms, Mr. Markey highlighted a recent report in the Wall Street Journal which said that more than 5,000 brokers who worked for firms thrown out of the industry by Finra are still practicing. He also referred to a recent study by the Public Investors Arbitration Bar Association that showed that expungement was granted more than 90% of the time it is requested by brokers in arbitration cases that were settled from 2007 through 2011.

“If brokers with that number of disciplinary disclosures are allowed to continue practicing, Finra needs to revise its disciplinary system,” Mr. Markey wrote.

Mr. Markey sent letters to both Finra and the SEC on Friday. The SEC declined to comment.

In a statement, Finra said that it has barred more than 2,300 brokers from the industry over the past five years and is reviewing expungement rules.

"FINRA has been actively assessing the expungement process," the organization said. "We have recently begun to implement changes and will continue to take any and all steps necessary in this and other areas to ensure the integrity of BrokerCheck and strengthen investor protection."

In response to the PIABA study earlier this month, Finra released a statement saying that the regulator granted 838 expungements following court orders between 2007 and 2011, or less than 5% of the 17,635 arbitration cases filed during that period.

Bryan Ward, a partner at Sutherland Asbill & Brennan LLP, said it's difficult for brokers to get arbitration claims removed from their records. Their requests are reviewed by arbitrators and then have to be approved by a court.

"It seems like a lot of commotion without a single instance of expungement having been granted improperly," Mr. Ward said, referring to Mr. Markey's letter. "It seems to be used appropriately, given the numbers."

Mr. Ward also said it's not practical to remove arbitrators from the expungement process.

"The point of the Finra arbitration system is to allow arbitrators to make findings of fact rather than Finra itself," Mr. Ward said. "It would certainly be a burden on Finra to be making those decisions."

Nearly every client agreement at brokerages includes a clause requiring mandatory arbitration of investor disputes. Finra operates the arbitration system.

In a statement, Mr. Markey said the investor-protection rules regarding broker disciplinary disclosure that emanated from his legislation more than 20 years ago need to be updated.

"It is unacceptable that some brokers have been able to conceal significant disciplinary information from the public," Mr. Markey said. "Even worse, it is unacceptable that once a consumer has won an award against a brokers by a securities industry arbitration panel, that some brokers have failed to pay the award that has been ordered. I will continue to call for a most rigorous tracking and disciplinary system."

By Mark Schoeff Jr.

[Financial Regulators Propose Joint Standards for Assessing Diversity Policies and Practices of Regulated Entities.]

JOINT RELEASE

Board of Governors of the Federal Reserve System

Consumer Financial Protection Bureau

Federal Deposit Insurance Corporation

National Credit Union Administration

Office of the Comptroller of the Currency

Securities and Exchange Commission

Six federal financial regulatory agencies are proposing joint standards for assessing the diversity policies and practices of the institutions they regulate.

The proposed standards are intended to promote transparency and awareness of diversity policies and practices within the institutions.

The assessment standards cover four key areas:

- Organizational commitment to diversity and inclusion.
- Workforce profile and employment practices.
- Procurement and business practices and supplier diversity.
- Practices to promote transparency of organizational diversity and inclusion.

In developing these proposed standards, the six agencies tailored the standards to account for variables including asset size, number of employees, governance structure, income, number of members or customers, contract volume, location, and community characteristics. The agencies recognize standards may need to change and evolve over time.

Each of the federal financial regulatory agencies houses an Office of Minority and Women Inclusion (OMWI). Under Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, each OMWI is required to develop standards for assessing diversity policies and practices in the regulated entities.

The agencies' OMWI directors held roundtable discussions with a range of parties, including representatives from depository institutions, holding companies, credit unions, and industry trade groups to solicit input on assessment standards and learn about the challenges and successes of current diversity programs and policies. Roundtable discussions also were held with financial professionals, consumer advocates, and community representatives to gain a greater understanding of issues facing minorities and women in employment and business contracting in the financial sector. Information obtained from those discussions helped shape the proposed standards.

Once published in the Federal Register, the proposed policy statement will be available for public comment for 60 days.

SIFMA Squares Off with SEC Advisory Group Over Fiduciary Standard.

Claims adhering to 1940 Act would be too restrictive to brokers

"The proposal would completely foreclose broker-dealers from the retirement-planning and investment-planning businesses — businesses in which broker-dealers have served clients for many decades," wrote Kevin Carroll, SIFMA's managing director and associate general counsel.

A major Wall Street trade organization opposes a recommendation by a Securities and Exchange Commission advisory group that calls on the agency to raise investment advice standards for brokers based on the law that currently governs investment advisers.

In an Oct. 11 letter to the SEC, the Securities Industry and Financial Markets Association said that if the agency proposes a rule to strengthen the standard of care for retail investment advice, it should use as its starting point the Securities Exchange Act of 1934, which set rules for broker-dealers.

SIFMA said that it supports a rule that would require brokers to act in the best interests of their clients — the standard that advisers now meet. Brokers currently operate under a less stringent suitability standard.

This month, a subcommittee of the SEC Investor Advisory Committee released a proposal saying that the SEC should craft a rule to establish a uniform fiduciary duty by narrowing the broker-dealer exemption to the Investment Advisers Act of 1940.

But brokers rely on the exemption in the 1940 law to charge commissions for securities transactions related to retirement and investment planning, according to SIFMA. It has long opposed subjecting brokers to the law.

“The proposal would completely foreclose broker-dealers from the retirement-planning and investment-planning businesses — businesses in which broker-dealers have served clients for many decades,” wrote Kevin Carroll, SIFMA’s managing director and associate general counsel. “Only investment advisers could then engage in those businesses. Such an approach would be grossly anti-competitive and unfair, and completely out of line with [the financial reform law] promise of a business model neutrality.”

In an interview, Mr. Carroll said that changing the broker-dealer exemption must be done legislatively rather than through regulation.

“Only Congress can do that,” Mr. Carroll said. “The notion that the SEC can modify the 40 Act is not a workable solution.”

The Dodd-Frank financial reform law authorizes the SEC to raise investment advice standards. It has not yet made a decision to proceed.

The Investor Advisory Committee, which was created by Dodd-Frank to represent the interests of small investors, was scheduled to vote on the fiduciary-duty proposal at an Oct. 10 meeting. That session was canceled due to the government shutdown and has not been rescheduled.

In addition to the SIFMA letter, the SEC has received comments from fi360 Inc., a fiduciary-duty consulting firm, the Investment Adviser Association and the Institute for the Fiduciary Standard regarding the fiduciary-duty proposal.

An IAC subcommittee recommended that the SEC use the 1940 Act as its foundation for a fiduciary-duty rule in order to ensure that the current standard is not watered down.

“We did not expect them to support the recommendation of rule making under the Advisers Act,” said Barbara Roper, director of investor protection at the Consumer Federation of America and a member of the IAC subcommittee.

She stressed that the subcommittee also recommended a way for the SEC to propose a fiduciary-duty rule under the 1934 law, as long as it includes a requirement for brokers to act in their clients’ best interests. In its letter, SIFMA endorsed that approach.

“It is gratifying that the main broker-dealer trade association is in support of one of those two options,” Ms. Roper said.

By Mark Schoeff Jr.

MSRB Enhances MyEMMA Search Functionality.

The Municipal Securities Rulemaking Board (MSRB) has enhanced its MyEMMA service to enable more tailored searches for information about specific groups of municipal securities. MyEMMA is a free service that allows users to sign up to receive alerts when new information about an individual security or group of securities becomes available on EMMA. MyEMMA users now can limit their advanced searches to their groups of securities and more quickly find information related to particular securities. MyEMMA also allows users to save frequently used sets of search criteria.

Learn more about searching with MyEMMA.

http://www.msrb.org/msrb1/EMMA/pdfs/MyEMMA-Advantages.pdf

Chicago's UNO Charter School Network Under SEC Scrutiny.

The Securities and Exchange Commission is investigating Chicago-based UNO Charter School Network for potential securities violations apparently tied to its October 2011 $37 million bond issue, the organization disclosed Wednesday.

The network issued $37 million of mostly tax-exempt new-money and refunding bonds in 2011 to help fund its ongoing expansion. The Illinois Finance Authority issued the bonds on the not-fo--profit’s behalf. Robert W. Baird & Co. Inc. and Cabrera Capital Markets LLC served as underwriters with Kutak Rock LLP acting as bond counsel.

“Last month, UNO Charter School Network received a request for documents from the U.S. Securities and Exchange Commission. We are responding to this request while continuing our community work, including educating more than 7,600 students, over 95% of which are from low-income and minority families, and implementing the reforms outlined earlier this year by Judge Wayne Andersen,” the organization said in a prepared statement Wednesday. “With respect to the government inquiry, we’re maintaining a level of confidentiality required by the SEC.”

The Chicago Sun-Times earlier this year reported on insider deals involving school construction contracts. Reports tying state grant payments to companies owned by relatives of a top UNO executive Miguel d’Escoto prompted Gov. Pat Quinn to halt funding this spring. Under the grant agreement, UNO should have disclosed the potential conflict of interest, state officials said. The network was awarded a $98 million state grant appropriation in 2009. D’Escoto has since resigned.

UNO commissioned Andersen, a retired federal judge, to conduct a review that resulted in a report recommending changes in governance and contracting practices.

Quinn soon restored funding, saying he was satisfied with reforms UNO was undertaking including its cancellation of the d’Escoto-related contracts.

UNO revamped its board in late May. Longtime chief executive officer Juan Rangel stepped down from his board post while keeping his paid position. Martin Cabrera Jr., well known in local public finance circles as the owner of Cabrera Capital Markets, took over as board chairman with the task of implementing reforms.

Cabrera abruptly resigned the post last month. Cabrera said Thursday during his three months as the unpaid UNO board chairman he had no knowledge “of any type of regulatory investigation by the SEC or others.”

“I resigned because of difference in philosophy and mission. Meanwhile, Cabrera Capital Markets will continue to always strive to meet our responsibility and accountability to our clients in full compliance of all industry regulations,” he said of his decision to leave.

The SEC declined to comment Wednesday and an IFA spokeswoman said the agency has not been contacted by the SEC seeking any information.

In the Sept. 20 letter from the SEC to UNO posted by the Chicago Sun-Times, the SEC said it is “conducting an investigation…to determine if violations of the federal securities laws have occurred.”

The agency ordered UNO to forward to its enforcement division by Oct. 11 documents and communications related to its state grant agreements, all documents related to its 2011 bond issue and the offering statement, information provided to investors, communications with underwriters on the bonds and investors, and information on who worked on disclosure included in the offering statement.

The request also sought documents and communications related to the engagement of the d’Escoto-related firms to build grant-funded schools, including communications relating to potential conflicts of interest. The SEC also sought transcripts from board meetings during which the bond issue, official statement, or d’Escoto was discussed.

The Chicago Public Schools oversees UNO’s charter and provides funding support. It’s the largest charter school operator in the state.

UNO carries a BBB-minus rating from Standard & Poor’s, the lowest investment grade level. In a December 2012 report, analysts said the UNO Charter School Network continues to expand and to manage its expansion well overall.

In fiscal years 2011 and 2012, the charter schools UCSN had surpluses, after two years of deficits.

Demand continues to be strong, as evidenced by wait lists at each school. However, growth and timing partly contributed to a low days’ cash on hand calculation of 32 days at fiscal year-end 2012. In addition to being secured by the revenues of nine of the organization’s schools, the bonds carry a guaranty of the closely affiliated organization, United Neighborhood Organization, which acts as the charter management company and owner of properties.

UNO, a prominent Latino organization with strong local political ties, was established in 1984 and the organization established the charter school network in 1998.

The Standard & Poor’s reports noted the state support of $98 million. The school network has a total of about $67 million in debt.

BY YVETTE SHIELDS

St. Louis Municipal-Bond Underwriter Agreed to Pay-to-Play Fine.

L.J. Hart & Co., a St. Louis-based municipal-bond underwriter, agreed to pay a $200,000 fine to settle charges that it violated pay-to-play rules by giving tickets to sporting events to win work from schools and counties.

L.J. Hart gave school and county officials more than 2,000 tickets to attend games played by the Kansas City Chiefs, St. Louis Cardinals and other teams, according to Financial Industry Regulatory Authority documents. The tickets were valued at $183,546.

The gifts show that securities regulators haven't eliminated underwriters' practice of giving gifts to public officials from whom they seek business in the $3.7 trillion municipal-bond market. This year about three-fourths of the $233.4 billion of municipal debt sold has been through negotiation, instead of competitive bidding, according to data compiled by Bloomberg.

"The regulators need to go further in limiting gifts," said Joy Howard, principal with WM Financial Strategies, a St. Louis-based financial adviser who favors competitive sales. "If you're doing competitive bidding, all of this is a moot point."

With competitive sales, governments take bids on their bonds the way they would for construction contracts or office-supply products. With negotiated sales, the officials hire underwriters to place the bonds with investors.

Financial Incentives

The firm agreed to a settlement in a Finra disciplinary proceeding. L.J. Hart didn't admit or deny allegations that it violated Municipal Securities Rulemaking Board rules designed to remove financial incentives in awarding underwriting business for negotiated deals, according to a Finra order dated Sept. 24. The Alexandria, Virginia-based MSRB makes rules for the municipal-bond market.

The firm broke MSRB gift rules because its own officials didn't attend events with the clients, according to the Finra order. If firm officials had attended, the firm wouldn't have violated the restrictions.

L.J. Hart, which has been giving tickets since 1994, "never used the tickets as an inducement" to be hired, according to a document the firm said it submitted to Finra. The firm said it didn't think it was necessary to accompany public officials to the games.

"L.J. Hart uses the tickets as an expression of its appreciation to its clients for their previous business and to serve as a reminder advertising of L.J. Hart's services," according to the document.

Past Gifts

Larry J. Hart, founder and principal, said in an interview that the firm had provided regulators information about its gifts in past audits and that no questions had been raised. The firm has changed its policies to require firm officials to attend events with clients, he said.

"We agreed to settle to proceed as a business and to avoid extensive legal costs," said Hart.

The ruling, which covered actions between January 1, 2009, and March 31, 2011, was reported earlier today in the St. Louis Post-Dispatch.

The MSRB supports "vigorous enforcement" of its gift rules, which are "designed to preserve the integrity of the municipal market," said Lynnette Kelly, executive director, in an e-mailed statement. "The public needs to have confidence that municipal securities business is awarded based on an underwriter's qualifications and not its ability to provide tickets to coveted sporting events."

SEC Wants Muni Underwriters to Stay on Top of Disclosure.

Oct 10 (Reuters) – A U.S. Securities and Exchange Commission official warned municipal bond underwriters on Thursday that they must make sure their issuer clients keep up with their disclosure obligations.

Throughout 2013, the commission has cracked down on cities, states, schools and other issuers in the $3.7 trillion municipal market to ensure they provide bond buyers with accurate and timely information. Its landmark fraud charges against Harrisburg, Pennsylvania, were based in part on the city's failure to make required annual disclosures.

But Peter Chan, assistant regional director in the SEC's enforcement division, said the regulators also hold underwriters who price the bonds responsible.

"Don't get cute," Chan said at the Bond Dealers of America National Fixed Income Conference, adding that the absence of due diligence files will only make the SEC "more curious."

Underwriters should have procedures and documentation in place to prove due diligence in terms of researching that an issuer is compliant on disclosing its financial reports and other material information, he said.

The federal government has greater authority over banks, financial institutions and broker-dealers than over state and local governments, and some of the recent rash of municipal bond charges have involved underwriters.

In July, the SEC hit an Indiana school district and its bond underwriter with charges after official documents for a 2007 bond sale falsely claimed the district had complied with disclosure obligations. A few months earlier it accused the underwriters of a Victorville, California, airport deal of misleading investors about the value of property used to secure the bonds.

Chan, who works on enforcement cases in the Midwest, said public corruption is also an area of concern for the regulator, noting that the SEC brought civil charges last year against former Detroit Mayor Kwame Kilpatrick and others over an alleged gift exchange meant to influence city pension fund investments.

Kilpatrick, who was convicted on federal criminal corruption charges in March, was sentenced on Thursday to 28 years in prison.

Chan said underwriters should not "cross the line" in their attempts to get business from public debt issuers, warning that the SEC has "no problem" getting cooperation from the U.S. Attorney and other law enforcement authorities.

"Don't even get close to the line," he said, adding that if they observe one of their competitors relying on gifts, charitable contributions or other enticements to get business, they should contact the SEC.

SEC Official to Muni Underwriters: "Don't Get Cute."

Peter Chan, assistant regional director in the Securities and Exchange Commission's division of enforcement, had some advice Thursday for municipal-bond underwriters when dealing with regulators: "Don't get cute."

"Stuff like, 'Oh, we don't keep due diligence files,' stuff like, 'It's privileged,' and so forth, it doesn't stop us," said Mr. Chan, at a conference in Chicago put on by Bond Dealers of America. "It actually gets us more curious."

Mr. Chan also said that if underwriting firms see their competitors winning business by unscrupulous methods, broker-dealers should not seek to emulate the potentially illegal behavior. Instead, he said, they should contact the SEC.

"Don't get mad," he said. "Call the SEC."

"Don't even get close the line," he added. "Criminal authorities get very, very interested in this area."

In general, municipal securities regulations prohibit broker-dealers from giving gifts to public officials in excess of $100 a year. There is an exception to the $100 limit for "normal business dealings," such as occasional tickets to events if representatives of the broker-dealer are also in attendance.

Mr. Chan highlighted a recent case against West Clark Community Schools, in Indiana, which was charged with falsely stating to bond investors that it was providing annual financial information, as it agreed to do in connection with previous bond sales.

The SEC said in July that it was the first time a municipality was charged with falsely claiming in bond offering documents that it was providing financial updates to investors. The school district settled the case, agreeing to adopting written policies for providing updated figures.

The underwriter on its bond sale, City Securities Corp. in Indianapolis, was also charged and agreed to pay nearly $580,000, according to the SEC.

Fiduciary Duty Rule Still in SEC's Sights, Agency Chair Says.

(Reuters) – U.S. regulators are still working their way through the thorny question of whether they should write rules to create a harmonized fiduciary rule for retail brokers and investment advisers, Securities and Exchange Commission Chair Mary Jo White said Wednesday.

"It's a major focus of our efforts," White told reporters on the sidelines of the annual Securities Enforcement Forum in Washington, D.C.

"I can't predict time wise when we actually reach it, but it's obviously something very important to both work on and resolve where we're going on it."

The SEC has struggled for some time over how to tackle different standards of care that advisers and brokers owe to their customers.

Advisers are held to the higher standard and must put their customers' interests ahead of their own. Brokers, by contrast, are only required to make investment recommendations that are "suitable" for their customers.

The 2010 Dodd-Frank Wall Street reform law required the SEC to study the issue and gave the SEC the authority to write rules but did not mandate any changes.

A resulting SEC study, released in 2011, called for creating a uniform standard that would still be flexible enough to accommodate different business models.

Brokers have embraced the concept, saying they are supportive of a new standard as long as they can continue selling products.

But advisers have said they fear the SEC's rule could water down the fiduciary duty and create potential conflicts of interest.

The SEC never managed to get out a proposed rule after the study came out, however, after Republican commissioners at the time criticized the report and said more economic study is required to determine if a fiduciary duty rule is even necessary.

The SEC put out a request for more data to help inform its policymaking in March. But since then, little has been said about the issue or how the SEC may proceed.

As the SEC continues its work on the issue, the U.S. Department of Labor is also working on a proposal that would impose fiduciary responsibilities on advisers serving workplace retirement plans and individual retirement accounts.

Brokerages have lobbied heavily against such a proposal, saying they would be unable to continue to provide advice to middle Americans because of the additional regulatory burdens.

The department withdrew an earlier version of the proposal in 2010, after heavy criticism from the brokerage industry.

Plans to introduce a revised proposal this month have been delayed.

The Securities Industry and Financial Markets Association, the brokerage industry's main trade group, has been pushing for the department to hold off on its plan until the SEC unveils its own proposal.

MSRB Publishes First Report on Timing of Municipal Bond Annual Financial Disclosures.

The Municipal Securities Rulemaking Board (MSRB) today released a report that documents for the first time statistics on the average time after the end of a fiscal year it takes issuers of municipal securities and other obligated persons to make their financial information available to the public.

View the report at:
http://msrb.org/msrb1/EMMA/pdfs/MSRB-CD-Timing-of-Annual-Financial-Disclosures.pdf

WSJ: FINRA Mulls Insurance for Brokerage Firms.

The U.S. Financial Industry Regulatory Authority may require brokerage firms to carry insurance to cover the payment of arbitration awards to investors, the Wall Street Journal reported on Saturday.

FINRA, Wall Street's industry-funded watchdog, will consider whether brokerage firms should be required to have "errors and omissions" insurance, which can cover legal claims, said Susan Axelrod, FINRA's executive vice president of regulatory operations, according to the newspaper.

Insurance could help reduce the number of brokerage firms that shut down without paying awards or other legal claims owed to investors.

FINRA said $51 million of arbitration awards granted in 2011 had not been paid, or 11 percent of the total awards, up from 4 percent in both 2009 and 2010, according to the Journal.

A spokesman for the Securities and Exchange Commission, which oversees FINRA, said net capital rules ensure brokerage firms can return investor assets if the firm fails, according to the newspaper.

MA Rule May Change Dealer Practices.

Broker-dealer practices may change under the Securities and Exchange Commission's new municipal advisor registration rule, as the rule encourages firms to establish underwriting relationships with issuers early in order to be exempt from registration.

SEC muni chief John Cross told participants in a webinar hosted jointly by The Bond Buyer and the Securities Industry and Financial Markets Association that the rule's registration exemption for underwriters will probably result in earlier letters documenting a firm's engagement to underwrite a bond deal.

The rule does not require underwriters to register as municipal advisors and allows them to provide certain advice on a specific issuance of bonds. But it only affords them the underwriter exemption from registration once they have been engaged as underwriter on a specific bond deal.

"That will be a change in focus for the broker-dealer community," Cross said.

The SEC rule says that an MA is someone who provides advice to an issue or other municipal entity or borrower on the issuance of municipal bonds, the investment of bond proceeds or escrow funds, guaranteed investment contracts, and derivatives such as swaps. Advice means recommendations tailored to the municipal entity, and does not include general information or statements of fact.

While the SEC has not taken the position that "engagement" as an underwriter explicitly requires a contractual agreement, Cross said he expects such agreements to be used and to be signed early in the relationship between dealers and issuers. By making clear that they have been engaged on the transaction, dealer firms could rely on that exemption from the registration rule while providing advice on the structure, terms, and timing of the offering.

Dave Sanchez, general counsel at De La Rosa & Co. and former SEC official who also participated in the webinar, said dealer firms are already assuming they are entering a new world under the regulatory regime.

“A majority believe it will have a major effect on their business,” he said.

Sanchez asked Cross and SEC attorney-fellow Rebecca Olsen to describe the relationship between the MA rule and Municipal Securities Rulemaking Board Rule G-23 on activities of financial advisors. G-23 prohibits financial advisors from also serving as underwriters on the same transaction. Bond lawyers have questioned whether a municipal advisor under the SEC rule must also be a financial advisor under the MSRB rule. Some have suggested that dealers could offer unsolicited advice to issuers, accept the fiduciary duty that comes with that, and then inform the issuer that they will seek to underwrite at an arm’s length later with no fiduciary duty attached at that time.

But the two regulators were quick to discourage that line of thinking.

“Rule G-23 still needs to be complied with,” Olsen said.

Cross underscored the intent of G-23, which was designed to prevent dealer-affiliated financial advisors from recommending bond deals that they then underwrite, regardless of whether those deals are in the best interest of the municipality.

“That seems like the classic role-switching that the MSRB rule relates to,” Cross said.

Firms will be required to register as MAs with the SEC under the rule on a staggered basis beginning July 1 2014, though the substantive and interpretative aspects of the rule will take effect 60 days following the publication of the rule in the Federal Register, which has not yet happened.

About 1,150 MAs are currently registered under a temporary registration rule that expires at the end of 2014. Cross said he expects that number to remain about the same once final registration is finished.

But Lanny Schwartz, a lawyer at Davis Polk & Wardwell LLP who also took part in the webinar, said some firms have been “waiting in the weeds” to register under the final rule. Cross said those firms should already be registered under the temporary rule.

The MSRB has the task of creating rules with which registered MAs must comply.

MSRB executive director Lynnette Kelly told webinar participants that while the MSRB board has control over the rulemaking agenda, she expects it may take up a fiduciary duty and fair dealing requirements first and tackle other rules or rule changes over the next 12-18 months. Those are likely to include requirements on supervision, gifts and gratuities, political contributions and professional qualifications. The MSRB also has to develop a professional exam for MAs, who will have to register with the board as well as the SEC.

by: KYLE GLAZIER

Shutdown Delays Advisor Rule Implementation.

The federal government shutdown will leave some agencies overseeing the bond market mostly operational in the near-term, but the municipal advisor rule’s implementation will be delayed and Build America Bond subsidy payments might be temporarily halted.

The Securities and Exchange Commission and core Treasury Department offices will largely continue to function in the absence of congressionally-approved funding. The Municipal Securities Rulemaking Board, a self-regulator, is not covered by the shutdown. However, the Internal Revenue Service is operating on a skeleton crew focused mainly on upholding tax laws, with only 9.3% of the agency's roughly 94,500 employees exempt from furlough, according to agency documents. The tax-exempt bond office appears to be closed.

Most federal websites will not be updated until Congress passes a continuing appropriations bill, and the Federal Register will not be updated. Because publication in the Federal Register starts the 60-day countdown for effectiveness of the SEC's recently approved MA registration rule and the rule wasn't published before Tuesday, its implementation will be further delayed.

Congressional Republicans and Democrats are at a stalemate over funding, with conservatives insisting on defunding or delaying Obamacare. The last government shutdowns, which occurred in 1995 and 1996, totaled 28 days, sources said.

SEC spokesman John Nester said the commission has funds available to allow it to continue functioning for weeks, despite the absence of government spending. This means that personnel in the enforcement and muni offices will still be reporting for work as usual, he said.

"Unlike most other agencies, our appropriations language provides that our funds 'remain available until expended,' Nester said. "It is not uncommon for us to have carryover balances at the end of a fiscal year, and we have determined that our carryover balances are sufficient to allow us to remain open for a few weeks during the lapse of appropriations."

The MSRB, which reports to the SEC and has rules mandated by federal law, is funded by fees and portions of penalties from enforcement cases and will not be affected by the shutdown.

To the extent that Build America Bond subsidy payments are treated as tax refunds, they won't be paid during the shutdown. "Tax refunds will not be issued until normal government operations resume," the IRS said in an announcement about its operations during the shutdown.

The Treasury's published shutdown procedures note that the Office of Domestic Finance will "continue Treasury borrowing/debt programs to meet the government's financial obligations and avoid, or minimize, disruptions to Treasury's financing schedule." State and local groups are worried about what the shutdown could mean for federal payments and support they are accustomed to receiving.

"Besides shirking its responsibilities, Congress' failure to pass a budget has real economic consequences for families and businesses in our communities," said National League of Cities executive director Clarence Anthony. "The economic uncertainty this creates is quite frankly, frustrating, and we urge Congress to move forward in finding a way out of this mess."

"Congress' failure to reach agreement on even a short-term budget fix is disappointing and, if not resolved soon could impose harmful impacts on state and local governments," said Dustin McDonald. director of the federal liaison center for the Government Finance Officers Association. If the shutdown is not ended, all non-mandatory discretionary government spending will cease in a few weeks, he said.

"State and local bond issuances could also be adversely affected by market uncertainty about the shutdown, delaying issuers from going to market for fear of higher borrowing costs," McDonald continued. "Finally, it isn't completely clear whether or not IRS subsidy payments to issuers of direct-pay bonds, such as the Build America Bonds program will go forward under a shutdown.

Obviously that is a concern, especially in light of the 8.7% cut to the federal subsidy payments that issuers of these bonds have already been forced to endure through sequestration."

Mesa, Ariz. Mayor Scott Smith, president of the U.S. Conference of Mayors, said municipal leaders will continue to work despite Congress' impasse.

"It is unfortunate that Washington has chosen to go the route of a government shutdown instead of figuring out a way to move forward for the sake of all Americans, including the majority of people who live in cities," Smith said. "Regardless of what happens in Washington, the nation's mayors will continue to lead, balancing budgets and solving problems. We do not have the luxury of turning our backs on our residents. We are pragmatic doers who believe in rolling up our sleeves, finding common ground on even the most difficult of issues and getting things done for the good of the whole."

National Association of State Treasurers senior vice president Richard Ellis, who is the state treasurer of Utah, said it is unclear when or if federal payments states expect, including infrastructure funding, will be made. "We're all kind-of waiting to see what this means to us," he said.

by: KYLE GLAZIER

MSRB to Implement Revised Rules Addressing Retail Order Periods.

The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to revise MSRB rules to establish certain basic regulatory standards relating to the use of retail order periods in the primary offering of municipal securities. The revised rules support the MSRB's mission to protect municipal securities issuers and investors.

State and local governments may designate that a specific amount or specific maturities of new bonds be marketed to "retail" investors. The revised rules address concerns that dealers may be disregarding issuers' criteria for participation in a retail order period.

The MSRB amended its initial proposal to the SEC in response to public comments requesting clarification of certain terms and concepts in the proposal. For example, the MSRB clarified that the definition of "retail order periods" in its proposal covers both those retail order periods in which the issuer has specified that only retail orders be accepted and those periods in which the issuer instructs the dealer to prioritize retail orders over other types of orders.

Revised MSRB Rule G-11 on primary offering practices and related revisions to Rule G-8 on recordkeeping and Rule G-32 on disclosures in connection with primary offerings will take effect on March 31, 2014.

The SEC Approval Order is available at:

http://www.sec.gov/rules/sro/msrb/2013/34-70532.pdf

Dealers Concerned About MA Rule.

Broker-dealers are concerned about the exemptions provided for underwriters in the Securities and Exchange Commission's municipal advisor registration rule, but securities lawyers and non-dealer municipal advisors say the more than 700-page release makes some important clarifications.

Much of the scrutiny of the rule, which came over the weekend after the rule was released late Friday, centers on the exemption from MA registration for underwriters.

While groups in every corner of the market praised the SEC for delivering the rule and for listening closely to industry feedback, broker-dealers also said the new rule may do some harm by preventing would-be underwriters from pitching ideas to issuers for fear they won't be able to underwrite the bonds.

"This final rule does present some problems," said Leslie Norwood, managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association.

Norwood said dealer firms frequently make suggestions to municipalities, and under the new rule these suggestions would itself create a fiduciary relationship inconsistent with underwriting. Under MSRB Rule G-23, firms cannot be both a financial advisor and an underwriter on the same bond issue. The SEC rule allows underwriters selected to handle a specific transaction to offer limited advice related to underwriting, but Norwood said uncertainty about what kind of communications might trigger a fiduciary relationship could lead broker-dealers to pull back from offering input that might be helpful to municipalities.

"That is a significant problem and we feel issuers will be harmed by not receiving these ideas," she said.

Mike Nicholas, chairman and chief executive officer at the Bond Dealers of America, also said that there may be some lingering question about where the line between an advisor and an underwriter is drawn.

"If that is unclear in any fashion, the result is underwriters are going to be cautious," he said.

But non-dealer MAs are pleased by the narrowness of the exemption.

"Based upon our preliminary review of the release, we are pleased that the SEC has determined to develop registration triggers that center upon whether the individual is providing municipal advisory services to municipal issuers and obligated persons," said National Association of Independent Public Finance Advisors president Jeanine Rodgers Caruso. "Although we are concerned that underwriters will be exempt from the registration requirements when providing advice relative to the issuance of securities and in the scope of their underwriting engagement, we are pleasantly surprised by the limited nature of this exception."

Securities lawyers said a broad new exception that allows anyone to offer financial advice to the issuer as long as the issuer has retained a registered MA on the same topic might create into some issues as well. The rule requires that the issuer certify in writing that it will rely solely on the advice of its MA. But issuers may balk at having to make such certifications. Other issuers might be confused by complex correspondence from dealers aimed at making clear they are not municipal advisors under the independent advisor exception.

An attorney who preferred not to be identified said it could be a compliance headache. “You may not be able to use the independent MA exception as often as you would like,” that lawyer concluded.

SIFMA to SEC: MSRB Proposals Too Burdensome.

The Municipal Securities Rulemaking Board’s proposed rule changes on retail order periods would be burdensome, costly and would result in some unintended adverse consequences for dealers and issuers, the Securities Industry and Financial Markets Association warned on Monday.

SIFMA issued the warning about the proposed changes to MSRB Rules G-11 on primary offering practices, G-32 on primary offering disclosures, G-8 on books and records, in a recent three-page letter sent to the Securities and Exchange Commission. The commission must approve the proposed rule changes, which the MSRB proposed in June, as well as a recent amendment the MSRB filed, before they become final.

The MSRB contends the rule changes are needed because sometimes, when issuers want their bonds to be initially sold to retail investors, underwriters have mischaracterized orders as “retail” when they are not, and have failed to disseminate the terms and conditions of the retail order period to selling group members and other dealers on a timely basis.

But SIFMA’s letter, signed by managing director and associate general counsel David Cohen, complains that some of the MSRB’s proposals would create new record-making systems for dealers and that the board has not given sufficient consideration to its proposed alternations, which would be much less burdensome.

One of SIFMA’s main concerns is that the proposed rule changes would require syndicate and selling group members, in the retail orders they submit to the managing underwriter at the time the bonds are formally awarded, to include four representations: that the order meets the issuer’s eligibility criteria for a retail order period; that the order is a retail order; whether the dealer received more than one order from a single customer for a security for which the same Cusip number was assigned, and; the par amount of the order.

“The MSRB fails to appreciate the costs in elevating a business practice to a regulatory requirement,” SIFMA told the SEC in the letter.

Instead, the dealer group wants the SEC adopt a less burdensome approach under which all of the dealers would agree, in their agreement among underwriters, that retail orders would meet the issuer’s criteria for retail orders.

The MSRB has rejected this approach, saying it would represent the status quo.

But SIFMA told the SEC, “We find it odd and disappointing that the MSRB is so dismissive of a reasonable alternative approach as well as the associated costs of rulemaking — which other securities regulators are required to consider and weigh appropriately.”

The dealer group also complained about the MSRB’s proposal that issuers approve the senior syndicate manager’s statement of all of the retail order period terms and conditions required by the issuer. Current rules allow the syndicate manager to just provide the statement to the issuer, without any need for the issuer to approve it.

"Our members believe that the existing rule is more than sufficient to ensure that an issuer is aware of, and agrees with, any requirements imposed on the syndicate and selling group members in its name," SIFMA said.

The group also questioned the need for this requirement, saying, said it "is not aware of [any] enforcement actions taken against syndicate managers for not honoring terms and conditions required by the issuer."

SIFMA warned this requirement will lead to adverse unintended consequences, much like the MSRB's recent requirement under G-17 on fair dealing that underwriters get issuers to approve the fair dealing disclosures they make to the issuers.

Issuers have complained they are getting six- and seven-page disclosure documents from underwriters that they do not understand and have been refusing to approve them.

"Prior to imposing this new regulatory requirement, we believe it is important for issuers to voice their views, as they have raised concerns about the G-17 disclosures," SIFMA said.

"There's no indication that issuers even want this," Cohen said in a brief interview.

In addition, SIFMA criticized the MSRB's refusal to replace the term "going away orders," which in the past has been used to mean retail orders, but can also mean other things, with "bona fide" retail orders. Both SIFMA and GFOA made this request.

But in a recent letter to the SEC, MSRB deputy general counsel Michael Post, said "bona fide" was "not sufficiently precise" and proposed using an "order for which a customer is already conditionally committed," saying this language would not permit orders for dealers' inventories.

"Our members believe, contrary to the MSRB, that 'conditionally committed' is less precise that 'bona fide' customer orders that meet the issuer's designated eligibility criteria," SIFMA told the SEC in its letter.

Lumesis Releases Whitepaper on Municipal Market Time of Trade Disclosure Obligations.

Lumesis, the firm behind the DIVER suite of municipal market focused software solutions, has released a whitepaper on proposed regulation around time of trade disclosure to the retail client. The report focuses on the Municipal Securities Rulemaking Board's ("MSRB") Proposed Rule G-47 ("G-47") and its significance on Time of Trade Disclosure Obligation to the retail investor for municipal bonds. G-47 was submitted to the Securities and Exchange Commission ("SEC") for approval on September 18, 2013. SEC action is expected sometime between early November and year-end 2013.

This whitepaper, written by Lumesis' CEO and co-founder, Gregg Bienstock, chronicles the basis for G-47 and provides insight into how market participants can meet these regulatory requirements and stay ahead of the curve in these volatile times. The report also examines a proposed amendment to the suitability rule (MSRB Rule G-19), which directly incorporates the language of the Time of Trade Disclosure rule.

"Market participants continue to express uncertainty around the 'what', 'when' and 'how' pertaining to disclosure. G-47 paves the path for a clearer understanding of the time of trade disclosure requirements," said Bienstock. "At a time when protection of the retail investor continues to be a priority, the Proposed Rule, which we expect to be approved by the SEC, should be a catalyst for market participants to revisit their existing policies and procedures to ensure they are not exposed to unnecessary risk."

To obtain a copy of the Whitepaper, click here.

http://www.lumesis.com/images/usr/Time%20of%20Trade%20G47%20Paper.pdf

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SEC Official Says Public Pension Disclosures Remain Under Scrutiny.

(Reuters) – The U.S. Securities and Exchange Commission's scrutiny of public pension liabilities will not let up any time soon, a top SEC official said on Thursday.

Pension disclosure will be "a continuing and very significant theme of the SEC," John Cross, head of the SEC's Office of Municipal Securities, told attendees at the National Association of Bond Lawyers' (NABL) annual workshop.

"I can't overemphasize the significance and at least the need to focus on pension liabilities because of the sheer magnitude of the numbers," Cross said, adding that those liabilities go the heart of state and local government fiscal health.

The SEC has cracked down on pension and disclosure problems, hitting Illinois in March with charges for not adequately informing investors about the liabilities. The SEC had brought similar charges against New Jersey in 2010. Both states settled the charges without admitting or denying them.

The SEC has also caught Harrisburg, Pennsylvania, and Miami in its regulatory net for allegedly making misleading statements and omissions in bond documents.

Dean Pope, a bond attorney at Hunton & Williams LLP, who spoke on a panel with Cross, said the cases were laying the groundwork to give issuers in the U.S. municipal bond market notice that whether they are big or small, they need to have good disclosure procedures in place.

The Pew Center on the States has reported that bigger cities faced a collective pension liability of $217 billion in fiscal 2009, while states had a shortfall of $757 billion for retiree pensions in fiscal 2010.

Detroit has recently taken the spotlight for pension shortfalls, with the size of its pension gap under dispute since the city filed in July for what ranks as the largest municipal bankruptcy in U.S. history.

For the municipal bond market, Detroit's bankruptcy filing is also raising questions about general obligation bond disclosures. The city's state-appointed emergency manager determined that some voter-approved unlimited-tax general obligation bonds sold by Detroit are unsecured debt.

Cross said investors historically thought general obligation bonds meant unlimited taxing power, which is not always the case.

"Largely, I think it's a point of clarity," he said.

Pope said the muni market may have to wait "until the dust" settles on high-profile bankruptcy cases like Detroit's to determine if there are some lessons to be learned.

NABL will soon launch an examination of the full faith and credit pledges behind various GO bonds.

Cross also said that the definition of municipal advisers the SEC approved last week was aimed at protecting issuers and investors in the wake of the financial markets meltdown during the financial crisis that left some muni issuers stuck with complex derivatives like interest rate swaps.

Rebecca Olsen, an attorney with the SEC's municipal securities office, said general information about the muni market would not be considered advice, including communication between underwriters and potential clients.

Update on MSRB 529 Plan Rule Proposal.

The SEC has commenced a proceeding in which additional public comment may be submitted to further inform the SEC as to whether to approve or disapprove the MSRB's proposal to collect information on 529 college savings plans from underwriters of such plans.

The proposal is available at:

http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/~/media/Files/SEC-Filings/2013/MSRB-2013-04-FR-Notice.ashx

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MSRB Files with SEC Proposed Rule Change to MSRB Rule G-11 on Bondholder Consents.

The Municipal Securities Rulemaking Board (MSRB) today requested approval from the Securities and Exchange Commission on a proposed rule change to MSRB Rule G-11 to carefully define the limited circumstances under which dealers may provide consents to changes in bond authorizing documents.

MSRG Rule G-11: http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-11.aspx

View the rule filing:

http://msrb.org/Rules-and-Interpretations/SEC-Filings/~/media/Files/SEC-Filings/2013/MSRB-2013-08.ashx

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SEC Urged to Exempt Muni MMFs From Proposed Reforms.

State and local governments are urging the Securities and Exchange Commission to either abandon proposed reforms for money market funds or exempt municipal MMFs from the reforms and clarify the rule changes are not meant to impact local government investment pools.

The latest request comes from the National Association of State Treasurers, which sent a 12-page letter to the SEC on Monday detailing its concerns about the reforms that the SEC proposed in June.

“The SEC’s proposed rule changes would be detrimental to competition, efficiency, and capital formation for our members as well as cities, counties, and other municipal entities,” said the letter signed by Manju Ganeriwala, NAST’s president and Virginia’s Treasurer.

The letter made three major points. First, the proposed reforms for MMFs to have a floating net asset value instead of the current stable NAV of $1 per share and/or liquidity fees and gating to limit redemptions could force governments to abandon local government investment pools.

LGIPs have been created by several states to help state and local entities invest public funds safely and efficiently. Generally they are designed to provide short-term investments for funds that are needed by governmental entities on a day-to-day or short-term basis. They are rated by rating agencies and operate like money market funds, only their clients are local governments. They are indirectly rather directly regulated by the SEC because the Governmental Accounting Standards Board mandates that MMF-like funds be governed by MMF rules.

LGIPs cannot tolerate even small losses for many reasons, including legal restrictions, budget constraints, investment limitations or liquidity requirements.

“To the extent that LGIPs were indirectly forced into a floating NAV, or required to abandon the use of amortized cost accounting, the usefulness of LGIPs to numerous state and local government entities would be greatly diminished,” the letter said. “This would result in disruption as public sector investors sought to redirect investments with few viable alternatives.”

Rhode Island Treasurer Gina Raimondo raised the same concerns in a two-page letter that said the state, along with some municipalities and quasi-public agencies, currently invest more than $500 million in the Ocean State Investment Pool on a short-term basis.

A floating rate NAV, she said “could change administrative burdens and costs, including accounting and tax complexities that would diminish the product’s usefulness. It could also result in investors choosing alternative means of managing cash that could prove to be more expensive, less diversified and riskier.”

NAST’s second big concern is that the proposed reforms would deter states from using MMFs as an efficient tool for managing large volumes of short-term liquid assets. “MMFs that seek to maintain a stable value per share are permitted investments for many of our members, which rely on these funds to obtain ready liquidity, preservation of capital, and to provide diversification,” the letter said. Generally, variable NAV MMFs are not permitted investments for states, it said.

William Dressel, Jr. executive director of the New Jersey League of Municipalities, told the SEC in a one-page letter that MMFs “hold more than half of the short-term debt that finances state and municipal governments for public projects such as roads, bridges, water and sewage facilities, and hospitals …. Without that financing, local governments may be forced to limit projects and staffing, spend more on financing by investing in lower yield products, or increase taxes. Given our current operating environment, these are not viable options.”

NAST’s third concern is the potential adverse impact the SEC’s proposed reforms could have on MMF purchase of short-term munis from state and local governments. “NAST is also concerned that a floating NAV, if applied to municipal MMFs, could lead to an exodus of investors from those funds,” the letter said.

"We do not believe additional changes to money market fund regulation are needed at this time," NAST told the SEC. "If further changes are adopted, however, we urge the commission to (a) include a comment that it is not the SEC's intent to promulgate changes to LGIPs, and (b) create an exemption for municipal money funds equivalent to that established for U.S. government MMFs under the proposal."

Geoffrey Beckwith, executive director of the Massachusetts Municipal Association, agreed, saying, "Given the highly negative consequences that would result, there is no compelling reason to regulate municipal MMFs as if they were prime MMFs, rather than regulating them similarly to the Treasury and government MMFs with which they share numerous characteristics."

The Securities Industry and Financial Markets Association also urged the SEC to exempt muni MMFs.

'SIFMA strongly believes the SEC should specifically exempt municipal money market funds from both the floating NAV and the liquidity fee and redemption gate proposals for money market funds," said Leslie Norwood, SIFMA managing director, associate general counsel and co-head of munis. "These funds have not shown susceptibility to destabilizing runs, they maintain weekly liquid assets well in excess of regulatory minimums, and they are held mainly held by retail investors. If any of the proposed changes are imposed on municipal money market funds, investors will lose an attractive cash management option while local governments will find it harder to raise the capital they need for roads, schools, hospitals, and other critical infrastructure that keep our communities running smoothly."

by: LYNN HUME

SEC Unanimously Adopts Final Muni Advisor Rules.

The Securities and Exchange Commission unanimously adopted a registration rule for municipal advisors, establishing that they have a federal fiduciary duty to clients if they provide advice, compensated or not, that is related to bonds or other municipal financial products and involves recommendations based on the specific needs of a municipal entity.

The rule adopted Wednesday, which clarifies the requirement for registration with the SEC, is more narrowly-tailored than the securities regulator's initial December 2010 proposal. It includes exemptions that SEC muni chief John Cross said are based on the activities involved, rather than the status of the individuals or firms.

Members of governmental boards, whether elected or appointed, would not be subject to registration under the rule.

The 2010 SEC proposal to exempt only elected members generated significant controversy.

Market participants had been eagerly awaiting the definition since the passage of the Dodd-Frank Act in 2010, which mandated federal oversight and regulation of municipal advisors. But the SEC's initial proposed registration rule encountered resistance from lawmakers and market participants, who said it cast too wide a net by covering not only appointed board members, but also professionals already regulated under different statutes. Dodd-Frank imposes a federal fiduciary duty on municipal advisors that provide financial advice to state and local governments, meaning that the MAs must put their clients' interests ahead of their own.

“The final rules that the commission is considering today set forth clear, workable requirements and guidance for municipal advisors and other market participants, which will provide needed protections for this market,” SEC chairman Mary Jo White said before the vote.

Dealer firms had looked to the he SEC for clarification, complaining that non-dealer financial advisors have been operating without the same level of oversight as dealer-affiliated FAs. SEC commissioner Daniel Gallagher blamed delays in the rule on the rush to meet various “arbitrary” Dodd-Frank deadlines. A temporary registration rule has been in place since December 2010, and was extended last year to expire Sept. 30. The temporary rule will be extended again, as the final rule does not take effect until 60 days after its publication in the Federal Register, which could be in a few days. The SEC currently has about 1,100 firms registered, and expects the number to remain about the same with the final rule.

The new rule also contains exceptions for underwriters, registered swap dealers providing advice related to swaps, and all government officials acting within the scopes of their official duties. A person or firm providing advice on investment strategies will only have to register if that advice involves the proceeds of muni bond sales, the investment of municipal escrow funds, or municipal derivatives. Banks will only have to register if they provide advice that goes beyond the scope of traditional banking services, such as deposit accounts and extensions of credit. Accountants providing traditional accounting services and engineers providing engineering advice such as feasibility studies would also be exempt.

Michael Decker, co-head of municipal securities at the Securities Industry and Financial Markets Association, said he was pleased to see the rule adopted and a new expansion of the underwriter exemption, which SIFMA had pushed for in comments submitted to the SEC. Under the rule, the underwriter exemption kicks in when a firm is engaged to underwrite a bond issue and covers advice on the structure, timing, and terms of the sale. Broker-dealers had harbored concerns that anything beyond negotiation of the agreement to underwrite could trigger the municipal advisor designation and impose a fiduciary duty on the firm.

Decker said the next question will be how dealers document engagement.

The SEC decision represents the first major muni move undertaken since two new commissioners, Kara Stein and Michael Piwowar, joined the commission. Piwowar protested that although he has been a commissioner for barely more than one month, he has already been forced to vote on hundreds of pages of complex rules without the time necessary to fully consider the proposals. He said he repeatedly asked White to have the meeting postponed, but that the chairman proved inflexible.

“My repeated requests were denied,” Piwowar said.

White said she understand his frustrations, but thought the commission should move forward in view of the years of staff work and Dodd-Frank mandates involved.

“I did not believe this should be delayed any further,” White said.

Stein said she was disappointed the rule does not contain an earlier provision that required firms to certify that MAs in their employ met certain standards. Gallagher said he looked forward to seeing an economic analysis of the rule, expressing some concern about its potential regulatory burden.

Reps. Steve Stivers, R-Ohio, and Gwen Moore, D-Wis., have sponsored legislation that would define MA’s even more broadly than the SEC’s new rule. That bill would define MAs as individuals paid by a muni issuer or borrower to provide advice on muni issuances or financial products. The SEC rule does not require compensation.

The SEC did incorporate Stivers' and Moore's exemption for many banking services. It is unclear if Stivers and Moore will still seek to have the bill brought to the floor. It is unlikely to gain traction in the Senate if passed in the House.

The Municipal Securities Rulemaking Board has proposed a series of rules that would govern the conduct and qualifications of municipal advisors, but those rules had been delayed pending the SEC's final interpretation of the term. Now that the SEC has defined MA, the MSRB is poised to begin the process of moving toward getting those rules finalized.

by: KYLE GLAZIER

MSRB Responds to SEC's Approval of Final Registration Rule for Municipal Advisors.

The Municipal Securities Rulemaking Board (MSRB) welcomes today's approval by the Securities and Exchange Commission of its final guidance on the types of municipal advisory activities that are subject to federal regulatory oversight, including MSRB rules. The MSRB will carefully study the guidance and continue its outreach to municipal advisors as it assumes oversight responsibilities.

http://www.msrb.org/News-and-Events/Press-Releases/2013/MSRB-Responds-to-SEC-Release-of-Final-Registration-Rule-for-Municipal-Advisors.aspx

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MSRB Seeks Approval to Consolidate and Harmonize Fair Dealing Obligations for Municipal Securities Dealers.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission a package of rule proposals to consolidate existing interpretive guidance under MSRB Rule G-17 related to three key fair dealing obligations for municipal securities dealers. The proposals establish or revise stand-alone rules for time-of-trade disclosures to investors, sophisticated municipal market participants and suitability.

http://www.msrb.org/News-and-Events/Press-Releases/2013/~/media/Files/SEC-Filings/2013/MSRB-2013-07.ashx

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SEC MA Rule Mostly Applauded.

Market participants are generally pleased that the Securities and Exchange Commission has adopted a municipal adviser definition that addressed concerns from several sectors of the muni bond industry, but non-dealer MAs remain concerned that the registration exemptions might allow for abuses Dodd-Frank was intended to curb.

While the nearly 800-page final rule had not been released as of Thursday, the statements of SEC commissioners and a summary sheet distributed by the agency left broker-dealers and bond lawyers optimistic that the commission crafted a rule far more workable than a broader version initially proposed in December 2010. That rule would have required volunteer government board members, employees at banks, and possibly a wide range of other professionals to register as MAs with the SEC.

The final rule, adopted unanimously on Sept. 18, offers broad exemptions for public officials and draws a more narrow focus on which types of professionals will be subject to registration requirements.

The rule will become effective 60 days after its publication in the Federal Register, which may occur in a few days. Municipal advisors have already been required to register with the SEC under a temporary rule, but will need to re-register on a staggered basis beginning July 1, 2014.

Susan Collet, senior vice president for government relations at the Bond Dealers of America, praised the SEC for some of the new safeguards, which include another new broad exemption that applies in cases where municipalities have hired a registered municipal advisor. In those cases, unregistered entities could offer muni advice on the same subjects as the advisor without becoming subject to the federal fiduciary duty that the Dodd-Frank act imposes on MAs.

"The SEC worked really hard to get this right, Collet said. "I think they have been faithful to the intent of Dodd-Frank. We're pleased with this outcome. I think we've seen a regulatory process come together well here."

Collet said she was glad to see the registration standard finally codified in SEC rules, as broker-dealers have long complained that independent financial advisors have been operating without the same level of oversight as dealer-affiliated advisors. Collet said the next question will be how the Municipal Securities Rulemaking Board reacts, as it will need to issue new rules and interpretive guidance.

Charles Samuels, a lawyer at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, said he is extremely pleased to see the government official exemption. He had harbored concerns, as had many, that volunteer board members and other individuals who appear to be outside the intent of Dodd-Frank would be forced into a cumbersome regulatory regime. The new SEC rule prevents this as long as the individuals act within the scope of their duties.

"We will have to scrutinize the full text carefully," Samuels said. "I think it can be said that [SEC muni chief] John Cross really delivered for issuers and borrowers."

Samuels said that the SEC's changes to its initial 2010 rule reflect the best of the regulatory process.

"This is an excellent example of a grassroots reaction to an overreaching regulator," Samuels said. "But at the end of the day, it's also a great example of a responsible reaction by a regulator."

But National Association of Independent Public Finance Advisors president Jeanine Rodgers Caruso indicated her group might take issue with an expanded underwriter exemption included in the SEC's definition. The SEC decided to allow underwriters to give advice on the structure and timing of a bond issue once the firm was engaged by an issuer. The exemption would not cover advice beyond those limited aspects of that specific offering, such as advice on the use of bond proceeds or what other bond offerings the issuer could or should do.

"NAIPFA is happy to see that the SEC has adopted a final registration rule and looks forward to working with the MSRB to craft appropriate MA rules and regulations," Rodgers Caruso said. "We continue to be concerned that the registration rule will not capture those underwriter firms who provide advice to municipal entities relative to the issuance of municipal securities and we fear that this will lead to a continuation of the market abuses that were promulgated by these firms prior to the enactment of the Dodd-Frank Act. However, it is our hope that the registration rule has been drafted in such a way as to limit the likelihood of this possibility."

Paul Maco, an attorney at Bracewell & Giuliani LLP, said the MSRB will have a lot of work to do in crafting rules parallel to the SEC definition. Maco said the commission has also sent a clear signal that it expects very rigorous economic analysis from the MSRB.

Lynnette Kelly, the MSRB's executive director, said the board will have control over what aspects of the new rulemaking to take up first. One possibility could be a fiduciary duty rule, but it might take time.

"It's important to take a measured pace and a measured approach," Kelly said.

by: KYLE GLAZIER

Lawmakers Lobby Newest SEC Commissioners Over Muni Advisors.

Reps. Steve Stivers, R-Ohio, and Gwen Moore, D-Wis., are urging the Securities and Exchange Commission's newest members to support their bipartisan legislative efforts to narrow the definition of municipal advisor.

Stivers and Moore made their case in a recent letter to Commissioners Kara Stein and Michael Piwowar, who joined the SEC last month, just before the commission's scheduled Wednesday meeting to consider whether to adopt new registration rules and forms for municipal advisors, including provisions that define who non-dealer MAs are.

Stivers and Moore prefer a definition that would apply to individuals engaged for compensation by an issuer or borrower to provide advice on muni issuances and products. That is narrower than a 2010 SEC proposal that did not draw the distinction between those compensated for muni work and those not paid for muni advice specifically.

"As you begin your tenure at the SEC one of the first issues you are likely to encounter is the agency's consideration of a final rule defining municipal advisors," the letter states. "As you and your colleagues on the SEC work to finalize the MA rule, we urge you to adopt a rule that reflects congressional intent and establishes appropriate distinctions among various participants in the municipal securities market."

Stivers, Moore, dealers and other supporters of their bill, H.R. 797, have argued that the SEC's original 2010 rule proposal would have cast a wide net, ensnaring entities that Congress never meant to regulate when Dodd-Frank was enacted. Bank employees providing traditional banking advice to a municipal entity, or appointed governmental board members who serve voluntarily could be forced to register as MAs under the SEC's proposal, supporters of the bill said. The legislation is identical to a bill sponsored by former Rep. Bob Dold, R-Ill., that passed the House last year before dying in the Senate. Dold was not re-elected last November.

Non-dealer MAs and other critics of the legislation, argue it would provide a loophole potentially exempting from registration some of the very entities Dodd-Frank was enacted to regulate For example, broker-dealers would not have to register as long as they were not paid for advisory services.

But Stivers and Moore told Stein and Piwowar that their bill “draws the appropriate lines.”

“The SEC’s MA rule should protect states and localities without threatening the ability to finance infrastructure as efficiently as possible,” the letter concludes.

The lawmakers also released public statements ahead of the SEC meeting, expressing the hope that the SEC follows their lead and hinting that they may continue a legislative push for their path if the commission goes a different direction.

“The Dodd-Frank definition for municipal advisors has affected people who were never intended to be covered by it, from volunteers on local boards to bank tellers,” Stivers said. “I hope the SEC will fix the definition; if not, our bipartisan bill will fix it.”

“I am so pleased that the SEC intends to vote on a rule that could clarify the definition of a municipal advisor,” said Moore. “It is my hope that the ultimate rule follows the model H.R. 797, the Municipal Advisor Oversight Improvement Act of 2013, sets forth. I look forward to seeing the outcome of their vote and how the municipal advisor market can continue serving its vital role in our community.”

by: KYLE GLAZIER

Commission Charges Operator of Miami-Dade County's Largest Hospital with Misleading Investors about Financial Condition.

The Commission today charged the operator of the largest hospital in Miami-Dade County with misleading investors about the extent of its deteriorating financial condition prior to an $83 million bond offering.

An SEC investigation found that the Public Health Trust, which is the governing authority for Jackson Health System, misstated present and future revenues due to breakdowns in a new billing system that inaccurately recorded revenue and patient accounts receivable. The Public Health Trust projected a non-operating loss in the official statement accompanying the bond offering in August 2009, but reported a figure that was more than four times lower than what was ultimately reported at the end of the 2009 fiscal year. The Public Health Trust also failed to properly account for an adverse arbitration award, and misrepresented that its financial statements were prepared according to U.S. Generally Accepted Accounting Principles (GAAP).

The Public Health Trust has agreed to settle the SEC’s charges.

“The Public Health Trust fell short in its obligation to maintain adequate accounting systems and controls that ensure truthful disclosures to investors about its financial condition,” said Eric I. Bustillo, Director of the SEC’s Miami Regional Office. “The Public Health Trust used stale numbers to calculate its revenue figures and lacked any reasonable basis for projecting losses that were far less than reality.”

Mark Zehner, Deputy Chief of the SEC Enforcement Division’s Municipal Securities and Public Pensions Unit, added, “Investors must be able to rely on the financial information accompanying municipal bond offerings. We will continue to scrutinize financial statements provided to investors and pursue municipal issuers who aren't providing accurate information to the public."

According to the SEC's order instituting settled administrative proceedings, the official statement accompanying the bond offering represented that the Public Health Trust (PHT) projected a $56 million non-operating loss for its fiscal year ending Sept. 30, 2009. Several months after the bonds were sold, external auditors discovered problems with the PHT's patient accounts receivable valuation. This discovery required a large accounting adjustment to the reported net income, and the PHT ultimately reported a non-operating loss of $244 million for fiscal year 2009 – more than four times the projection made to bond investors.

The SEC's order found that the PHT was aware of the rising level of patient accounts receivable and declining cash-on-hand prior to the bond offering, which caused concern among trustees and executive management. They raised questions about the accounts receivable amounts and collection rates that were used to calculate the PHT's revenue figures. The $56 million non-operating loss amount included in the bond offering's official statement was generated by the budget department using stale cash collection numbers amid the known problems with the new billing system. The budget department was not updating its collection rates in a timely fashion due to a lack of adequate communication among departments. Therefore, the PHT lacked a reasonable basis for its loss projection, and the official statement was materially misleading.

The SEC's order also found that the PHT failed to properly account for a December 2008 arbitration award that negatively impacted patient accounts receivable in its 2008 audited financial statements that were attached to the bond offering's official statement. The arbitration award required the PHT to pay a third-party receivables company $3.9 million in cash, and transfer to the company $360 million face amount of existing accounts receivable and $250 million face amount of future accounts receivable. The PHT failed to perform an analysis to determine the value of the replacement accounts receivable awarded to the third-party company. The analysis is required under the relevant accounting standards in order to evaluate whether to accrue an expense related to the arbitration award or disclose the arbitration award in the notes to its financial statements. Without the proper analysis, the PHT failed to accurately account for the arbitration award in the audited financial statements.

The SEC's order directs the PHT to cease and desist from committing or causing any violations of Sections 17(a)(2) and (3) of the Securities Act of 1933. The PHT neither admitted nor denied the SEC's findings. The Commission determined not to impose a monetary penalty due to the PHT's current financial condition. The Commission also considered the PHT's cooperation with the investigation and the remedial measures undertaken.

The SEC's investigation, which is continuing, has been conducted in the Miami office by members of the Municipal Securities and Public Pensions Unit, including Brian P. Knight, Sean M. O'Neill, and Fernando Torres under the supervision of Jason R. Berkowitz. The investigation followed an examination conducted by Paul Anderson under the supervision of Nicholas A. Monaco and the oversight of John C. Mattimore. (Press Rel. 2013-181; Rel. 33-9450)

SIFMA and GFOA Submit Comments to SEC Regarding Proposal to Amend MSRB Rules G-8, G-11 and G-32 in regards to Retail Order Periods.

Securities Industry and Financial Markets Association (SIFMA) and Government Finance Officers

Association's (GFOA) Governmental Debt Management Committee provide comments to the Securities and Exchange Commission (SEC) on the proposed rule changes filed by the Municipal Securities Rulemaking Board (MSRB) to MSRB Rules G-8, G-11 and G-32 to include provisions specifically tailored for retail order periods.

SIFMA and GFOA submit this supplemental comment letter to encourage the SEC to ensure that an appropriate course of action is followed for this amended Proposal, and to strongly suggest that it be published with an opportunity for the public to comment.

http://www.sifma.org/comment-letters/2013/sifma-and-gfoa-submit-comments-to-sec-regarding-proposal-to-amend-msrb-rules-g-8,-g-11-and-g-32-in-regards-to-retail-order-periods/

Miami Settlement Unlikely.

The Securities and Exchange Commission, Miami, Fla., and the city's former budget director agree they are unlikely to settle a bond-related securities fraud case and that the trial will be lengthy, according to a joint scheduling report they filed with a federal court in Miami.

The scheduling document, filed Wednesday with the U.S. District Court for the Southern District of Florida, indicates that attorneys for all parties involved agree a trial is likely to take more than 10 days.

The case stems from an SEC lawsuit filed July 19, charging Miami and its ex-budget director Michael Boudreaux with three counts of securities fraud for making "numerous material misrepresentations and omissions to investors" in 2009 bond offering documents and financial statements about interfund budget transfers that were designed to "mask" a deficit in the city's general fund.

Lawyers representing Miami have denied wrongdoing and vowed to "vigorously defend" the city against the SEC suit. Those involved see little chance the matter will be settled without a trial, according to the scheduling report.

"The parties have already had discussions regarding the resolution of this matter and will continue to discuss the likelihood of settlement," the filing states. "At this time they do not believe a settlement of this case is likely."

Bond lawyers view the case as an important precedent for SEC enforcement against municipal issuers, as it is the first time the commission has charged a municipality with violating a previous cease and desist order. Miami had agreed to a cease and desist in 2003 for similar fraudulent conduct. The case also represents a rare case of the SEC seeking a civil financial penalty against a municipality, something the commission has been historically hesitant to do because the burden of such penalties ultimately falls on taxpayers.

The fact that the SEC charged Boudreaux also signals the commission's seriousness in holding individual public officials responsible for securities law violations, something SEC commissioners have called for but which has frequently not occurred.

The proposed deadlines included in the scheduling report indicate that the matter could play out over a period of almost two years. The filing includes a Sept. 30 deadline for defendants to file responses to the SEC complaint, including motions to dismiss the case. If the scheduling holds, the SEC would then have until Nov. 1 to file its own replies to those responses and motions and the trial period would commence on June 1, 2015.

Christopher Martin and Amie Berlin signed the document as senior trial counsel for the SEC. Scott Cole of Cole, Scott, & Kissane, P.A. signed for Miami. Benedict Kuehne of Benedict P. Kuehne, P.A. represents Boudreaux.

by: KYLE GLAZIER

Fidelity: Money Market Reform Could Hike Muni Borrowing Costs.

(Reuters) – Fidelity Investments, the largest provider of U.S. money market funds, told Securities and Exchange Commission officials that proposed industry reform could increase the borrowing costs of U.S. municipalities by up to $13 billion, according to an SEC memo.

During an Aug. 16 meeting with the SEC's Division of Economic and Risk Analysis, Fidelity officials said U.S. municipal financing costs could increase anywhere from $1 billion to $13 billion, depending on the amount of money market-related funding that is refinanced with more expensive debt.

A Fidelity slide presentation with the figures was part of the discussion with regulators, according to the memo Reuters obtained on Wednesday.

Money market funds currently provide low-cost financing to U.S. states and cities by buying the short-term debt they issue to fund their operations.

Social Media Privacy Bills May Hinder Advisor Compliance.

The Financial Services Institute warned today that 70 social media bills in state legislatures could conflict with Finra advisor regulations.

Privacy provisions in the bills could prevent advisors from fulfilling their supervisory and record-keeping responsibilities under state and federal securities laws and regulations, said Bob Webster, spokesman for the the North American Securities Administrators Association (Nasaa), which is working with Finra and the Securities Industry and Financial Markets Association (Sifma) to seek corrective action on the measures.

"Many of these bills fail to include a carve out that would allow [broker-dealers] and [investment advisors] to access the social media accounts used by their agents and reps for business purposes," Webster said.

Noting that many of the bills are designed to protect the privacy of personal social media sites, Finra spokesperson George Smaragdis said the regulator has never said that firms are required to conduct routine surveillance of representative's personal social media, nor have we said they must obtain passwords and user names to keep on file "just in case."

"Firms that prohibit employees from conducting the firm's business using particular social media sites, or any social media sites, must follow up on red flags that may indicate that an associated person is not complying with firm policies," he said.

Smaragdis added Finra has been in contact with 12 states about proposed legislation.

In a letter to Colorado legislators, Finra said it wants state laws to accommodate the obligations of registered broker-dealers under federal law to supervise their employees' use of personal accounts or services for business purposes.

The letter said the objective may be accomplished through a specific exemption for broker-dealers whose employees use a personal account or service for business communications.

To increase awareness of state legislation affecting advisors and to encourage individual lobbying, FSI is adding an advocacy action center to its Web site with an interactive map that has information on 350 bills it is following.

The announcement was made at FSI's Investor Advisor Summit in Washington, D.C.

MSRB Files with SEC Revised Amendments to MSRB Rules on Retail Order Periods.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission revised amendments to MSRB Rule G-8, Rule G-11 and Rule G-32 on retail order periods.

The revised amendments are in response to comments received by the SEC on the MSRB's original rule filing, which aimed to address concerns that new issues of municipal bonds are not being distributed among different types of retail investors according to the preferences of the state or local government issuing the bonds.

The revised rules can be found at:

http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/~/media/Files/SEC-Filings/2013/MSRB-2013-05%20Partial%20Amendment%201.ashx

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WSJ: Muni Advisers Face Tougher SEC Rules.

Regulators are set to finalize long-delayed rules to rein in advisers who help states and localities raise cash in the $3.7 trillion municipal-bond market, a move aimed at protecting taxpayers from the types of complex transactions that soured during the financial crisis.

The Securities and Exchange Commission is expected this month to finalize rules that would require the federal registration and oversight of municipal financial advisers, according to people familiar with the matter. Such advisers are firms, often affiliated with banks, hired to work with states and localities to time, market and price municipal-bond transactions.

The rules come as the SEC grapples with a host of problems in the muni market, including what it sees as lackluster disclosures for investors. The SEC has cracked down on municipalities for failing to keep investors apprised of their financial health and the agency has turned to Congress to boost its limited authority in the market. Muni issuers currently are exempt from the disclosures corporations must make when they sell securities.

As part of the 2010 Dodd-Frank law municipal advisers must register with the SEC, adhere to a series of forthcoming rules from the Municipal Securities Rulemaking Board and adhere to a fiduciary duty to put their clients' interests ahead of their own. Only bank-affiliated advisers were previously subject to any federal oversight.

Lawmakers pushed to increase oversight of municipal advisers in the wake of financial debacles in localities like Jefferson County, Ala., where officials and Wall Street firms repeatedly used complex payment arrangements known as interest-rate swaps as a vehicle for kickbacks and other types of fraud.

The new rules seek to prevent similar occurrences by ensuring municipalities have competent financial advisers.

SEC officials have settled on a plan to scale back the agency's original December 2010 proposal, a concession to lawmakers and other critics who said the initial draft was too broad and would have ensnared too many individuals who work in public finance, according to people familiar with the matter.

The agency now is expected to exempt individuals appointed by governors and other elected state officials to serve on the governing boards of thousands of bond-issuing authorities throughout the country, including university systems, public power utilities and housing finance agencies. Such individuals don't typically provide advice on the structure of deals but vote to approve bond transactions and usually adhere to state fiduciary duty requirements.

SEC officials originally planned to include these individuals over concerns that, unlike elected officials, they were unaccountable to taxpayers and should be regulated at the federal level if they played a significant role in deciding how and when to issue bonds.

That proposal triggered pushback from Congress. More than two dozen lawmakers urged the SEC to limit the definition of "financial advisers" to paid, external professionals, saying subjecting appointed officials to extensive regulations and federal paperwork goes beyond the intent of Dodd-Frank and would make it difficult for states to recruit individuals to serve.

SEC Chairman Mary Jo White, at a congressional hearing in May, said the agency would scale back the rules in response to more than 1,000 comment letters. "The staff is developing a recommendation for final rules that we anticipate will address these concerns," she said. The agency also plans to clarify the rules' impact on banks offering traditional banking products and services to municipalities as well as the handling of municipal investments unrelated to muni bonds.

Thomas Gleason, executive director of the Massachusetts Housing Finance Agency, said Dodd-Frank's intent was to regulate "true third-party advisers."

"It just seems like common sense to exclude board members of municipal-bond issuers from the definition of municipal advisors," Mr. Gleason said.

Bond Dealers of America Sends Comment Letter to SEC Study Regarding Obligations of Brokers, Dealers, and Investment Advisers.

BDA recently commented on the current study the SEC is conducting on the effectiveness of the existing legal or regulatory standards of care for brokers, dealers and investment advisers when providing personalized investment advice and recommendations to retail investors and whether there are gaps, shortcomings or overlaps in the protection of retail customers. The comment letter is available at:

http://www.bdamerica.org/wp-content/uploads/2010/12/8-10BDA-comments-File-No.-4-606-Retail-Standard-of-Care.docx

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Gallagher's 'Blood Oath' to Keep Focus on Munis.

Securities and Exchange Commission member Daniel Gallagher has sworn to take up the cause of municipal market reform at the SEC, accepting the baton from Elisse Walter, who recently left the commission.

Many of the recommendations included in the commission's comprehensive 2012 report on the municipal market remain unimplemented, and muni issues have been slow to gain traction with federal policymakers and lawmakers. But the Republican commissioner, who took office in November 2011, said he is ready to push for some of those recommendations, particularly those on price transparency.

"I can tell you that I'll be pushing for us to continue to focus on these issues, especially with my former colleague Elisse Walter leaving," Gallagher said. "She was a real driving force for all this. We have a sort of blood oath between the two of us. I'll keep the flame lit here and make sure we continue to focus on these issues."

In fact, Gallagher would like to see more focus on fixed-income issues generally at the SEC.

"If I had my way, if I was king for a day, we would have the whole associate director group on fixed-income and trading and markets. We'd have 50 people."

The SEC's agenda is the prerogative of chairman Mary Jo White, who assumed leadership of the commission in April. Gallagher said that while he has no direct control over the SEC's schedule, he and other commissioners can and will weigh in on issues of special importance to them. Gallagher pointed out that while White has been getting acclimated to her role, former Senate staffers Kara Stein and Michael Piwowar also became new commissioners last month, meaning that they, too, have a lot of catching up to do.

"I know that chair White is getting up to speed on everything about the agency and that she takes fixed-income issues generally very seriously," said Gallagher. "I will be pushing hard to make sure fixed-income issues generally, munis specifically, are at the forefront. I think she knows, obviously, that we need our muni advisor rule out."

The Dodd-Frank Act mandated SEC oversight and Municipal Securities Rulemaking Board regulation of non-dealer municipal advisors in 2010, but implementation has been hampered by the SEC's failure to define the term. The SEC's initial definition of an MA, included in proposed registration rules, generated intense resistance from lawmakers and market participants, who said it cast too wide a net, covering individuals appointed to governmental boards and professionals already regulated.

Reps. Steve Stivers, R-Ohio, and Gwen Moore, D-Wisc., have sponsored legislation to define MAs more narrowly. The bill would apply to individuals engaged for compensation by an issuer or borrower to provide advice on muni issuances or muni financial products. It contains exceptions for dealers seeking to be underwriters or placement or remarketing agents and those providing related advice, as well as bankers, swap dealers and governmental board members.

Gallagher said the commission would release its definition soon, and blamed the extensive delay on mandatory time lines imposed by Dodd-Frank.

“The [initial] proposal was really bad, to put it bluntly,” he said. “It was way too expansive, it generated way too much comment and push back, it generated way too much interest on [Capitol] Hill. And so it just became controversial when it shouldn’t have. And it doesn’t mean the staff didn’t do a good job. It doesn’t mean that the staff isn’t excellent. It just means that a lot of these Dodd-Frank rules have very arbitrary deadlines where the agency rushed to get the proposals out in a vain attempt to actually look like we were going to hit those deadlines. The proposals weren’t as good as SEC proposals usually are.”

Muni Report

“I’m focusing on the final product and hoping to get that out, and hoping it is as good as it seems like it is,” he said.

Gallagher signed the muni market report and is generally supportive of its goals, particularly the recommendations for the SEC or MSRB to take administrative action to improve price transparency.

He is not sure about the recommendations for legislative action to allow the SEC to dictate the form and content of issuers’ muni disclosures.

“I worry, obviously,” Gallagher said. “I don’t think we have the authority. I know the report raises that issue. It says we’re not denied the authority. I think we’d have to be pretty creative to go after that.

I’ve got to tell you I personally think that if that’s something we’re going to move to, that’s something that Congress should take up.”

Any such legislation would likely be very controversial. Gallagher said a “more realistic” would be to push issuers and other market participants to voluntarily improve their disclosure practices.

Asked about the SEC’s recommendation that Congress give it authority to require issuers to use generally accepted accounting principles set forth by the General Accounting Standards Board, Gallagher said he would prefer urging issuers to disclose whether they are using the GASB standards and, if not, what kind of accounting systems they are using.

Gallagher said he has spoken to White about striking a balance between legislating that has to be done by Congress and rulemaking that the SEC can do itself.

“One of the things I’m impressing with chair White, and I know she understands is very important, we need to have a healthy mix of mandated rulemakings from Congress but also voluntary things,” he said.

He said he is very much concerned about state and local pension liabilities and whether governments are accurately disclosing their pension problems. But he noted the SEC has brought enforcement cases in this area and said he expects that focus to continue from an enforcement standpoint.

Financial Crisis

But the SEC's new muni-market flag bearer was cautious about wading back into the water as a commissioner, having endured what he characterized as an "intensely traumatic" time as deputy director at the commission's trading and markets division during the 2008 financial crisis, when he spent a lot of time on the floor of Lehman Brothers, a firm that collapsed as a result of the crisis.

The Philadelphia native first joined the SEC in January 2006, serving as counsel to Commissioner Paul Atkins and later to SEC chairman Christopher Cox.

"All this gray hair came in 2008. I did my time," he said. "It was an awful period. Professionally, personally, it was just one of the worst periods ever."

Gallagher left the SEC in January 2010 to become a partner in the Washington office of WilmerHale, where he was making more than $1 million per year. He said his work at the firm was a good fit for him and that private practice always provides some independence.

He had seen Cox and former SEC chair Mary Schapiro unfairly maligned by Congress, the press, and the public in the aftermath of the financial crisis and the Bernard Madoff ponzi scheme scandal. "We were attacked. This agency was attacked during the crisis. Unfairly. Some things fairly, but mostly unfairly," he said.

Speaking of Cox, who was portrayed as uninterested and ineffectual during the financial crisis in 2008, Gallagher said he was dismayed at what he perceived to be a highly inaccurate portrayal of the man whom he worked closely with. "He's brilliant. High, high IQ, high functioning man. This notion that he's some buffoon I think is insanely unfair. That's the peril."

"Who wants to be sitting here when this stuff blows up?" he asked, noting that at the SEC, commissioners and officials are closely scrutinized by Congress, the press, the public, the industry, other market participants and investors.

But when a Republican seat on the commission needed filling, Gallagher was seen as the perfect candidate, one who would be well-equipped to know which Dodd-Frank rules were needed and which were overkill, given his role in the center of the maelstrom that led to the new law.

"The Senate Republicans were looking for someone who could deal with the Dodd-Frank implementation. A lawyer who could handle the rules, and somebody who knew the building," he said. "To wade back into it was not an easy decision, but at the same time, it was an honor to be asked."

From the commissioner's chair Gallagher has been one of few appointees to speak publicly about muni bond issues. He is a critic of much of Dodd-Frank, an advocate for tough enforcement against municipalities and muni officials who commit fraud, and a proponent of more investor education focused on the fixed-income markets.

Dodd Frank and SROs

Gallagher said that while he is glad Dodd-Frank mandated the reviving of an independent Office of Municipal Securities that reports directly to the SEC chairman, he thinks the mandates in that and other legislation risk harming the market and warping the role of self-regulatory organizations like the Municipal Securities Rulemaking Board.

“I’ve been very public with my dislike of Dodd-Frank,” Gallagher said. “I’m just hoping that we’re not inserting too many frictions and costs into the space.”

Gallagher said Dodd-Frank’s requirement that the MSRB have a majority public board is an example of how SROs have been transformed into arms of the federal government, rather than the self-regulators they were intended to be.

“I don’t like dictating things like that,” he said. “I think the SROs have gotten so far away from being truly SROs, that we have to be very mindful of that here. That they’re just arms of the federal government, or they’re so strictly controlled by the federal government through these prescriptive requirements like the majority-public [board], that they’re getting too far away from what they’re supposed to be. They’re supposed to be groups of the regulated.”

Instead, the SEC should provide oversight and step in if the SROs are not fulfilling their missions. Gallagher said.

“If they’re not doing a good job, if they don’t have vibrant rules or they’re not enforcing them, that’s what we’re there for,” he said. “But they’re not supposed to be arms of the federal government.”

The commissioner said he is on board with the SEC’s initiative to crack down on muni violators of federal securities laws, a philosophy that has resulted in a string of enforcement cases throughout 2013 and that many market participants believe will continue under the leadership of White, who was known as a tough prosecutor of financial crimes.

Gallagher fired one of the opening salvos on this issues in a May 10 speech at the 45th Annual Rocky Mountain Securities Conference in Denver, Colo.In that speech, he called for individuals to be held accountable when they violate securities laws or rules. He cited the SEC’s case against Harrisburg, Pa., which did not single out the alleged misconduct of any individual city officials or employees. Gallagher said he sympathizes with public officials but does not believe the commission should shy from playing hardball when violations occur.

“Municipalities don’t commit frauds, people do,” he told The Bond Buyer. “I think traditionally there has been a reluctance to go after fellow public servants in this space. Folks who truly are, sometimes might just be, overwhelmed. You want to always encourage public service involvement. At the same time, they’re accessing the capital markets. Just the way a corporate issuer accesses the capital markets. They’re selling to investors.”

Gallagher added that the extremely high rate of retail investor participation in the municipal market means SEC oversight might be even more key, because other markets do not have such high participation rates of less sophisticated investors who require more protection.

“In many ways, what they’re selling is much more dear to us here and our mission,” he said.

Gallagher has spoken out repeatedly about a lack of investor knowledge in the fixed-income markets, which includes municipal as well as corporate bonds. He created a stir in April at an SEC roundtable on fixed-income securities when he warned of a possible muni bond “Armageddon” that could follow when the Federal Reserve Board stops holding interest rates at an artificially low level. He said later that he did not intend for the remarks to be as dramatic as they became, but he remains very concerned by studies that show a very low percentage of bond investors really understand the ins and outs of the financial products they are purchasing. However, his remarks turned out to be “the best free investor education that the agency could have ever had,” he said.

Investors “have no clue what it means when interest rates go up,” Gallagher said. “Literally no clue.

More than half, they couldn't tell you the simple impact of an interest rate rise on their fixed income investment. That's horrifying. It really is. It blows my mind. It really scares me."

If investors simply held their bonds, the damage would be minimal and they would at least not lose principal, he added.

"Unfortunately what you'll see is, especially with some more unscrupulous registered representatives and financial advisors, folks are selling their muni bonds prior to maturity. And they're getting killed. They're getting scalped on the fees, and they have no concept how that plays out to their overall investment. Every bit of their tax advantage that they experienced while they held it is out the window with the fees that they pay coming in and certainly going out. Folks don't get that. There's a real lack on the investor education side there. It's something that really worries me."

Like Walter, Gallagher has emerged as a force pushing for more transparency in the muni market. He said the SEC should encourage the use of alternative trading systems, but that he would oppose mandating it. He believes the muni market should have its own best execution rule, and said he does not understand the resistance of broker-dealers to using the term "best execution."

The Securities Industry and Financial Markets Association has floated an "execution with diligence" rule, but Gallagher said the rule should be called "best execution" and might be better written by the Financial Industry Regulatory Authority, which already has such a rule for corporate debt.

"We all know what it is, at a very general level. And if you want to spend more time, I think FINRA would be better suited than us right now at developing a really good best ex rule in the space," he said. "I don't understand the resistance. It should be embraced."

Money Market Funds

Gallagher finds himself a bit at odds with state and local groups over the issue of money market fund reform proposals the SEC released in June. One of those proposals would require most money market funds, excluding government funds and "retail" funds that restrict redemptions to $1 million per day, to use a "floating" net asset value rather than the current fixed $1 per share rate.

The proposals, which also include redemption fees and gates, are designed to prevent panic-driven runs on MMFs, similar to the ones that occurred in 2008 during the financial crisis after. Gallagher has always supported floating the NAV, but voted against an earlier reform proposal because it contained a so-called "capital buffer" rule requiring funds to keep a certain amount of capital in reserve.

State and local officials and groups have said the floating NAV would damage the usefulness of MMFs as an investment vehicle by reducing their liquidity. Issuers often use money funds to meet short-term cash needs and have also expressed concerns that switching to a floating NAV would require costly overhauls of their financing systems. Gallagher said he and other commissioners certainly remain open-minded to comments, but that he thinks the revised proposals focus on prime funds and give the muni issuers alternatives to floating rate NAV.

"In a worst-case scenario, if given their state law or other contractual arrangements they can't use a floating NAV, they need a constant NAV, they'll have the government funds to go to," he said. "So then you ask yourself the question: 'Do I want my state treasurer seeking yield in prime institutional funds when there's a government fund available? Is that the best way to use taxpayer dollars in the state? Is that how a fiduciary should be functioning?' Could be yes, seeking out extra yield, but if what we've heard and what we've studied about the risks inherent in prime institutional funds are real, then you really have to ask yourself the question: 'Should that be a place where you're putting taxpayer dollars?'"

One concern that nags him is the lack of resources for fixed-income and muni securities.. Recalling his stressful days following the Lehman Brothers bankruptcy in 2008, Gallagher said the lack of attention paid to these markets shocked him.

"People say, 'Oh, what kept you up at night? Was it Lehman or the auto industry?' It was the muni markets. Erik Sirri, who was the division director at the time, he and I were horrified that we had [only] two full-time employees [on munis]," he said referring to then-muni chief Martha Haines and Mary Simpkins "We no longer had a real office of municipal securities. We had two full-time, very capable employees, but two, for a $3.7 trillion market?"

At that time, the SEC had reached multi-million dollar settlements with a number of firms over auction rate securities, that not only required them to pay penalties, but also mandated them to buy back at par the ARS they sold to retail investors. Sirri and Gallagher were afraid the crisis would limit the firms' abilities to carry out those agreements.

In addition, when the Reserve Primary Fund broke the buck in September 2008 and led investors to withdraw $310 billion from prime money market funds, SEC officials started worrying about the potential for withdrawals from muni money market funds — a concern that led the Obama administration to set up a temporary federal guarantee program.

Gallagher said if he had his way, he'd have dozens of people tackling fixed-income issues on a daily basis.

"We're still so, so far away from where we need to be. We have policy issues to address, many of which are in the muni report. Almost all of which came up in the fixed-income roundtable. We have internal resource issues."

He said he doesn't expect Congress will give the SEC funds for this. "We have to do it ourselves," he added. "I hope we will."

The fixed income roundtable held earlier this year was one of Gallagher's major requests of then-chairman Walter when he first became a commissioner, he said, adding he was glad to see the enthusiasm by both participants and commissioners. The simple act of talking about fixed income markets might seem basic, but represents progress in focusing a bit more on a part of the market that is not stocks, he said.

"It's one of those things, where Congress beats you up about the equities markets, where the media beats you up about the equities markets. That's what you resource," he said. "That's what you pay attention to because you know you're going to get called out on it. An it's called the Securities and Exchange Commission, right? We focus on exchanges, and there are no exchanges on the fixed-income side. It's institutional behavior and we need to break it. We need to resource it, we need to get expert, and we need for investors to have a hell of a lot more information [on fixed-income]."

by: KYLE GLAZIER

National Federation of Municipal Analysts submits comment to the SEC on Proposed Rule Change to Amend MSRB Rule A-3.

The NFMA submitted a comment to the SEC on a Proposed Rule Change to Amend MSRB Rule A-3, on Membership on the Board, to Modify the Standard of Independence for Public Board Members, dated August 26, 2013.

http://www.nfma.org/assets/documents/position.stmt/sec.msrb.rulea3.8.13.pdf

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FINRA Fines Morgan Stanley $1M for Unfair Pricing.

The Financial Industry Regulatory Authority announced Thursday that Morgan Stanley & Co. LLC and a subsidiary have agreed to pay $1.19 million in fines and restitution for unfair pricing of muni and corporate bonds in transactions with customers.

FINRA found that in 165 municipal bond transactions, Morgan Stanley and Morgan Stanley Smith Barney, a joint venture of the firm and Citigroup, failed to purchase or sell bonds at prices reasonably related to fair market value.

The muni transgressions include violations of the Municipal Securities Rulemaking Board's Rule G-17 on fair dealing and G-30 on prices and commissions.

G-17 requires broker-dealers to deal fairly with customers and G-30 prohibits dealers from purchasing munis for their own accounts from customers, or selling munis from their own accounts to customers, at aggregate prices that are not fair and reasonable, taking into consideration all relevant factors. These factors include the best judgment of the broker-dealer as to the fair market value of the securities at the time of the transaction.

The firm will pay a fine of $1 million and $188,000 in restitution plus interest, FINRA said. The MSRB is to be allotted $560,000 of the fine.

The total amount of restitution owed as a result of the violations, FINRA said, was $452,280.90, more than $250,000 of which stemmed from MSRB violations. However, Morgan Stanley already made considerable restitution payments.

The violations occurred during several quarters over three years that were examined by FINRA, including the third quarter of 2008, second quarter of 2009, first quarter of 2010, fourth quarter of 2010, and the third quarter of 2011. Morgan Stanley was previously fined $1 million in October 2011 for similar conduct that FINRA alleged the firm had engaged in between 2003 and 2010.

Morgan Stanley was also dinged for unfair pricing in 116 corporate and agency bond transactions.

"Firms must ensure that customers who buy and sell securities – including corporate, agency, and municipal bonds – receive execution prices that are consistent with prices available in the marketplace," said Thomas Gira, executive vice president of FINRA Market Regulation. "FINRA will continue to sanction firms that execute fixed income transactions for their customers at unfair prices, and will require firms that violate such standards to reimburse customers."

Morgan Stanley neither admitted nor denied FINRA's findings, but pointed out that the infractions alleged by the authority were a small percentage of the firm's dealings during those time periods.

“Morgan Stanley Wealth Management is committed to seeking the best execution reasonably available for our clients,” said managing director James Wiggins. “We fully cooperated with FINRA’s investigation. The settlement involved fewer than 300 fixed income transactions over a four-year period during which some four million such trades were conducted. FINRA did not allege any willful or fraudulent conduct by the firm. Morgan Stanley will make restitution to the affected clients.”

by: KYLE GLAZIER

FINRA Fines Four Firms, Two Individuals $270,000 For Muni Violations.

The Financial Industry Regulatory Authority fined four firms and two individuals a total of $270,000 for violations of municipal securities rules, FINRA announced this month.

The firms and fines included: Edward D. Jones & Co. with $160,000, Alluvion Securities LLC with $45,000, Robert W. Baird & Co. with $45,000, and Tullet Prebon Financial Services LLC with $5,000. Alluvion chief executive officer John Jumper accepted a $10,000 fine, and former Morgan Stanley Smith Barney representative Norbert Price agreed to a $5,000 fine and a one-month suspension.

FINRA alleged that, in 87 transactions between Oct. 1 and Dec. 31 2008, St. Louis-based Edward Jones sold securities for the firm’s own account at prices that were not fair and reasonable. That conduct is a violation of the Municipal Securities Rulemaking Board’s Rule G-17 on fair dealing, as well as Rule G-30 on prices and commissions. Without admitting or denying FINRA’s findings, the firm agreed to pay the fine.

FINRA tagged Memphis, Tennessee¬-based Alluvion for several distinct violations. On Feb. 2, 2012, FINRA found, Alluvion failed to provide an official statement to customers whose transactions settled that day. The firm filed the OS three days late, FINRA said, during which time 31 affected transactions totaling $10.7 million took place. Alluvion was 96 days late in filing an official statement to EMMA following a June 24, 2011 bond transaction, FINRA alleged. Both those actions are violations of MSRB Rule G-32 on primary offering disclosure.

FINRA further found that Alluvion failed to abide by Rule G-37 on political contributions by failing to file a form G-37 detailing which issuers the firm did muni business with in the first quarter of 2011. Finally, FINRA said, Alluvion violated Rule G-27 on supervision by failing to have adequate policies in place designed to ensure compliance with securities rules. Alluvion neither admitted or denied the findings.

Baird, based in Milwaukee, Wis., violated G-17 and G-30, FINRA said. According to FINRA, the firm sold securities at unreasonable prices during two stretches between July 1 and Sept. 30, 2009 as well as between Jan. 1 and March 31, 2011. The firm neither admitted nor denied the findings.

London-based Tullett Prebon, which has offices in the U.S., accepted a fine for failing to accurately report time of trade or other required information on more than 100 transactions between Oct. 1 and Dec. 31 2010. The firm also agreed to pay $220,000 in non-muni violations

Jumper agreed to his fine and a censure in connection with Alluvion’s failures to file official statements, FINRA said. The firm’s procedures designate Jumper as having responsibility for ensuring Alluvion’s compliance with securities rules, and by failing to do so he violated G-27, FINRA said. Jumper also did not admit or deny the authority’s findings.

"The fine imposed was based on our disagreement with FINRA of the accrual audit and other expenses which we were not told to do in the past several years and they found fault with it in our last review," Jumper said. "As far as other compliance matters, we engaged the firm of Regulatory Compliance to assist us in review of our compliance. As far as MSRB matters, EMMA indicated we were three days late, our emails indicated we were on time. We simply agreed to negotiate a settlement with FINRA rather than have a protracted argument, which only would cost more time."

Price, whose association with Morgan Stanley Smith Barney ended in April 2012, violated FINRA Rules 2010 and 2210 by sending out a deceptive email to prospective investors, the authority alleged. The email purported to offer an investment opportunity, but was not properly approved by a principal of the firm and contained information that was "incomplete and oversimplified," FINRA said. Without admitting or denying the findings, he agreed to the fine and one-month suspension. Price is not currently registered with any FINRA member firm.

by: KYLE GLAZIER

MSRB Reminds Dealers of August 22, 2013 Effective Date for Amendments to Rule G-39.

The Municipal Securities Rulemaking Board (MSRB) reminds dealers that amendments to MSRB Rule G-39, which prohibits dealers from engaging in deceptive and other abusive telemarketing practices, become effective on August 22, 2013.

http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-12.aspx

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SIFMA Launches Broker Protocol Information.

SIFMA is the administrator of the Protocol for Broker Recruiting (Broker Protocol), governing the use of client information when registered representatives (RRs) move between participating firms. The Protocol governs the use of client information when RRs move between firms that are signatories to the Protocol, with the stated principal goal of furthering clients' interests in privacy and freedom of choice in connection with the movement of their registered representatives. There is no fee to become a signatory to the Broker Protocol. Sign up today!

Since May 2010, SIFMA has administered the Protocol for Broker Recruiting (also referred to as the Broker Protocol).

A copy of the Protocol can be found here:
http://www.sifma.org/uploadedfiles/services/standard_forms_and_documentation/broker_protocol/brokerprotocol.pdf?n=21616

The Protocol was originally executed in 2004 between Citigroup Global Markets Inc. ("Smith Barney"), Merrill Lynch, Pierce, Fenner & Smith Incorporated, and UBS Financial Services Inc. The Protocol governs the use of client information when registered representatives move between firms that are signatories to the Protocol, with the stated principal goal of furthering clients' interests in privacy and freedom of choice in connection with the movement of their registered representatives.

There is no fee to become a signatory to the Protocol. A firm interested in joining should sign the joinder agreement (a copy of which can be found here) and send it to SIFMA. Please also submit the name, phone number, and e-mail address of your firm's contact for purposes of the Protocol. Signed copies of the joinder agreement and firm contact information can be submitted to SIFMA:

By fax to 202-962-7305;

By mail to 1101 New York Avenue NW, Washington, DC 20005, Attn: Broker Protocol; or

By email to brokerprotocol@sifma.org

Please submit the joinder agreement and contact information using only one of the methods specified above. A firm's joinder to the Protocol is effective on the date the firm's signed joinder agreement and contact information are received by SIFMA.

SIFMA distributes by email weekly to all firms that have joined the Protocol a list of the signatory firms and their contact information.

If you have any questions concerning the Protocol, please contact SIFMA by email at brokerprotocol@sifma.org.

MSRB: Request for Comment on Proposed Rule Change to Consolidate Registration Requirements.

The Municipal Securities Rulemaking Board ("MSRB" or "Board") is seeking comment on proposed rule changes that would set forth in a single rule the requirements to and process by which brokers, dealers and municipal securities dealers ("dealers") and municipal advisors (collectively "regulated entities") register with the MSRB. The substance of the single rule would be similar to that of existing rules, with the exception of new requirements to provide additional contact and firm identification information, as well as data concerning the scope of dealer activities. The proposed changes would consolidate the requirements for new MSRB registrants into MSRB Rule A-12 and would eliminate MSRB Rules A-14, on the Board's annual fee, A-15, on the notification to the Board of a change in status or a change of name or address, and G-40, on electronic mail contacts, and modify MSRB Rule G-14(b)(iv). Additionally, the proposed changes would eliminate two existing MSRB forms, Forms RTRS and G-40, and create a single, consolidated electronic registration form, Form A-12.

Comments should be submitted no later than September 20, 2013, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Lawrence P. Sandor, Deputy General Counsel, at 703-797-6600.

BACKGROUND

Currently, regulated entities must reference a series of MSRB rules when registering with the MSRB, as there is no single “registration” rule. Prior to engaging in municipal securities or municipal advisory activities, regulated entities must, consistent with Rule A-12, supply basic identifying information to the MSRB and pay an initial fee. Each regulated entity that changes its name or address, or ceases to be engaged in municipal securities business, whether voluntarily or otherwise, must so notify the MSRB, pursuant to Rule A-15. Also, regulated entities must complete Forms RTRS and G-40, which are required by Rules G-14(b)(iv) and G-40, respectively. These rules require registrants to provide the MSRB with an official contact, as well as other business information, and to provide the MSRB with information necessary to process their transactions correctly, such as their trading symbol. Additionally, under Rule A-14, regulated entities must pay an annual fee upon registration and annually thereafter.

The purpose of the proposed registration rule, revised Rule A-12, is to delineate succinctly and clearly in one location the requirements and process for MSRB registration and to resolve certain other regulatory issues discussed below that are not fully addressed by existing MSRB rules. The proposed changes would result in the elimination of three current MSRB rules, Rules A-14, A-15, and G-40, as well as two forms, Forms RTRS and G-40. These forms would be replaced by the single new electronic Form A-12.

The MSRB believes that the proposed changes will clarify and facilitate the registration process for new registrants, who, as noted, currently must follow requirements spread across several rules and forms. The MSRB staff regularly provides guidance to new registrants regarding registration, and the MSRB believes that a streamlined “registration” rule will reduce the necessity for such staff guidance and the use of outside counsel. The MSRB also believes that relief is warranted for new registrants that register in the last month of the MSRB’s fiscal year in the form of a waiver of the following year’s annual registration fee. This relief is intended to address concerns raised by regulated entities that they must pay two annual fees in a short period of time if they register with the MSRB at the end of a fiscal year. The proposed changes would impose a late fee on those regulated entities that fail to pay certain MSRB fees timely.

SUMMARY OF THE PROPOSAL

Revised Rule A-12 would require regulated entities to register with the Board prior to engaging in any municipal securities or municipal advisory activities. As a precondition to MSRB registration, dealers and municipal advisors would be required to register with the SEC, notify the Financial Industry Regulatory Authority (“FINRA”) or the appropriate bank regulator, as applicable, complete Form A-12 and pay the initial and annual registration fees. Necessary information collected previously on Forms RTRS and G-40 would be collected on Form A-12. This includes information regarding a dealer’s executing broker symbol assigned by NASDAQ and any participant member identification assigned by the National Securities Clearing Corporation. It also includes other trade reporting information and contact information currently collected on Form RTRS and Form G-40.

Under the proposed changes, rather than provide a primary electronic mail contact, the registrant would provide contact information on Form A-12 for a primary regulatory contact, optional regulatory contact, master account administrator, billing contact, compliance contact, data quality contact, and optional technical contact. For dealers, the primary regulatory contact would be required to be a registered principal. It would be the responsibility of the primary regulatory contact to receive official communications from the MSRB, similar to the role of the primary electronic mail contact under Rule G-40.

Based on questions from regulated entities as to whether they can reference their status as an MSRB registrant in advertising and, if so, how to do so, the rule change provides that, once registered, a regulated entity may use the designation “MSRB registered” in its advertising, including on its website.

The initial and annual fee amounts would remain unchanged, though the MSRB will review its fee structure periodically. The annual fee would continue to be due by October 31 each year, but revised Rule A-12 would provide that a regulated entity that registers in September and pays an annual fee at the time of registration need not pay the annual fee for the following fiscal year. Consistent with the practices of other SROs, the MSRB will institute late fees as a means to encourage timely payment of fees. Any registrant that fails to pay the annual fee or any fee due under Rule A-13 (underwriting, transaction and technology fees) will be assessed a monthly late fee computed based on the overdue balance and the prime rate plus an additional $25 per month.

The proposal also would provide for an annual affirmation process similar to the current process under Rule G-40, which would require registrants to review, update and affirm the information on Form A-12 during the first seventeen business days of each calendar year. Similar to the current requirement in Rule A-15, registrants would be required to update Form A-12 if any information on the form becomes inaccurate or if the firm ceases to be engaged in municipal securities or municipal advisory activities.

Finally, to have more complete data concerning the scope of activities engaged in by MSRB registrants, regulated entities would be required to inform the MSRB of the types of municipal securities and municipal advisory activities engaged in by such firms.

REQUEST FOR COMMENT

The MSRB is requesting comment from regulated entities and other market participants regarding the proposed changes to Rules A-12 and G-14, the proposed elimination of Rules A-14, A-15, and G-40, and the replacement of Forms RTRS and G-40 with Form A-12. In addition to the substance of the proposed changes, the MSRB requests that commenters address the following questions, and include relevant data wherever possible:

Would the proposed changes make it easier for regulated entities to understand and follow the registration requirements of the MSRB? Are there other ways for the MSRB to assist new registrants in meeting their registration requirements?

Relative to the process for registration today, do the proposed changes offer any benefits to regulated entities?

To the extent the proposed changes would impose any new burdens on regulated entities, please describe those burdens in detail and quantify them, to the extent possible.

Would the waiver of the following year’s annual fee for firms that register in September be appropriate relief for firms that seek to register at the end of a fiscal year?

Would the assessment of late fees impose any undue burden on firms that fail to pay the requisite fees in a timely fashion? If so, what alternatives should the MSRB consider as means to promote the payment of fees in a timely manner?

Are there any other provisions in MSRB rules that should be consolidated into the proposed new registration rule?

August 19, 2013

TEXT OF PROPOSED AMENDMENTS[2]

Rule A-12: Registration Initial Fee

(a) Registration Requirements. Each broker, dealer and municipal securities dealer prior to engaging in municipal securities activities must register with the Board, and each municipal advisor prior to engaging in municipal advisory activities must register with the Board. Prior to registration, each broker, dealer, municipal securities dealer and municipal advisor must register as such with the Commission and, as applicable, provide the Board with evidence of notification to a registered securities association or appropriate regulatory agency of its intent to engage in municipal securities and/or municipal advisory activities. Registration will not become effective until the broker, dealer, municipal securities dealer or municipal advisor is notified by the Board that its Form A-12 is complete and its initial registration fee and annual registration fee have been received and processed.

(b) Initial Registration Fee. Each broker, dealer, municipal securities dealer and municipal advisor shall pay to the Board an initial registration fee of $100, which shall be payable in the manner provided by the MSRB Registration Manual. A firm registering as a broker, dealer or municipal securities dealer and as a municipal advisor need only pay one initial registration fee, so long as such firm remains continuously registered with the Board.

(c) Annual Registration Fee. As part of its initial registration and annually thereafter, based on the fiscal year of the Board, each broker, dealer, municipal securities dealer and municipal advisor shall pay to the Board an annual registration fee of $500. The annual registration fee shall be payable in the manner provided by the MSRB Registration Manual. Subsequent to initial registration, the annual registration fee is due by October 31 each year. For any broker, dealer, municipal securities dealer or municipal advisor that registers and pays an annual registration fee during the month of September, the annual registration fee for the following fiscal year beginning in October shall be waived.

(d) Late Fees. Any broker, dealer, municipal securities dealer or municipal advisor that fails to pay any fee assessed under this rule or Rule A-13 within 30 days of the invoice date shall pay a monthly late fee of $25 and a late fee on the overdue balance, computed according to the Prime Rate, as provided for in the MSRB Registration Manual, until paid.

(e) Registration Designation. Any broker, dealer, municipal securities dealer or municipal advisor that is registered with the Board may use the designation “MSRB registered” in its advertising, including on its website.

(f) Designated Contacts. Each broker, dealer, municipal securities dealer and municipal advisor must designate, on Form A-12, a Primary Regulatory Contact, Master Account Administrator, Billing Contact, Compliance Contact, and Data Quality Contact, and may designate an Optional Regulatory Contact and/or Optional Technical Contact, for purposes of communication between the firm and the Board. Each Primary and Optional Regulatory Contact shall, in the case of brokers, dealers, or municipal securities dealers, be a registered municipal securities principal (Series 53 or, in the case of a firm solely engaged in municipal fund securities business, Series 51 or 53) of the broker, dealer or municipal securities dealer. Each Primary and Optional Regulatory Contact shall, in the case of municipal advisors, be a municipal advisory principal who shall be authorized to receive official communications from the Board. It shall be the responsibility of the Billing Contact to receive Board invoices and to respond to any Board inquiries regarding fees.

(g) Trade Reports. Each broker, dealer and municipal securities dealer shall provide to the Board, prior to registering with the Board, the information required by Form A-12 to ensure that its trade reports can be processed correctly, or shall confirm that it qualifies for the exemption for trade reporting pursuant to Rule G-14(b)(vi) and shall update such information promptly to ensure its continued accuracy.

(h) Compliance with Regulatory Requests. Each broker, dealer, municipal securities dealer and municipal advisor shall comply with any request by the Board or the appropriate regulatory agency for required information within 15 days or such longer period as may be agreed to by the Board or the appropriate regulatory agency.

(i) Form A-12 Reporting Requirements. Each broker, dealer, municipal securities dealer and municipal advisor shall provide to the Board, prior to registration with the Board, the information required by Form A-12 in a designated electronic format and in such manner as set forth in the MSRB Registration Manual.

(j) Form A-12 Updates and Withdrawal. A broker, dealer, municipal securities dealer or municipal advisor must update Form A-12 within 30 days, if any information therein becomes inaccurate or if it ceases to be engaged in municipal securities or municipal advisory activities, whether voluntarily or involuntarily through a regulatory or judicial bar, suspension or otherwise.

(k) Form A-12 Annual Affirmation. Each broker, dealer, municipal securities dealer and municipal advisor shall review, update as necessary, and affirm Form A-12 during the Annual Affirmation Period that commences on January 1 of each calendar year and ends 17 business days thereafter. The annual affirmation may be completed by the Primary Regulatory Contact or an Optional Regulatory Contact designated by the firm. Any broker, dealer, municipal securities dealer or municipal advisor that submits its initial Form A-12 during the Annual Affirmation Period need not affirm Form A-12 during that period.

(l) MSRB Registration Manual. The MSRB Registration Manual, as updated or amended from time to time, is comprised of the specifications for the reporting of information required under this rule, the instructions for submitting Form A-12, and other information relevant to payments and reporting under this rule. The MSRB Registration Manual is located at www.msrb.org .

Prior to effecting any transaction in or inducing or attempting to induce the purchase or sale of any municipal security, or engaging in municipal advisory activities, a broker, dealer, municipal securities dealer, or municipal advisor shall pay to the Board an initial fee of $100, accompanied by a written statement setting forth the name, address and Securities and Exchange Commission registration number of the broker, dealer, municipal securities dealer, or municipal advisor on whose behalf such fee is paid. The Commission registration number shall also be set forth on the face of the remittance. Such fee shall be payable at the offices of the Board. In the event any person subject to this rule shall fail to pay the required fee, the Board may recommend to the Commission that the registration of such person with the Commission be suspended or revoked. No municipal advisor shall be in violation of this rule for failure to pay this initial fee in advance of January 1, 2011.

Rule G-14: Reports of Sales or Purchases

(a) No change.

(b) Transaction Reporting Requirements.

(i) – (iii) No change.

(iv) The provisions of this section (b) shall not apply to a dealer if such dealer does not effect any transactions in municipal securities or if such dealer's transactions in municipal securities are limited exclusively to transactions described in subsection (b)(vi) of this rule and the dealer has confirmed that it is qualified for this exemption as provided in Rule A-12(g). Each dealer shall provide to the Board on Form RTRS information necessary to ensure that its trade reports can be processed correctly. Such information includes the manner in which transactions will be reported, the broker symbol used by the dealer, the identity of and information on any intermediary to be used as a Submitter, information on personnel that can be contacted if there are problems in RTRS submissions, and information necessary for systems testing with RTRS. Information provided on Form RTRS shall be kept current by notifying the MSRB when contact information or other information provided on the form changes.

(v) – (vi) No change.

Rule A-14: Annual Fee

In addition to any other fees prescribed by the rules of the Board, each broker, dealer, municipal securities dealer, and municipal advisor shall pay an annual fee to the Board of $500, with respect to each fiscal year of the Board in which the broker, dealer, municipal securities dealer, or municipal advisor conducts municipal securities activities or municipal advisory activities. Except as set forth below, such fee must be received at the office of the Board no later than October 31 of the fiscal year for which the fee is paid, accompanied by the invoice sent to the broker, dealer, municipal securities dealer, or municipal advisor by the Board, or a written statement setting forth the name, address and Commission registration number of the broker, dealer, municipal securities dealer, or municipal advisor on whose behalf the fee is paid. No municipal advisor shall be in violation of this rule for failure to pay this annual fee in advance of January 1, 2011.

Rule A-15: Notification to Board of Change in Status or Change of Name or Address

(a) Procedure for Notifying Board of Change in Status. A broker, dealer, municipal securities dealer, or municipal advisor must promptly notify the Board if it ceases to be engaged in municipal securities activities or municipal advisory activities, whether voluntarily or because it has been barred or suspended from engaging in municipal securities activities or municipal advisory activities by the appropriate regulatory agency, judicial authority or otherwise. A broker, dealer, or municipal securities dealer must also notify the Board if it has been expelled or suspended from membership or participation in a national securities exchange or registered securities association. Any notification required by this rule shall be provided in a written statement setting forth such broker's, dealer's, municipal securities dealer's, or municipal advisor's name, address, Commission registration number, and a description of, and the reasons for, its change in status.

(b) Obligation to Pay Fees. A broker, dealer, municipal securities dealer, or municipal advisor that files notification with the Board pursuant to section (a) of this rule shall be obligated to pay the fees owed to the Board at the time of filing of such notification.

(c) Notification of Name or Address Change. Each broker, dealer, municipal securities dealer, or municipal advisor that has followed the procedure set forth in Board Rule A-12 shall notify the Board promptly of any changes to the information required by Rule A-12.

Rule G-40: Electronic Mail Contacts

(a)(i) Each broker, dealer, municipal securities dealer, or municipal advisor shall maintain an Internet electronic mail account to permit communication with the MSRB, and shall appoint a

Primary Electronic Mail Contact to serve as the official contact person for purposes of electronic mail communication between the broker, dealer, municipal securities dealer, or municipal advisor and the MSRB. Each Primary Electronic Mail Contact of a broker, dealer, or municipal securities dealer shall be a registered municipal securities principal (Series 53 or Series 51) of the broker, dealer or municipal securities dealer.

(ii) Each broker, dealer, municipal securities dealer, or municipal advisor may appoint an Optional Electronic Mail Contact for purposes of electronic mail communication between the broker, dealer, municipal securities dealer, or municipal advisor and the MSRB.

(b)(i) Upon completion of its Rule A-12 submissions and assignment of an MSRB Registration Number, each broker, dealer, municipal securities dealer, or municipal advisor shall electronically submit to the MSRB a completed Form G-40 setting forth, in the prescribed format, the following information:

(A) The name of the broker, dealer, municipal securities dealer, or municipal advisor and the date.

(B) The MSRB Registration Number of the broker, dealer, municipal securities dealer, or municipal advisor, including any separate MSRB Registration Number assigned if registered both as a municipal advisor and a broker, dealer, or municipal securities dealer.

(C) The name of the Primary Electronic Mail Contact, and his/her electronic mail address and telephone number.

(D) The name of the Optional Electronic Mail Contact, if any, and his/her electronic mail address and telephone number.

(E) The name, title and telephone number of the person who prepared the form.

(F) In the case of a municipal advisor, the categories of municipal advisor that describe the municipal advisor as provided on Form G-40.

(ii) A broker, dealer, municipal securities dealer, or municipal advisor may change the information previously provided by electronically submitting to the MSRB an amended Form G-40. In addition, each broker, dealer, municipal securities dealer, or municipal advisor shall update its information promptly, but in any event not later than 30 days following any change in such information.

(c)(i) Each broker, dealer, municipal securities dealer, or municipal advisor shall review and, if necessary, update its information and submit such information electronically to the MSRB within 17 business days after the end of each calendar year.

(ii) Any broker, dealer, municipal securities dealer, or municipal advisor that, during the 17 business-day update period, submits its initial Form G-40 or modifies or affirms its information shall be deemed to be in compliance with the annual update requirement applicable to the year immediately preceding that 17 business-day update period.

(d) Each broker, dealer, municipal securities dealer, or municipal advisor shall promptly comply with any request by the appropriate regulatory agency for required information, but in any event not later than 15 days following any such request, or such longer period that may be agreed to by the appropriate regulatory agency.

(e) No municipal advisor shall be in violation of this rule for failure to complete Form G-40 in advance of January 1, 2011.

Form A-12

Each broker, dealer, municipal securities dealer and municipal advisor shall, prior to registering with the Board, provide the following information:

(i) Firm Information:

(A) Name of Firm or Individual;

(B) SEC identification number;

(C) FINRA identification (Central Registration Depository) number, if applicable;

(D) Legal entity identifier, if any;

(E) Executing broker symbol(s) (Market Participant Identifier) assigned by NASDAQ, if any; and

(F) Participant member identification number assigned by National Securities Clearing Corporation, if any.

(ii) Applicant's Form of Organization:

(A) Sole Proprietorship (Individual), Limited Liability Company, US Federally Chartered Bank, Partnership, Limited Liability Partnership, Other. Indicate where the entity is incorporated, organized or established.

(iii) Registration Categories:

(A) Broker-Dealer;

(B) Bank Dealer;

(C) Municipal Advisor.

(iv) Type of Business Activity:

(A) Municipal Advisor (Financial Advisor, GIC Broker/Advisor, Investment Advisor/Bonds Proceeds Investment, Placement Agent, Solicitor/Finder, Swap/Derivative Advisor, Tax, Third Party Marketer, Other);

(B) Municipal Fund Securities (529 Plan Primary Distributor, 529 Plan Sales, Local Government Investment Pool Distributor/Sales, Other);

(C) Dealer Activities (Underwriting, Retail Sales, Research, Alternative Trading System, Broker's Broker Activities, Institutional Sales, Online Brokerage, Trading-Proprietary, Trading-Inter-Dealer, Other).

(v) Business Information:

(A) Business address, mailing address, phone number, and fax number;

(B) Website address, if any; and

(C) E-mail address.

(vi) Other Names (d/b/a)

(vii) Contact Information – name, title, address, phone number, fax number and email address for the following:

(A) Primary Regulatory Contact;

(B) Optional Regulatory Contact;

(C) Master Account Administrator;

(D) Billing Contact;

(E) Compliance Contact;

(F) Data Quality Contact; and

(G) Optional Technical Contact.

(viii) Trade Reporting Information:

(A) Method by which dealer will report transactions;

(B) Identity of dealer(s) employed as agent for the purpose of submitting transaction information;

(C) Method by which dealer will review transaction status information;

(D) If method selected is email, email address to which transaction status information should be sent; and

(E) Identity of any executing broker symbol used to report transactions effected when acting as a broker's broker.

[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

[2] Underlining indicates new language; strikethrough denotes deletions.

MSRB Showcases EMMA Resources for Investors in New Video.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today released a short video that showcases resources available to investors on its Electronic Municipal Market Access (EMMA®) website. Investors can use EMMA to make more informed decisions when buying and selling municipal bonds.

The EMMA website is a centralized online database that provides free public access to more than 800,000 official disclosure documents and data for more than 70 million trades associated with municipal bonds issued in the United States. The new video, EMMA 101: An Overview for Municipal Bond Investors, is geared toward first-time users and explains how investors can use EMMA to learn about the municipal market, evaluate municipal bond features, risks and prices, and monitor the health of their municipal bond investments over time.

The video continues the MSRB's digital strategy to provide municipal market education to investors and state and local governments. The MSRB provides free online toolkits for investors and for state and local governments to help them navigate the process of investing in and issuing municipal securities. A recently released video explains how the municipal market works and the MSRB's role in the $3.7 trillion municipal securities market. An education center on the EMMA website provides additional resources for anyone interested in the municipal securities market. All of the MSRB educational materials provide objective and independent information for municipal market participants.

http://www.msrb.org/msrb1/Investor-Toolkit-Videos.asp

MSRB Publishes Notice Regarding Policy on Interpretive Guidance.

The Municipal Securities Rulemaking Board (MSRB) today published a notice to communicate its policy regarding interpretive guidance on MSRB rules for municipal securities brokers, dealers, municipal securities dealers and municipal advisors.

http://msrb.org/Rules-and-Interpretations/MSRB-Policy-on-Interpretive-Guidance.aspx

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Commission Adopts Amendments to Financial Responsibility Rules for Broker-Dealers.

The Securities and Exchange Commission (Commission) today announced the adoption of amendments to the net capital, customer protection, books and records, and notification rules for broker-dealers. The amendments to the broker-dealer financial responsibility rules are designed to better protect a broker-dealer's customers and enhance the SEC's ability to monitor and prevent unsound business practices. The rule amendments were approved by a unanimous Commission vote. "Investors need to feel confident that their money is safe when it's being held by their broker-dealers," said Mary Jo White, Chair of the SEC. "These measures will significantly bolster the protections that our rules already offer." The rule amendments will become effective 60 days after their publication in the Federal Register. (Press Rel. 2013-140; 34-70072)

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539739257#.UgQaEuDxYeF

Commission Adopts Rules to Increase Protections for Investors with Assets Being Held By Broker-Dealers.

The Commission today announced the adoption of rules designed to substantially increase protections for investors who turn their money and securities over to broker-dealers registered with the SEC.

The new rules, approved by a 3-2 Commission vote, require broker-dealers to file new reports with the Commission that should result in higher levels of compliance with the SEC's financial responsibility rules.

"These rules will provide important additional safeguards for customer assets held by broker-dealers," said Mary Jo White, Chair of the SEC. "These rules will strengthen the audit requirements for broker-dealers and enhance our oversight of the way they maintain custody of their customers' assets."

Broker-dealers are required to begin filing new quarterly reports with the SEC and annual reports with SIPC by the end of 2013. The requirement for broker-dealers to file annual reports with the SEC is effective June 1, 2014. (Press Rel. 2013-141; 34-70073)

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539740621#.UgQaReDxYeF

Senate Democrats Urge Delay in Labor Fiduciary-Duty Rules.

Ten Senate Democrats are calling on the Obama administration to delay a Labor Department proposal on investment advice for retirement plans until after the Securities and Exchange Commission decides whether to issue its own proposal relating to retail investment advice.

In an Aug. 2 letter, the lawmakers said that the two rules could conflict, forcing brokers and advisers to meet two different standards.

"We remain very concerned that uncoordinated efforts undertaken by the agencies could work at cross-purposes in a way that could limit investor access to education and increase costs for investors, most notably Main Street investors," the senators wrote in a letter to the Office of Management and Budget, the agency that reviews all regulations.

"We believe that, at a minimum, the Department of Labor should not issue final regulations in this area until the SEC has completed its work and that any regulation the DOL ultimately may propose should be carefully crafted so that it does not upend the SEC's work," the letter continued.

Among those signing the letter was Sen. Jon Tester, D-Mont., chairman of the Senate Banking Subcommittee on Securities, Insurance and Investment, the panel that most directly affects investment adviser issues. Other signatories included Sen. Mark Warner, D-Va., and Sen. Kay Hagan, D-N.C., who are both members of the Senate Banking Committee.

Neither OMB nor the DOL responded to a request for comment about the letter.

The Labor Department is poised to re-propose a rule in October that would expand the definition of "fiduciary" for anyone providing investment advice for retirement plans.

The agency originally proposed a rule in 2010 that immediately met stiff resistance from the financial industry and bipartisan members of Congress. They argued that it would extend fiduciary duty for the first time to brokers selling individual retirement accounts, threatening commissions and access to brokers for millions of IRA holders.

DOL Assistant Secretary of Labor Phyllis Borzi has championed the rule, asserting that investors who are providing for their own retirement through 401(k) plans and IRAs need better protection against conflicted advice.

Separately, the SEC is considering whether to propose a rule that would raise investment advice standards for brokers. The Dodd-Frank financial reform law gave the SEC the authority to make such a move. The agency is currently conducting a cost-benefit analysis of a potential rule.

Lawmakers from both sides of the aisle have been urging the DOL to wait for the SEC. A bill written by Rep. Ann Wagner, R-Mo., and approved by the House Financial Services Committee would legislate such an outcome. Critics warn that the effort is meant to kill a DOL fiduciary-duty rule if the SEC does not move forward.

At a July 30 Senate Banking Committee hearing, Ms. Hagan pressed SEC Chairman Mary Jo White about SEC-DOL coordination on fiduciary duty.

“We are independent agencies, but I totally take all the points in that space about the desirability for consistency,” Ms. White said. “I’ve personally met with senior officials of the Department of Labor and directed [SEC] staff to really engage even more actively than they have in the past to try to coordinate, to try to make certain the Department of Labor understands our perspective.”

MSRB Requests Comment on Whether to Require Dealers to Adopt a "Best Execution" Standard for Municipal Securities Transactions.

INTRODUCTION

The Municipal Securities Rulemaking Board (“MSRB”) is requesting comment on whether to require a broker, dealer, or municipal securities dealer (“dealer”) to seek “best execution” of customer orders for municipal securities and provide detailed guidance to dealers on how “best execution” concepts would be applied to municipal securities transactions. This request for comment is intended to elicit input from all interested parties on adoption of a “best execution” or similar standard for the municipal securities market, to more fully appreciate the benefits and impact of this requirement on investors and dealers, including the costs, burdens, any operational concerns, as well as any alternatives for the MSRB to consider. Specific comment is also solicited from dealers on the application of their existing best execution requirements to transactions in other types of fixed income securities under FINRA Rule 5310. These comments will assist the MSRB in determining whether to consider undertaking formal rulemaking to propose a best execution or similar requirement on dealers when executing transactions in municipal securities.

Comments should be submitted no later than October 7, 2013, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, Virginia 22314. All comments will be available for public inspection on the MSRB’s website.[1]

Questions about this notice should be directed to Kathleen Miles, Associate General Counsel, at 703-797-6600.

BACKGROUND

The Securities and Exchange Commission (the “SEC”) issued its “Report on the Municipal Securities Market” in the summer of 2012. The SEC Report contained a number of recommendations relating to the structure of the municipal market. Some of the recommendations related to ways in which the MSRB could consider buttressing existing dealer pricing obligations. MSRB rules generally require dealers to trade with customers at "fair and reasonable" prices and to exercise diligence in establishing the market value of municipal securities and the reasonableness of their compensation. However, MSRB rules, unlike rules that apply to the equities and corporate fixed income markets, do not impose a "best execution" standard.

The Commission noted that the lack of such a requirement may give rise to an impression that customers purchasing municipal securities may not be receiving as favorable a price as possible. The Commission has recommended that the MSRB consider a rule that would require dealers to seek "best execution" of customer orders for municipal securities and provide detailed guidance to dealers on how "best execution" concepts would be applied in municipal securities transactions.

The logical starting place for a standard of best execution is FINRA Rule 5310, which applies to both the equity and corporate fixed income markets. In general, FINRA Rule 5310(a)(1) requires a member firm, in any transaction for or with a customer or a customer of another broker-dealer, to use "reasonable diligence" to ascertain the best market for a security and to buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. The rule includes a non-exclusive list of factors that will be considered in determining whether a firm has used "reasonable diligence":

- the character of the market for the security;
- the size and type of transaction;
- the number of markets checked;
- the accessibility of the quotation; and
- the terms and conditions of the order as communicated to the firm.

FINRA Rules 5310(a)(2) and 5310(b)-(e) and the Supplementary Material to Rule 5310 address certain additional obligations of the member firm or standards to be applied if a member firm:

- injects a third party between the member firm and the best available market;
- utilizes the services of a broker's broker;
- staffs an order room or other department to execute customer orders;
- channels customer orders through a third party;
- handles customer orders for securities for which there is limited pricing information or quotations available or securities that do not trade in the United States; or
- receives an unsolicited specific instruction to route a customer's order to a particular market for execution.

The Supplementary Material to Rule 5310 also codifies the obligations of the member firm when it undertakes a regular and rigorous review of the execution quality likely to be obtained from different market centers.

EXISTING MSRB PRICING REQUIREMENTS

MSRB Rule G-18 (Execution of Transactions) and Rule G-30 (Prices and Commissions) generally require dealers to trade with customers at fair and reasonable prices and to exercise diligence in establishing the market value of municipal securities and the reasonableness of dealers' compensation. Rule G-30(a) explicitly provides that the best judgment of the dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction is a relevant consideration. The MSRB issued guidance on the fair-pricing requirements of MSRB Rules G-18 and G-30 in 2004 and addressed the issues relating to the pricing of hard-to-value securities and stressed that "dealers nevertheless should be cognizant of their duty to establish market value as accurately as possible using reasonable diligence" and that "[t]he lack of a well-defined and active market for an issue does not negate the need for diligence in determining the market value as accurately as reasonably possible when fair pricing obligations apply."

REQUEST FOR COMMENT

A "best execution" requirement would augment the existing requirements to trade at prices that are fair and reasonable. While an objective of any "best execution" requirement is to provide a customer with a price that is as favorable as possible under prevailing market conditions, a "best execution" requirement would target the process by which firms handle orders, and as such, would be complementary to existing MSRB Rules G-18 and G-30.

The MSRB, however, is mindful that copying the existing standards from the equity and corporate fixed income markets may not be the optimal manner to promote fair pricing in the municipal market. Although FINRA Rule 5310 applies to fixed income securities, there are certain concepts and requirements in FINRA Rule 5310 that appear more appropriate for equity securities, particularly those that are part of the national market system. The MSRB believes that any "best execution" requirement should be uniquely tailored to the attributes of the municipal securities market. Any divergence from existing best execution requirements would not be intended to dilute them, but to impose requirements that are properly tailored for the municipal market.

Virtually all of the dealers that are registered with the MSRB are subject to the best execution obligations imposed by FINRA Rule 5310 for trades in equities and corporate fixed income securities. This request for comment seeks to leverage the experiences of such firms to assist the MSRB in developing a regime that would improve secondary market pricing of municipal securities.

The MSRB seeks public comment on the following questions, as well as any other comments on this topic, to assist it in determining whether to consider proposing a "best execution" or similar requirement for dealers. The MSRB particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or assumptions or issues raised in this request for comment. If the MSRB determines to proceed with rulemaking in this area after reviewing the comments received in response to this request for comment, it would publish a request for comment seeking further industry and public input on specific requirements intended to achieve the goals enunciated herein before making a final decision on whether to file such a proposal with the SEC for its approval.

Would implementation of a best execution requirement help ensure investors receive fair and reasonable prices?

Are there certain segments of the municipal market or categories of municipal securities for which a best execution requirement would not be appropriate, e.g., transactions in new issues or transactions in variable rate demand obligations?

Should a best execution requirement apply to all transactions with customers in municipal securities, or should transactions with certain customers, such as sophisticated municipal market professionals (SMMPs) as defined in the interpretation to Rule G-17, on fair dealing, be exempt?

Would implementing a best execution requirement support compliance by dealers with their fair-pricing obligations to customers? If so, how would the existing requirements for fair pricing be helped by the application of a best execution requirement?

Do dealers currently follow a "best execution" plan in connection with the purchase or sale of municipal securities?

Would disclosure that a firm does not utilize a best execution standard be a reasonable alternative to a best execution requirement?

Should there be a minimum number of quotations that must be received in order to support the prevailing market price established by a dealer?

If a best execution standard is adopted, how often should the MSRB require that dealers conduct a review of their practices relating to best execution? What factors would be relevant to a determination of whether this review should be more or less frequent?

Should procedures address circumstances under which dealers might seek quotations from:

- one or more alternative trading systems?
- one or more broker's brokers?
- one or more affiliates of the dealer's firm?
- the dealer firm's clearing firm?
- dealer firms that participated in the underwriting of the subject municipal securities?

How could a dealer be expected to ensure best execution when selling a municipal security to an investor from the dealer's inventory?

In the municipal securities market, is it a common practice for customers to direct dealers to solicit bid wanteds from particular dealers, alternative trading systems, or through brokers' brokers? If not, should dealers be required to provide these alternatives to customers?

Do customers inquire as to the methods that dealers employ to determine the prevailing market price for municipal securities?

What are the most significant challenges, if any, currently experienced with interpretation and execution of best execution duties for fixed income securities under FINRA Rule 5310?

Are there alternative methods that the MSRB should consider to provide more transparency to the process dealers employ when determining the prevailing market price for municipal securities in the secondary market that may be more effective for investors and/or less costly or burdensome to dealers? Would a best execution or similar requirement have any negative effect on the protection of investors and the public interest, or on the fair and efficient operation of the municipal market? If so, please describe in detail.

What tools do dealers employ to document and preserve diligence undertaken to substantiate the basis of the prevailing market price? What other tools might be needed if a best execution or similar requirement were adopted by the MSRB?

If your firm conducts a post-trade internal review of pricing, does it audit all trades, a sampling of trades and what frequency is employed for such review, e.g., daily, weekly, monthly or on a quarterly basis?

If your firm conducts a post-trade internal review, how often does it adjust pricing?

August 6, 2013

[1] Comments are posted on the MSRB website without change. Personal identifying information

such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

MSRB Requests Comment on Proposed Fair-Pricing Rule.

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a proposed rule that would consolidate MSRB Rule G-18 on execution of transactions and Rule G-30 on prices and commissions, and streamline and codify existing guidance regarding fair pricing currently set forth in interpretive guidance to MSRB Rules G-17 and G-30. The proposed changes would create a single general rule, G-30, on prices and remuneration.

Comments should be submitted no later than September 20, 2013, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[1]

Questions about this notice should be directed to Damon D. Colbert, Assistant General Counsel, at 703-797-6600.

BACKGROUND

Market participants have expressed concern regarding the difficulty of reviewing years of interpretive guidance to determine fair pricing obligations. Separately, the MSRB has conducted a review of Rules G-17 and G-30, which have been expanded upon through numerous interpretive notices and interpretive letters. The MSRB has examined its interpretive guidance concerning fair pricing and is proposing to consolidate this guidance by codifying it into a new fair-pricing rule. Consolidating this guidance into rule language would ease the burden on brokers, dealers, and municipal securities dealers (dealers) and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

In addition, to further promote regulatory efficiency, the MSRB is proposing to consolidate Rules G-18 and G-30, thereby consolidating the MSRB's fair-pricing requirements into the single new fair-pricing rule.

PROPOSED FAIR-PRICING RULE

The proposed fair-pricing rule, which includes the codified interpretive guidance, preserves the substance of the existing fair-pricing requirements.[2] The structure of the proposed rule (rule language followed by supplementary material) is the same structure the MSRB recently has begun to follow in order to streamline its rules.[3]

CURRENT INTERPRETIVE GUIDANCE

The MSRB has identified three interpretive notices and one interpretive letter under Rule G-30 that would be superseded in their entirety by the proposed rule, and the MSRB proposes to delete the notices and letter.[4] The MSRB intends, in a subsequent rulemaking initiative, to move the remaining Rule G-30 interpretive guidance, which addresses topics other than fair pricing, to other applicable general rules. Interpretive guidance under Rule G-17 that addresses topics other than fair pricing also will remain intact at this time.

REQUEST FOR COMMENT

The MSRB is requesting comment from the industry and other interested parties on the proposed rule set forth below. In addition to any other subjects related to the proposal that commenters may wish to address, the MSRB specifically requests that commenters address the following questions:

Will the proposed codification of existing guidance impose any particular burden on dealers or provide any material benefit to dealers?

Will the proposed new rule format impose any particular burden on dealers or provide any material benefit to dealers?

August 6, 2013

TEXT OF PROPOSED RULE

Fair Pricing

(a) Principal Transactions.

No broker, dealer or municipal securities dealer shall purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.

(b) Agency Transactions.

(i) Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.

(ii) No broker, dealer or municipal securities dealer shall purchase or sell municipal securities as agent for a customer for a commission or service charge in excess of a fair and reasonable amount.

– – – Supplementary Material:

.01 General Principles.

(a) Each broker, dealer or municipal securities dealer (each, a “dealer,” and collectively, “dealers”), whether effecting a trade on an agency or principal basis, must exercise diligence in establishing the market value of the security and the reasonableness of the compensation received on the transaction.

(b) A dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account.

(c) A “fair and reasonable” price bears a reasonable relationship to the prevailing market price of the security.

(d) Reasonable compensation differs from fair pricing. A dealer could restrict its profit on a transaction to a reasonable level and still violate this Rule if the dealer fails to consider market value. For example, a dealer may fail to assess the market value of a security when acquiring it from another dealer or customer and as a result may pay a price well above market value. It would be a violation of fair-pricing responsibilities for the dealer to pass on this misjudgment to another customer, as either principal or agent, even if the dealer makes little or no profit on the trade.

.02 Relevant Factors in Determining the Fairness and Reasonableness of Prices.

(a) The most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.

(b) Other factors include:

(i) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and, where applicable, of any securities exchanged or traded in connection with the transaction;

(ii) the expense involved in effecting the transaction;

(iii) that the dealer is entitled to a profit;

(iv) the total dollar amount of the transaction;

(A) To the extent that institutional transactions are often larger than retail transactions, this factor may enter into the fair and reasonable pricing of retail versus institutional transactions.

(v) the service provided in effecting the transaction;

(vi) the availability of the securities in the market;

(vii) the rating and call features of the security (including the possibility that a call feature may not be exercised);

(A) A dealer should consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any bond insurance applicable to the security.

(B) A dealer pricing securities on the basis of yield to a specified call feature should consider the possibility that the call feature may not be exercised. Accordingly, the price to be paid by a customer should reflect this possibility and the resulting yield to maturity should bear a reasonable relationship to yields on securities of similar quality and maturity. Failure to price securities in this manner may constitute a violation of this Rule because the price may not be “fair and reasonable” if the call feature is not exercised. That a customer in these circumstances may realize a yield greater than the yield at which the transaction was effected does not relieve a municipal securities professional of its responsibility under this Rule.

(viii) the maturity of the security;

(ix) the nature of the dealer’s business; and

(x) the existence of material information about a security available through EMMA or other established industry sources.

.03 Relevant Factors in Determining the Fairness and Reasonableness of Commissions or Service Charges.

(a) A variety of factors may affect the fairness and reasonableness of a commission or service charge, including:

(i) the availability of the securities involved in the transaction;

(ii) the expense of executing or filling the customer’s order;

(iii) the value of the services rendered by the dealer;

(iv) the amount of any other compensation received or to be received by the dealer in connection with the transaction;

(v) that the dealer is entitled to a profit;

(vi) the total dollar amount and price of the transaction;

(vii) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and of any securities exchanged or traded in connection with the transaction; and

(viii) for a dealer that sells municipal fund securities, whether the dealer’s commissions or other fees fall within the sales charge schedule specified in Rule 2830 of the National Association of Securities Dealers, Inc. (Such compliance with Rule 2830 may, depending upon the facts and circumstances, be a significant, though not dispositive, factor in determining whether a commission or other fee is fair and reasonable.)

.04 Fair-Pricing Responsibilities and Large Price Differentials.

(a) A transaction chain that results in a large difference between the price received by one customer and the price paid by another customer for the same block of securities on the same day, without market information or news accounting for the price volatility, raises the question as to whether each of these customers received a price reasonably related to the market value of the security, and whether the dealers effecting the customer transactions (and any broker’s brokers that may have acted on behalf of such dealers) made sufficient effort to establish the market value of the security when effecting their transactions.

(b) The lack of a well-defined and active market for an issue does not negate the need for diligence in determining the market value as accurately as reasonably possible when fair-pricing obligations apply. Although intra-day price differentials for obscure and illiquid issues might generally be larger than for more well-known and liquid issues, dealers must establish market value as accurately as possible using reasonable diligence. When a dealer is unfamiliar with a security, the efforts necessary to establish its value may be greater than if the dealer is familiar with the security.

(i) A dealer may need to review recent transaction prices for the issue or transaction prices for issues with similar credit quality and features as part of its duty to use diligence to determine the market value of municipal securities. When doing this, the dealer often will need to use its professional judgment and market expertise to identify comparable securities and to interpret the impact of recent transaction prices on the value of the block of municipal securities in question.

(ii) If the features and credit quality of the issue are unknown, it also may be necessary to obtain information on these factors directly or indirectly from an established industry source. For example, the current rating or other information on credit quality, the specific features and terms of the security, and any material information about the security such as issuer plans to call the issue, defaults, etc., all may affect the market value of securities.

(c) A bid-wanted procedure is not always a conclusive determination of market value. Therefore, particularly when the market value of an issue is unknown, a dealer may need to check the results of the bid-wanted process against other objective data to fulfill its fair-pricing obligations.

[1] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[2] The MSRB notes that in response to its December 18, 2012, Request for Comment on MSRB Rules and Interpretive Guidance, a commenter urged the MSRB to preserve Rule G-30's standards for fair and reasonable pricing because the commenter believed the rule appropriately balances investor-protection interests with the need for efficient municipal markets. Although the proposed fair-pricing rule preserves the substance of Rule G-30, future changes in market practices or conditions may cause the MSRB to revise its fair-pricing requirements.

[3] See MSRB Notice 2013-04, Request for Comment on Codifying Time of Trade Disclosure Obligation, (Feb. 11, 2013).

[4] See Review of Dealer Pricing Responsibilities (Jan. 26, 2004); Republication of September 1980, Report on Pricing (Oct. 3, 1984); Interpretive Notice on Pricing of Callable Securities (Aug. 10, 1979); and Factors in pricing (Nov. 29, 1993).

SEC's Aguilar: Custody Rules Won't Burden Brokers.

New regulations for brokers who control their clients' cash will go a long way toward preventing another client rip-off like the Bernard Madoff Ponzi scheme, according to a Securities and Exchange Commissioner who championed the rules.

"I don't think there can be any guarantee there won't be a future Madoff, but that's no excuse for not trying to prevent it," SEC Commissioner Luis Aguilar said in an interview Wednesday. "Registered broker-dealers should be required to account for money and securities entrusted to them by their customers. Our new custody rules substantially enhance such protection."

Under rules approved by the SEC, 3-2, last week, brokers who have custody of client funds must now file a quarterly Form Custody that details the amount and location of the assets. In addition, brokers must file a broader annual compliance report verifying that they meet financial responsibility requirements.

Mr. Madoff for decades operated a multibillion-dollar Ponzi scheme. For almost all of that time, he was registered as a broker-dealer. In his last year and a half in business, he also registered as an investment adviser. He admitted to his fraud in 2008 and is in prison.

The SEC approved new investment-adviser custody rules in 2009, including a requirement that advisers who hold their clients' funds undergo annual surprise examinations by an independent public accounting firm.

The broker-dealer rules approved by the SEC last week were proposed about two years ago. Mr. Aguilar made a point of bringing them to the attention of SEC Chairwoman Mary Jo White.

"In one of my first meetings with Chair White, I highlighted the importance of the broker-dealer custody rule and noted that the proposed rule had lingered far too long," Mr. Aguilar said. "She understood the importance of having that rule in place and was willing to go forward on a 3-2 vote."

SEC Commissioners Daniel Gallagher and Troy Paredes, who recently left the SEC, dissented. They said the rules gave the SEC too much latitude in obtaining audit documents that are required with the compliance report.

The new rules will affect about 300 of the 4,700 broker-dealers who are registered with the Financial Industry Regulatory Authority Inc., the broker regulator that reports to the SEC.

"It's a very significant regulation," said Holly Smith, a partner at Sutherland Asbill & Brennan LLP. "For some broker-dealers, it could be a significant cost. It depends on what their current policies, procedures, books and records are."

Mr. Aguilar said the new rules will not burden broker-dealers.

"Any well-run operation should be able to implement the rules without difficulty," he said. "Investors need to have confidence that the assets they hand over to broker-dealers will be protected. Without such confidence, investors are likely to stay out of the markets, which isn't good for the economy."

Although Ms. White quickly put the broker-custody rule on to her "to do" list, the fact that the regulations languished for two years before her arrival is cause for concern, according to Mr. Aguilar.

He has similar qualms about investor protection proposals that were released last month in conjunction with a rule that lifted the ban on public advertising for non-registered securities. The advertising can begin on Sept. 23. It's unclear when or if the SEC will approve the additional safeguards, which Mr. Aguilar said are imperative.

"The commission must be ready, willing and able to act expeditiously when it sees a need to protect investors," he said. "I hope the proposed improvements move forward quickly. Nonetheless, there's always the fear that a proposed rule will die on the vine if left untended."

House Democrat Introduces Bill to End Mandatory Arbitration.

Rep. Keith Ellison, D-Minn., a member of the House Financial Services Committee, has introduced legislation that would end mandatory arbitration in broker and investment adviser agreements with clients, but the bill faces an uphill battle.

The measure, floated Aug. 2, also would prohibit any restriction on class action claims.

Mr. Ellison said the bill, the Investor Choice Act, would help level the playing field for investors.

"Investors want to get back in the market, but they're rightly wary that the game is rigged against them," Mr. Ellison said in a statement to InvestmentNews. "Investors shouldn't have to sign away their rights in order to work with a financial adviser or broker dealer to build a secure retirement. By removing some of the unfair advantages, consumers will be more eager to invest, which will create jobs and strengthen the economy."

State securities officials have been pushing for an end to mandatory-arbitration clauses, which are part of nearly every brokerage contract. The Dodd-Frank financial reform law gives the Securities and Exchange Commission the authority to prohibit such agreements, but the agency has yet to propose such a rule.

The North American Securities Administrators Association, which has been calling on Congress to address arbitration, came out strongly in favor of Mr. Ellison's bill.

The measure would give investors the option of pursuing a case in court or in arbitration and would ensure that they could coalesce into a class action group. Small investors need such flexibility, according A. Heath Abshure, Arkansas' securities commissioner and NASAA's president.

"No attorney is going to take a $50,000 securities fraud claim," Mr. Abshure said. "It's important that [investors] have a reasonable, effective and efficient forum to hear their claims."

Supporters of arbitration argue that it is the more successful and cost-effective venue for investor-broker disputes and broker cases against their firms. They say that court action can drag on for years and result in substantial legal costs.

Handled by the Financial Industry Regulatory Authority Inc., arbitration cases are heard by a panel of three adjudicators who are selected from a roster consisting of industry and public arbitrators.

Controversy over compulsory arbitration spiked this year when a Finra hearing panel ruled that the regulator couldn't stop The Charles Schwab Corp. from using the arbitration agreements to prohibit clients from engaging in class actions.

It's not clear how much congressional attention the issue will draw. As a Democrat on the Republican-majority House Financial Services Committee, Mr. Ellison will find it difficult to get a hearing, much less a favorable vote.

Still, Mr. Abshure said Republicans should get behind Mr. Ellison's bill because it would help protect small investors able to participate in securities sales allowed by the Jumpstart Our Business Startups Act, a bill approved last year by large bipartisan majorities. That measure OK'd so-called crowdfunding, or online equity offerings.

"If the Republicans want to see the JOBS Act become a success, they better embrace this act," Mr. Abshure said, referring to Mr. Ellison's bill.

SEC Charges Underwriter, Issuer Over Disclosure.

For the first time, the Securities and Exchange Commission has charged an issuer, an underwriter, and one of its officials with falsely claiming in bond documents that the issuer was meeting its secondary market disclosure obligations when it wasn't.

The issuer is West Clark Community Schools, based in Clark County, Ind. The SEC also charged the underwriter, Indianapolis-based City Securities Corp. and its senior executive vice president Randy G. Ruhl, with giving improper gifts and gratuities to other issuers and then reimbursing the firm by characterizing the expenses as bond issuance costs.

The disclosure charges come 18 years after the SEC Rule 15c2-12 secondary market disclosure requirements took effect. Sources have long contended the SEC was reluctant to take action against broker-dealers for issuer disclosure failures because the whole muni disclosure system is aimed at issuers but regulated and enforced through the broker-dealer community. The SEC has no regulatory authority over issuers.

Under the SEC's Rule 15c2-12, firms are barred from underwriting bonds if the issuer has not contractually agreed to disclose annual financial information and events as they occur. The issuer must disclose any instances in which it has failed to comply with its disclosure obligations over the past five years.

According to the SEC, West Clark Community Schools, which has about 400 staff and 4,500 students, agreed in the official statement for $52 million of bonds it issued in March 2005 to disclose annual financial and operating information as well as event notices.

Its underwriter was City Securities, which has about 200 employees and seven branch offices in Indiana, ranked 39 of 197 underwriters for 2012. Randy G. Ruhl, 56, is supervisor of the firm's public finance and municipal bond department.

City Securities also underwrote $31 million of bonds for West Clark in December 2007. In the OS for those bonds, the school district claimed it had not failed to meet its disclosure obligations during the previous five years. However, that statement was false and a violation of the securities antifraud laws because West Clark did not submit any disclosure documents between at least 2005 and 2010, the SEC said. In addition, the school district executed a Certificate and Affidavit, claiming the 2007 OS did not contain any untrue statements.

City Securities helped draft and review the official statements for the 2005 and 2007 bonds.

"City Securities conducted inadequate due diligence and, as a result, failed to form a reasonable basis for believing in the truthfulness of material statements in an issuer's official statement," the SEC said. The firm offered and sold the 2007 bonds "on the basis of a materially misleading disclosure document," it said.

The SEC also charged the underwriter and Ruhl with failing to enact procedures or take reasonable steps to ensure it would receive prompt notice of an issuer's failure to make the required disclosure submissions.

Ruhl was aware of Rule 15c2-12 … yet as supervisor of the department he failed to take reasonable steps to ensure that City Securities had reasonable compliance procedures and failed to provide any training to department employees regarding Rule 15c2-12." the SEC said. The firm's employees improperly relied solely on the issuer's assertions that it had complied with the rule.

City Securities violated the antifraud rules and the MSRB's Rule G-17 on fair dealing and that Ruhl aided and abetted the violations, the SEC said.

The firm and Ruhl also were charged with providing other issuers with improper gifts and gratuities and then treating those expenses as "miscellaneous" costs or costs related to "printing, preparation and distribution of official statement" to be taken out of issuance costs.

The gifts included: a $2,500 donation to a charity favored by an issuer; a $1,500 donation to an educational scholarship favored by an issuer; $1,000 to sponsor a golf outing sponsored by an issuer; $2,500 to sponsor an education foundation hosted by an issuer involving members of the Colts football team; 12 Chicago Whitesox tickets; and travel, hotel and entertainment expenses for issuers.

Ruhl "approved these reimbursement as a matter of course, without regard to limitations" in the

MSRB's Rule G-20 on gifts and the firm's compliance manual. G-20 prohibits a dealer from giving any thing or service of value in excess of $100 per year to a non-employee in connection with muni business

The SEC said the improper gifts and reimbursement violated the antifraud laws and MSRB Rules G-17 and G-20 and that Ruhl aided and abetted the violations.

Both West Clark and City Securities agreed to cease and desist from further violations and take remedial actions. Neither admitted nor denied the charges.

City Securities agreed to pay almost $580,000 to settle the charges – a $300,000 fine and $279,446 of ill-gotten gains and prejudgment interest. Ruhl agreed to a penalty of $18,155 and disgorgement of $20,320 of ill-gotten gains. He also was permanently barred from serving in any supervisory capacity in the market and is subject to a one year bar for serving in other capacities, with the right to reapply.

by: LYNN HUME

SEC Charges School District and Muni Bond Underwriter in Indiana with Defrauding Investors.

The Securities and Exchange Commission (Commission) today charged a school district in Indiana and its municipal bond underwriter with falsely stating to bond investors that the school district had been properly providing annual financial information and notices required as part of its prior bond offerings.

In new municipal bond offerings, an official statement is prepared by a municipal issuer or its underwriter to describe the essential terms of the bonds and other pertinent information for investors.

An SEC investigation revealed that in an official statement prepared in 2007 for a bond offering on behalf of West Clark Community Schools that was underwritten by Indianapolis-based City Securities Corporation, the school district stated that it was in compliance with its disclosure obligations related to prior bond offerings. However, West Clark had not submitted any of the required annual reports or notices for a 2005 bond offering, and City Securities did not conduct adequate due diligence to detect the false statement in the course of the 2007 offering.

The SEC also charged Randy G. Ruhl, who heads the public finance & municipal bond department at City Securities, for the misconduct involving West Clark's disclosures. The SEC's investigation further found that City Securities and Ruhl provided improper gifts and gratuities to representatives of municipal bond issuers, and then wound up charging these and other expenses back to the issuers under the guise of costs for "printing, preparation and distribution of official statements."

City Securities agreed to pay nearly $580,000 to settle the SEC's charges, and Ruhl and West Clark Community Schools also agreed to settlements, which include a one-year collateral bar and a permanent supervisory bar for Ruhl.

"This is the first time the SEC has charged a municipal issuer with falsely claiming in a bond offering's official statement that it was fully compliant with the annual disclosure obligations it agreed to in prior offerings, and an underwriter and its principal for not doing the necessary research to attest to the truthfulness of that claim," said Andrew Ceresney, Co-Director of the Division of Enforcement. "West Clark Community Schools defrauded bond investors by leading them to believe that it had provided the annual financial information contractually required in a prior bond offering, when in fact for five years they failed to submit the required information. This case demonstrates that we will be vigilant in making sure municipal issuers and underwriters comply with their obligations."

Elaine C. Greenberg, Chief of the Enforcement Division's Municipal Securities and Public Pensions Unit, added, "City Securities abused its role as municipal underwriter by fraudulently obtaining reimbursement from bond proceeds for expenses unrelated to the issuance of bonds. Moreover, City Securities violated MSRB rules by providing representatives of municipal securities issuers with valuable and excessive gifts such as multi-day golf trips and tickets to various sporting events."

According to the SEC's orders instituting settled administrative proceedings, Rule 15c2-12 generally prohibits an underwriter from purchasing or selling municipal securities unless the issuer has contractually agreed to provide annual financial information and event notices to investors through information repositories. In its $52 million municipal bond offering in 2005, West Clark agreed to submit annual reports and notices to Nationally Recognized Municipal Securities Information Repositories (NRMSIRs), an obligation it never fulfilled. In December 2007, the school district issued a $31 million bond offering, which triggered a requirement to describe instances where it had failed to materially comply with its prior disclosure obligations. The official statement for this 2007 offering contained a section entitled "Compliance with Previous Undertakings" affirming that in the previous five years, the school district "never failed to comply, in all material respects, with any previous undertakings." The official statement was approved, certified, and disseminated to the public. The school district also signed a certificate and affidavit attesting that the official statement did not contain any untrue statement of material fact. Since West Clark had never submitted any annual reports or notices in its 2005 offering, these attestations in the 2007 offering were materially false and misleading.

Without admitting or denying the SEC's findings, West Clark consented to an order to cease and desist from committing or causing any violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. The school district has undertaken remedial actions including the adoption of written policies for its continuing disclosure obligations and the designation of an individual responsible for ensuring compliance with those obligations. The school district also has implemented annual training for personnel involved in the bond offering and disclosure process.

The SEC's investigation further revealed that between 2007 and 2010, City Securities provided improper gifts and gratuities to representatives of municipal bond issuers in violation of Municipal Securities Rulemaking Board (MSRB) Rule G-20. Without the issuers' knowledge, City Securities mischaracterized the expenses associated with these gifts and mischaracterized charitable donations, entertainment expenses, and other "miscellaneous" items as legitimate operating costs so the company could bill these expenses back to the unknowing issuers.

City Securities consented to an SEC order, without admitting or denying the findings, to cease and desist from committing or causing any violations of Section 17(a) of the Securities Act, Sections 10(b) and 15B(c)(1) of the Exchange Act and Rules 10b-5 and 15c2-12, and MSRB Rules G-17 and G-20. City Securities agreed to be censured and pay disgorgement and prejudgment interest of $279,446 as well as a penalty of $300,000. City Securities has taken a number of remedial actions to enhance its disclosure and expense reimbursement policies, including reviewing and amending policies and procedures as well as engaging independent compliance counsel.

Ruhl, without admitting or denying the findings, similarly consented to cease and desist from committing or causing any violations of these provisions of the federal securities laws. He agreed to pay disgorgement and prejudgment interest of $20,320 as well as a penalty of $18,155. Ruhl is subject to a collateral bar, penny stock bar, and investment company bar with the right to apply for reentry after one year, and he is permanently barred from association in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or credit rating agency.

The SEC's investigation was conducted by Peter K. M. Chan along with Eric A. Celauro and Sally J. Hewitt in the Municipal Securities and Public Pensions Unit in the SEC's Chicago Regional Office. The investigation resulted from a referral from the Chicago Regional Office's examination staff including Thomas P. Conroy, Atif M. Shameem, John W. Ekdale, and Paul N. Mensheha. (Press Rel. 2013-136; Rel. 33-9434; Rel. 33-9435)

MSRB Seeks Input on Potential Enhancements to Price Transparency in the Municipal Market.

The Municipal Securities Rulemaking Board (the "MSRB") is publishing this second in a series of concept releases relating to the planned development of a new central transparency platform (the "CTP") as contemplated under the MSRB's Long-Range Plan for Market Transparency Products, (January 27, 2012) (the "Long-Range Plan").[1] The MSRB is seeking input from all interested parties on the specific data elements the MSRB should consider disseminating publicly through the CTP with respect to both pre-trade and post-trade pricing information. The MSRB also is seeking input on the appropriate methods, technologies and data protocols that could be used in collecting pre-trade information in a manner that is most efficient for market participants potentially submitting or using such data and for the MSRB as operator of the CTP. Furthermore, this concept release is intended to elicit input on the potential benefits and burdens of providing pre-trade pricing information to the public through the MSRB's Electronic Municipal Market Access (EMMA®) website[2] and related data feeds, as well as on potential alternatives to achieving the goals enunciated below.

Comments should be submitted no later than November 1, 2013 and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[3]

BACKGROUND

Transparency refers to the degree to which information regarding quotations for securities, the prices of transactions, and the volume of those transactions is made publicly available in a securities market.[4] Pre-trade transparency typically refers to public dissemination of information indicating the size and price of prospective trading interest in specific securities. Generally, this means dissemination of firm quotations of a specified size – that is, a commitment to buy or sell a specific quantity of a particular municipal security at a stated price. Pre-trade transparency information may also include pending limit orders from customers or other indications of trading interest. The exact nature of pre-trade transparency information that is (or can be made) available will depend on the structure of the specific market in question. Post-trade transparency refers to public dissemination of information regarding the size and price of specific executed securities transactions.

With respect to post-trade price transparency, MSRB Rule G-14 currently requires brokers, dealers and municipal securities dealers ("dealers") to report all executed transactions in municipal securities to the MSRB's Real-Time Transaction Reporting System ("RTRS") within fifteen minutes of the time of trade, with limited exceptions.[5] RTRS serves the dual objectives of price transparency and market surveillance. Because a comprehensive database of transactions is needed for the surveillance function of RTRS, Rule G-14, with limited exceptions, requires dealers to report all of the their purchase-sale transactions to RTRS, not just those that qualify for public dissemination to serve the transparency function.[6] The MSRB makes transaction data available to the general public through the EMMA website at no cost simultaneously with the dissemination of such data through paid subscription services to market data vendors, institutional market participants and others that subscribe to the data feed.

With respect to pre-trade price transparency, there is currently no central location in the municipal market through which such pricing information is made broadly available to the public in a comprehensive manner. To the extent that pre-trade pricing information is available, it is typically provided by electronic networks operated by broker's brokers, alternative trading systems (ATS) and other similar systems,[7] although such information also has sometimes been provided through non-electronic venues as well. Typically, access to pre-trade pricing information is limited to market participants engaging directly with such venues and may be further limited to information regarding only those potential transactions involving the particular market participant, with information consisting of some or all of the bids and offers entered for a potential transaction.

The MSRB's Long-Range Plan envisions that the CTP would serve as the next-generation of RTRS and would include, in addition to enhanced public access to real-time post-trade pricing information, new centralized public access to pre-trade pricing information, as well as related disclosure information, yield curves and other utilities for public users of the information. The Long-Range Plan anticipated that such information would be obtained both under regulatory requirements established under MSRB rules as well as through voluntary submissions by market participants. While the CTP could ultimately provide links to market participants where any execution activities could be undertaken away from the CTP, the Long-Range Plan contemplates that the CTP itself would serve solely as an information platform and would not act as an exchange, automated trading system, or other form of execution venue.

Thus, while RTRS has democratized access to post-trade pricing information, either directly through the EMMA website or through third-party vendors that receive the automated feed of RTRS data from the MSRB, access to pre-trade pricing information is piecemeal, incomplete and largely limited to institutional market participants. The Long-Range Plan's focus on improved public access to pre-trade pricing information as an expansion on the MSRB's existing post-trade pricing information dissemination is supported by recent reports by the Securities and Exchange Commission (the "SEC") and the Government Accountability Office (the "GAO"), which state that certain market participants, especially retail investors, do not have access to the same amount and type of information that is available to larger institutional investors, dealers and more sophisticated market participants. For example, in January 2012, the GAO published a report on the municipal securities market that found, among other things, that a key barrier to the ability of individual investors (as compared to institutional market participants) to independently assess offers and bids they received from their dealers for municipal securities they were interested in purchasing or selling is the lack of access to pre-trade pricing information in the form of offerings and bids.[8]

In July 2012, the SEC published a report recommending enhancements to the flow of information to investors.[9] In this report, the SEC noted that investors have very limited access to the level of interest in a particular municipal security and the specific price levels. Furthermore, the report suggests that bids and offers are generally not made publically available by ATSs, brokers' brokers or dealers that use their facilities, even though these electronic trading systems are primarily used for smaller, retail-size orders. In this regard, the SEC made two recommendations: (1) the SEC could consider amendments to Regulation ATS to require an ATS with material transaction or dollar volume in municipal securities to publicly disseminate its best bid and offer prices and, on a delayed and non-attributable basis, responses to "bids wanted" auctions, and (2) the MSRB could consider rules requiring a brokers' broker with material transaction or dollar volume in municipal securities to publicly disseminate the best bid and offer prices on any electronic network it operates and, on a delayed and non-attributable basis, responses to "bids wanted" auctions. Subsequently, participants in the SEC's April 2013 Fixed Income Roundtable discussed, among other things, potential improvements to municipal market transparency, liquidity and efficiency that could be furthered by the collection of bid and offer information, together with the public display of this information if accompanied with appropriate education and guidance to provide the public with the ability to interpret the information.[10]

The MSRB is seeking comment on potential enhancements to the specific data elements collected and disseminated through RTRS in connection with post-trade pricing information that would be provided through the CTP, as well as on a number of key aspects relating to the potential collection and dissemination of pre-trade pricing information through the CTP, as discussed below.

POTENTIAL ENHANCEMENTS TO POST-TRADE PRICE TRANSPARENCY

Discussed below are several areas in which modifications to the current post-trade price transparency reporting and public dissemination process could potentially improve the quality and usefulness of the transaction information collected and disseminated. The MSRB is seeking input in these various areas, as well as on any other aspects of post-trade price transparency not otherwise addressed below. If the MSRB determines that any of the modifications identified below are appropriate, the MSRB would publish more specific proposals in a future request for comment prior to implementation.

Transaction Reporting of New Issues

Potential New Indicator for Conditional Trading Commitments . Although trade executions and trade confirmations for new issues are not permitted prior to the formal award of the bonds by the issuer to the underwriter,[11] dealers often solicit orders, accept orders and conditionally allocate to orders prior to the formal award. The prices at which such orders are conditionally allocated pending the formal award (referred to herein as "conditional trading commitments" or "CTCs") generally are determined prior to the formal award and often will reflect market conditions at the time of such determination rather than at the time the trade is actually executed after the formal award.

The MSRB seeks comment on whether to require reporting of information regarding conditional trading commitments, with such information disseminated to the public.[12] Specifically:

In the case of a transaction resulting from a CTC, would the marketplace benefit from reporting by dealers and public dissemination by the MSRB of an indicator denoting that post-trade pricing information for the transaction reflects pricing under a CTC? Are there any reasons why such a CTC indicator may not be beneficial to market participants or could be misleading?

Should the CTC indicator be accompanied by the date and time at which such CTC was formed? Would providing such additional information assist issuers, as well as their teams of professionals working on bringing new issues to market, in meeting their obligations under the Internal Revenue

Code with regard to issue price?

Should CTC information be reported to the MSRB as part of the post-trade reporting process, or should they instead be reported at the time the commitment is made? What operational or other difficulties would dealers face in reporting CTC information to the MSRB in either scenario? Would the benefits of collecting and disseminating such information outweigh the burden on dealers to provide it?

Potential New Indicator for Retail Order Period Trades . In some cases, a new issue may be offered with a retail order period in which the securities are to be marketed to investors that meet the definition of retail for purposes of the offering. The MSRB seeks comment on whether to require the use of a new indicator to denote retail orders placed during a retail order period, with such information disseminated to the public.[13] Specifically:

If a retail order period is used in a new issue offering, would the marketplace benefit from having dealers that place retail orders during the order period report such trades to the MSRB with an indicator that the trade resulted from a retail order? Should the MSRB consider developing a series of indicators that dealers would use to differentiate among the types of investors that an issuer may have defined as qualifying as retail (individual investor, investment advisor on behalf of an individual investor, etc.)?

Beyond identification of the nature of retail orders, should the MSRB more broadly consider developing a series of indicators that dealers would use to indicate the category of investor involved in customer trades reported to the MSRB? If so, how granular should those categories be? For example, would it be beneficial for dealers to distinguish between individual investors and institutional investors? Or should dealers distinguish among types of institutional investors and, if so, what should the categories be (sophisticated municipal market professional, investment advisor, insurance company, etc.)? What would be the burden to dealers of instituting such a requirement, and would there be other potential negative ramifications of doing so?

Existing Indicator for List Offering Price and RTRS Takedown Transactions . Current transaction reporting procedures require dealers that are part of the underwriting group for a new issue to include an indicator on trade reports (which indicator is disseminated to the public) for transactions executed on the first day of trading in a new issue with prices set under an offering agreement for the new issue. These transactions include sales to customers by a sole underwriter, syndicate manager, syndicate member or selling group member at the published list offering price for the security ("List Offering Price Transaction") or by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published list offering price for the security ("RTRS Takedown Transaction"). Such trade reports are provided an end-of-day exception from the fifteen-minute reporting requirement since they are executed at, or based on, published list offering prices and such prices may not reflect market conditions at the time that the transactions are actually effected.

Since the introduction of this List Offering Price/RTRS Takedown Transaction provision, certain market practices and the information publicly available through the EMMA website have evolved. Outside of traditional underwriting syndicates or selling groups, some dealers have entered into long-term marketing arrangements with other dealers that serve in the syndicate or selling group, under terms that are not generally disclosed publicly, relating to purchases and resales of new issue securities. The MSRB also now provides through the EMMA website public access to the initial offering price scale for most new issues, typically within two hours of the time of formal award and before the underwriter's announced time of first execution of trades. However, the discount from the published list offering price for RTRS Takedown Transactions is not generally published to the public through any of the EMMA data products.

In the January 2013 Concept Release, the MSRB sought comment on whether the end-of-day exception from 15 minute reporting should be eliminated for List Offering Price/RTRS Takedown Transactions, or whether the period of lag in reporting of such trades should be reduced.[14] The MSRB seeks further comment with respect to the following matters as they relate to this provision:

Is the current List Offering Price/RTRS Takedown Transaction indicator a useful indicator for users of disseminated pricing information?

Although the price at which List Offering Price trades occur are now known to the public on a more timely basis through the initial offering scale published on EMMA, [15] does the delay in reporting the principal amount and number of trades sold at the List Offering Price until the end of the trading day adversely affect transparency or otherwise negatively impact some market participants during the first day of trading in a new issue?

Consistent with the discussion above regarding conditional trading commitments, should underwriters reporting the initial offering scale for new issues be required to indicate the date and time when the scale was established? Should the List Offering Price indicator and related end-of-day reporting exception be subsumed within any new conditional trading commitment submission requirement as described above?

Should the MSRB establish a requirement that the discount from the published list offering price for RTRS Takedown Transactions also be published to EMMA as a condition to providing dealers with an end-of-day reporting exception for such trades? Are takedown discounts for new issues structured in a manner conducive to uniform reporting through EMMA? Even if such takedown discounts are made publicly available, does the delay in reporting the principal amount and number of trades sold in RTRS Takedown Transactions until the end of the trading day adversely affect transparency or otherwise negatively impact some market participants during the first day of trading in a new issue?

What would be the burden to dealers of reporting any such additional items of information regarding List Offering Price/RTRS Takedown Transactions, and would the benefits of such additional information outweigh such burden?

Transaction Yields

Transaction reporting procedures require dealers to include on most reports of customer transactions to RTRS both a dollar price and yield.[16] The yield required to be reported to RTRS for customer trades is consistent with the yield required to be displayed on a customer confirmation under Rule G-15(a), which requires yield to be computed to the lower of an “in whole” call or maturity, subject to certain requirements set forth in the rule for specific special situations (generally referred to as the “yield to worst”). Rule G-15(a) requires the confirmation to include the date to which yield is calculated if such date is other than the nominal maturity date, and also requires the confirmation for a transaction effected based on a yield other than yield to worst to include both yields. Since April 30, 2012, the MSRB has calculated and included in disseminated RTRS information yield on inter-dealer trades computed in the same manner as required for customer trades.

The MSRB seeks comment on whether to modify the yield reporting components of trade reporting. Specifically:

Should the MSRB itself compute yield to worst for customer trades, as it currently does for interdealer trades? If so, should the MSRB eliminate the requirement for reporting of yield to worst by dealers in customer transactions? Would such an approach create any unintended problems for price transparency? Would removing the requirement for dealers to include yield on reports of customer transactions reduce the compliance and operational burden on dealers?

Should the MSRB require dealers to include in their trade reports, and should the MSRB disseminate publicly, the date and redemption price to which yield is calculated if other than the nominal maturity date and value? Would such a requirement create a burden on dealers that outweighs the benefits of such additional transparency?

Should the MSRB require dealers to include in their trade reports for trades effected based on a yield other than yield to worst, and should the MSRB disseminate publicly, the yield at which such trade was effected and the date to which such yield is calculated? Would such a requirement create a burden on dealers that outweighs the benefits of such additional transparency?

Are there additional yield calculations that the MSRB should consider requiring dealers to report or that the MSRB should consider itself calculating and disseminating?

Would having multiple yields publicly disseminated for some or all trades be confusing or misleading to users of this information, or would it provide greater price transparency that would outweigh any potential confusion?

Consistency of Transaction Price Reporting

Normally, in principal transactions, the trade price reported to and publicly disseminated by the MSRB includes all aspects of the price, including any mark-up or mark-down that compensates the dealer for executing the transaction. In agency transactions, dealers are required to report to the MSRB both the price of the security and the commission charged to the customer. RTRS currently calculates yield on agency trades using this reported information, then derives a transaction price based on this calculated yield, resulting in publicly disseminated prices for agency transaction also incorporating the compensation component in order to be comparable to principal trade prices. However, dealers effecting transactions as part of an arrangement that does not provide for dealer compensation to be paid on a transaction-based fee basis, such as in certain wrap fee arrangements, will report to the MSRB transaction prices that do not include a compensation component, and current yield calculation requirements would not capture any such non-transaction-based compensation component. The MSRB does not currently collect information regarding fees charged in non-transaction-based compensation arrangements, nor does it collect or disseminate an indicator of transactions that are effected in that manner

The MSRB seeks comment on whether to modify reporting requirements or public dissemination of trade data relating to transactions where fees are charged on a non-transaction-based basis. Specifically:

What would be the best approach for handling trades with non-transaction-based compensation arrangements? Should the MSRB require dealers to report the nature of such compensation arrangements?

Would it be sufficient to require dealers to report, and for the MSRB to disseminate, an indicator that a trade involved a non-transaction based compensation arrangement?

Market of Execution

The MSRB understands that dealers may use a variety of means for transacting in municipal securities, including broker's brokers or alternative trading systems ("ATS") as well as traditional direct transactions with a known counterparty. The MSRB currently identifies all transactions executed by a broker's broker. This identifier is applied based on the broker's broker informing the MSRB that it acts in such capacity. The MSRB does not currently identify trades executed through an ATS.

The MSRB seeks comment on whether to modify reporting requirements or public dissemination of trade data relating to the use of such third-party venues. Specifically:

Should the MSRB require dealers effecting transactions through an ATS to include an indicator to that effect? Should such indicator be included in the information disseminated publicly? Are there other venues through which dealers effect transactions that should be reflected by an indicator? For any trades subject to a venue indicator, would it be sufficient to indicate the type of venue or should dealers be required to identify the specific venue? What would be the benefits and burdens of establishing such a requirement?

Is the existing broker's broker indicator included on disseminated information useful? Would a greater level of precision in the application of the broker's broker identifier be appropriate such that the dealers transacting with the broker's broker and/or the broker's broker itself include an identifier on the trade report to signify that the transaction was executed by a broker's broker in its capacity as such?

Away From Market Transactions

As noted above, dealers are required to report virtually all transactions in municipal securities to RTRS. This is necessary for a comprehensive database of transactions for the surveillance function of RTRS. The MSRB has recognized that some transactions are not useful in determining, and may in fact be a misleading indicator of, the current market value of a municipal security, either because the transaction price differs substantially from the market price or the trade is the result of a specific scenario where the trade executed is not a typical arms-length transaction negotiated in the secondary market.[17] These transactions include customer repurchase agreement transactions, transactions from an accumulation account to a unit investment trust unit and trades into and out of derivative trusts for tender option bond programs. Accordingly, RTRS has included an away from market indicator that is required to be used by dealers reporting transactions arising from these types of trading situations that allows such transactions to be reported and entered into the RTRS database used for surveillance but not disseminated publicly.

The MSRB seeks comment on whether some or all information for such transactions should be included in publicly disseminated information. Specifically:

Although the price at which these transactions are effected may not be reflective of current market value, does the failure to report the existence of such trades, including the principal amount and number of trades, adversely affect transparency or otherwise negatively impact some market participants?

Would there be benefits to publicly disseminating the principal amount, without the price, of away from market trades with an indicator that the trade occurred at a price away from the market? Would there be any negative implications of disseminating such information? Would delayed reporting of away from market trades be appropriate and, if so, what would be the appropriate delay?

Are there other categories of "away from market" trades, in addition to those noted above, that should be explicitly recognized by the MSRB as qualifying for the end-of-day reporting exception?

Are there any categories of “away from market” trades that should be fully exempted from reporting, even for surveillance purposes? Would providing such a full exemption have any negative impact on the marketplace, directly or indirectly as a result of potentially impeding the ability of regulators to surveil the marketplace or to enforce applicable MSRB rules? Would any such full exemption be consistent with current processes within the broader securities market to develop a consolidated audit trail?

Transactions with Affiliated Entities

In recent years, some dealers have informed the MSRB that new corporate structures have been formed whereby some dealers establish several distinct corporate entities to perform specific functions. For example, some corporate structures involve one corporate entity that holds inventory and another corporate entity that transacts with customers. In these cases, the corporate entity that transacts with customers will acquire bonds from or sell liquidated positions to the corporate entity that holds inventory on an exclusive basis. Given the mechanical nature of these intra-corporate entity transactions and the fact that the prices at which these transactions occur are based on set arrangements raises questions about whether such transactions reflect negotiated arms-length transactions priced based on current market conditions. The MSRB seeks comment on the following:

To what extent have dealers employed such corporate structures where transactions occur between two separate legal entities on an exclusive basis at prearranged pricing arrangements? Are there other arrangements among dealers that present similar transaction reporting issues?

Should transactions arising from these corporate structures be identified as being “away from market” transactions or should a new indicator be used for identifying such transactions when they are reported? If a new indicator is used, should such transactions continue to be disseminated publicly and include this new indicator?

POTENTIAL COLLECTION AND DISSEMINATION OF PRE-TRADE INFORMATION

To increase the level of pre-trade pricing information available in the municipal market place, the MSRB is considering whether to propose the collection and dissemination of certain pre-trade pricing information. The information proposed to be collected would provide investors and other market participants with access to pre-trade pricing information generally not available publicly. The MSRB seeks comment on all aspects of the potential collection and dissemination of pre-trade information, including any aspects of pre-trade price transparency not otherwise addressed below. Specifically:

Would collection and public dissemination of additional pre-trade transparency by the MSRB improve pricing efficiency, investor confidence and liquidity in the market place? Would providing such information publicly have any negative impacts on market participants or the marketplace in general?

As an alternative to the MSRB collecting such information for public dissemination through the EMMA website, are there existing venues for public access to all or some of this information? Do daily bids and offers available through these existing venues provide a true and reliable indication of market levels? Would providing access to these existing venues through the EMMA website, rather than providing the pre-trade information itself through the EMMA website, meet the MSRB’s stated objectives for providing access to this information to the public? Would any of these venues provide access to issuers and investors, including retail investors, at no cost? Are there other alternatives to achieving the goals of broadly available pre-trade price transparency that would be more effective or less burdensome than those described in this concept release?

What types of information or tools should be provided along with the pre-trade information itself to help the public understand the nature and potential uses of the information?

Potential Data Elements

To the extent that these data elements are available, the core items of pre-trade pricing information proposed to be collected and disseminated could include:

- CUSIP number
- Date and time of bid submission
- Date and time of offer submission
- Bid quantity
- Bid yield
- Bid price
- Offer quantity
- Offer yield
- Offer price
- Offer minimum quantity
- Submitter ID
- Indicator of matched bid and offer, if applicable
- Venue type indicator [ATS, broker's broker, exchange, dealer]
- Entity placing bid/offer type [dealer/investor]

Depending on various issues raised in the remainder of the Concept Release, additional items of information ultimately may also be included among the data elements to be collected and disseminated to properly collect and identify such additional information that commenters believe the MSRB should include in the CTP. The MSRB seeks comment with regard to the appropriate data elements to collect with respect to pre-trade transparency, as follows:

Are the specific data items listed above the appropriate pre-trade pricing information for collection? Would any of these items present specific difficulties with regard to the ability to report such items? Are certain of these items valuable for purposes of regulatory surveillance but not for purposes of dissemination to the public?

What additional data elements used by venues that currently handle bids for and offers of municipal securities would be necessary or useful for the MSRB to collect?

Types of Offerings for Which Pre-Trade Information Should be Collected

Depending on the venue, municipal securities may be offered for sale through various mechanisms. For example, municipal securities can be offered for sale through a "bid wanted" process in which bids to purchase the securities are sought and potentially multiple priced bids are submitted.[18] In some cases, the bid wanted process will result in a sale of the securities to a winning bidder, whereas in other cases a satisfactory bid will not be received and no transaction will result. In still other cases, the party offering the securities may enter into a negotiation with one of the bidders to sell the security at a negotiated price that may differ from the price of that bidder's bid. Municipal securities also can be offered outside of a bid wanted process, such as by posting the offer for sale at a stated price that a purchaser can execute against at such price or through a negotiation, among others.

The MSRB seeks comment on the types of offerings for which pre-trade information should be collected and publicly disseminated. Specifically:

Should pre-trade information be sought only in connection with bid wanted offerings? If so, should these be limited to bid wanteds conducted solely by or through ATSs and broker's brokers, or should they also include bid wanteds conducted directly by dealers? Are there other venues through which bid wanteds are conducted for which pre-trade information should be included?

Should all bids in an offering be collected and displayed, or only the best bid in an offering? If not all bids are to be collected and displayed, should the MSRB also include the cover bid and/or the total number of bids in the offering?

Should the collection and public dissemination of pre-trade information be limited to information from bid wanteds that result in an executed transaction between the offeror and a winning bidder? Or should it also include information where bids are placed for an offering but does not result in an executed transaction? Or should it further include information about offerings where no bids are placed?

Are there other types of offerings, other than through a bid wanted process, for which pre-trade information should be sought? How would the MSRB collect the relevant information for any such other types of offerings?

The MSRB recognizes that the exchange of certain bid and offer information is not always done electronically via ATS, broker's brokers or other electronic trading networks but instead through traditional voice brokerage or other one-to-one communications. Should the MSRB seek to collect and publicly disseminate such other pre-trade information and, if so, is there an appropriate method that the MSRB could use to attempt to collect the information that is not disseminated electronically?

What would be the burden of reporting any of pre-trade information through any of the types of offerings described above, and would the benefits of such pre-trade information outweigh such burden?

Data Quality Issues Relating to Pre-Trade Information

The MSRB understands that, in some cases, a bid or offer may not truly reflect an intent to effect a transaction in a posted security at a market price. For example, a single block of bonds may sometimes be posted in multiple venues simultaneously (such that there can be no expectation that a transaction will be executed in all such venues), or may be posted for price discovery purposes only with no real intent to execute a transaction. In addition, a bidder may in some cases enter a bid, as an accommodation to another party or for other reasons, that it does not intend to result in a sale and that likely does not reflect an accurate assessment of the bond's market value (e.g., a so-called "throw-away bid").[19]

The MSRB seeks comment on the extent to which information about certain types of bids or offers may not be well suited to public dissemination. Specifically:

If a single block of bonds is offered in multiple venues, would the marketplace be better served to have all such offerings included in the disseminated pre-trade information, or should such information be filtered in some way, such as to eliminate potentially overstating the volume of bonds offered? If filtering would be appropriate, how would the MSRB identify situations where such filtering should occur? For example, is it possible to distinguish, with a high degree of confidence, situations where a single block is being offered in multiple venues from situations where a market participant is offering same-sized but different blocks of the same securities in different venues?

Should the MSRB seek to filter out offerings posted for price discovery purposes rather than with an intent to sell, or to filter out throw-away bids? In either case, is it possible to distinguish, with a high degree of confidence, those bids and offers that should be retained for dissemination purposes from those that should be suppressed?

Technology and Protocols for Collecting Pre-Trade Information

In the January 2013 Concept Release, the MSRB sought input on certain baseline technology, processes and protocols relating to some of the potential new data elements or data types that might be included in the CTP to assist the MSRB in pursuing a CTP architecture that can support a broad array of data types in a manner that is most efficient for the MSRB as well as for market participants who may have a role in the submission or dissemination of such data. In particular, in connection with the potential collection of pre-trade information, the MSRB sought input on the most effective methods currently used to disseminate such information among market participants, and whether such methods would be appropriate for the purposes of the CTP. The MSRB received only limited comments on these issues. The MSRB again seeks comment on these types of technology and protocol issues with respect to pre-trade information. Specifically:

The MSRB understands that the FIX messaging protocol [20] is commonly used in the fixed income market for purposes of entering bids and offers. Is there any reason why the FIX messaging protocol would not be appropriate for purposes of submitting pre-trade information to the MSRB? Are there alternative messaging protocols, and what are the relative merits of available alternatives as compared to the FIX messaging protocol?

If the FIX messaging protocol is the appropriate method of collecting pre-trade pricing information, are there certain data fields, in addition to the ones listed above, that should be required from participants?

Are there any specific data transmission infrastructures currently in existence through which pre-trade information customarily is transmitted to trading venues that would be appropriate for the MSRB to consider utilizing if it were to collect pre-trade information? If there are no such specific infrastructures commonly used for this type of data, or if such infrastructures might not be ideal for use by the MSRB, are there other technological processes that might be well adapted to the purposes described herein?

Manner and Timing of Collecting Pre-Trade Information

In the case of bid wanteds, the process typically begins with the posting of an offer of municipal securities, a period of time during which bids can be posted, a point in time at which all bids must be entered, and a time at which the offeror accepts a bid, if at all. Depending on how and where the bid wanted is conducted, trade execution may occur in conjunction with the acceptance of the bid or shortly thereafter, or trade execution may occur away from the venue somewhat later. The MSRB seeks comment on which parties should submit pre-trade information to the MSRB and the manner and timing for providing such information. Specifically:

Should the MSRB seek to obtain pre-trade information directly from the venue through which the offerings are made, or should such information be submitted by the dealers placing the bids and offers? If not collected from the venue but instead from parties placing the bids and offers, would the MSRB risk obtaining incomplete information to the extent that a venue permits bids or offers to be placed by investors or other market participants over which the MSRB does not have regulatory jurisdiction? If such information is best collected directly from the venue, should the MSRB nevertheless collect the data from dealers in those cases where they use a venue that is not subject to the MSRB's jurisdiction (e.g., an exchange rather than a dealer ATS or broker's broker)?

Should the MSRB seek to obtain bid and offer information as they are placed on a real-time basis (e.g., within 15 minutes of the bid or offer being placed), or should the information be provided at a later time, such as within a specified period after the end of the offering or by the end of the trading day?

If pre-trade information is to be provided to the MSRB after the end of the offering or by the end of the trading day, should the MSRB seek to have all bids and offers for an offering submitted as a single bundle of data, or should each bid and offer be submitted individually?

If pre-trade information is to be provided to the MSRB on a real-time basis, should the MSRB seek to obtain such information after the bid or offer has been placed at the offering venue or simultaneously with the placing of the bid or offer? If simultaneously, would existing infrastructures support a straight-through process by which the same message transmitted to the offering venue could be routed to the MSRB?

Should the MSRB attempt to associate bids and offers placed in the same offering with the specific offering, or should they simply be associated with a particular security without identifying to which offering of that security such bid or offer applies? If bids and offers related to a particular offering are to be associated, what would be the best way of doing so?

Should the MSRB attempt to associate a matched bid and offer with the actual final executed transaction as reported to the MSRB? Given that certain entities providing access to pre-trade bids and offers do not take a position or participate in the exchange of security and money and therefore may not have final confirmation that a deal was conducted, who is the entity best positioned to provide information to the MSRB regarding whether specific bids and offers have resulted in executed trades? How would the MSRB match bids and offers to a particular executed transaction?

Public Dissemination of Pre-Trade Information

The MSRB would display pre-trade information it collects through the CTP in a venue on the EMMA website designed to integrate pre-trade, post-trade and other related information for a particular security. In addition, the MSRB anticipates that such pre-trade information would be made available through paid subscription services through a data feed. The MSRB seeks comment on how such information should be displayed. Specifically:

For pre-trade price transparency information to be beneficial to investors and market participants if available on EMMA, would such information have to be disseminated real-time, or near real-time, or would dissemination on a delayed basis be appropriate? If delaying the dissemination of the information is appropriate, how long could such information be delayed and still be beneficial to investors and market participants without becoming stale?

What type of educational material would be appropriate and necessary to accompany the pre-trade pricing information in order to provide a comprehensive guide of the data and its use that would permit non-professionals to make effective use of the information?

* * * * *

Questions about this notice may be directed to Justin R. Pica, Director, Product Management –

Market Transparency, Marcelo Vieira, Director of Research, or Ernesto Lanza, Deputy Executive Director, at 703-797-6600.

[1] The initial concept release on the CTP, MSRB Notice 2013-02 (January 17, 2013) (the "January 2013 Concept Release"), provides background information on the MSRB's initiative under the Long-Range Plan to develop the CTP. The MSRB sought input on the appropriate standard for "real-time" reporting and dissemination of transaction price and related information through the CTP, as well as on baseline technology, processing and data protocols for post-trade pricing information. Comments received in response to that concept release may be viewed on the MSRB website and will be considered in conjunction with comments received on this and future concept releases related to implementation of the CTP.

[2] EMMA is a registered trademark of the MSRB.

[3] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[4] Principles of Transaction Transparency, Securities Regulators of the Americas ("COSRA") (1993). Transaction transparency is distinct from concepts relating to dissemination of official statements, periodic financial information and other disclosure information about an issuer and its securities. Of course, transparency and disclosure are both important principles for a securities market, each serving to reduce information asymmetries, to promote efficient pricing and to foster investor confidence and liquidity.

[5] Transactions in securities without CUSIP numbers, in municipal fund securities, and certain inter-dealer securities movements not eligible for comparison through a clearing agency are the only transactions exempt from the reporting requirements of Rule G-14(b)(vi).

[6] In this respect, RTRS serves as an audit trail for municipal securities trading, with the exception of certain internalized movements of securities within dealers that currently are not required to be reported and the lack of reporting of customer identifications and other related specific items of information. Compare Consolidated Audit Trail, Exchange Act Release No. 34-67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

[7] For example, NYSE Bonds, the New York Stock Exchange's bond trading system, offers a centralized trading platform, which currently lists a limited number of municipal securities qualified to trade through such system. See http://www.nyse.com/bonds/nysebonds/GeneralObligationBonds.html and http://www.nyse.com/bonds/nysebonds/RevenueBonds.html.

[8] Government Accountability Office, Municipal Securities: Overview of Market Structure, Pricing, and Regulation, GAO-12-265, January 17, 2012.

[9] Securities and Exchange Commission, Report on the Municipal Securities Market, July 31, 2012.

[10] Some roundtable participants noted that education and guidance should accompany any public dissemination of pre-trade information to ensure that non-professionals are able to properly understand its meaning and how it might be used in assessing pricing. See http://www.sec.gov/spotlight/fixed-income-markets.shtml.

[11] See MSRB Rule G-12 Interpretive Letter, "Confirmation: Mailing of WAII confirmation," dated April 30, 1982.

[12] The MSRB previously proposed requiring dealers to indicate transactions that are based upon a conditional trading commitment to alert users of disseminated information that the trade date and time reflective of when the trade was executed may not be reflective of market conditions as of the date and time that the order was priced. See MSRB Notice 2006-10 (April 21, 2006); MSRB Notice 2007-10 (March 5, 2007). However, there was general agreement at the time that there would be several operational concerns with complying with such a requirement, most notably the lack of availability of the time of formal award, and such proposal was not adopted. Since then, underwriters have become obligated under Rule G-34 to announce the time of formal award and time of first execution for new issues. In addition, the EMMA website now makes such information publicly available.

[13] The MSRB has filed with the SEC to require, among other things, that underwriters report to the MSRB through EMMA whether a retail order period was conducted for a new issue offering. See SR-MSRB-2013-05, Exchange Act Release No. 34-69834 (June 24, 2013), 78 FR 39038 (June 28, 2013).

[14] As noted above, comments on this topic received in response to the January 2013 Concept Release may be viewed on the MSRB website and will be considered in conjunction with comments received on this and future concept releases related to implementation of the CTP.

[15] In most cases, such initial offering scale is derived from data that underwriters are required to submit under Rule G-34 to the Depository Trust and Clearing Corporation's New Issue Information Dissemination Service ("NIIDS").

[16] For inter-dealer transactions, dealers report the dollar price at which the transaction was effected and the MSRB calculates and includes in disseminated information the corresponding yield.

[17] Such "away from market" trades are described in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions.

[18] While MSRB Rule G-43(b) sets out certain provisions for bid wanteds that broker's brokers may elect to follow, these provisions are not obligatory for broker's brokers and do not apply to other market participants conducting bid wanteds.

[19] Depending on the specific facts and circumstances, any such throw-away bid likely would constitute a violation of MSRB rules. See, e.g., Rule G-13(b); MSRB Rule G-43 Interpretive Notice, "Notice to Dealers that Use the Services of Broker's Brokers," dated December 22, 2012.

[20] For more information on the FIX messaging protocol, see http://www.fixprotocol.org.

SEC Final Rules Update: Financial Responsibility Rules for Broker-Dealers.

The Securities and Exchange Commission ("Commission") is adopting amendments to the net capital, customer protection, books and records, and notification rules for broker-dealers promulgated under the Securities Exchange Act of 1934 ("Exchange Act"). These amendments are designed to address several areas of concern regarding the financial responsibility requirements for broker-dealers. The amendments also update certain financial responsibility requirements and make certain technical amendments.

The full Rules Update is available at:

http://www.sec.gov/rules/final/2013/34-70072.pdf

SEC Final Rules Update: Broker-Dealer Reports.

The Securities and Exchange Commission ("Commission"), under the Securities Exchange Act of 1934 ("Exchange Act"), is amending certain broker-dealer annual reporting, audit, and notification requirements. The amendments include a requirement that broker-dealer audits be conducted in accordance with standards of the Public Company Accounting Oversight Board ("PCAOB") in light of explicit oversight authority provided to the PCAOB by the Dodd- Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") to oversee these audits. The amendments further require a broker-dealer that clears transactions or carries customer accounts to agree to allow representatives of the Commission or the broker-dealer's designated examining authority ("DEA") to review the documentation associated with certain reports of the broker-dealer's independent public accountant and to allow the accountant to discuss the findings relating to the reports of the accountant with those representatives when requested in connection with a regulatory examination of the broker-dealer. Finally, the amendments require a broker-dealer to file a new form with its DEA that elicits information about the broker-dealer's practices with respect to the custody of securities and funds of customers and non-customers.

The full Rules Update is available at:

http://www.sec.gov/rules/final/2013/34-70073.pdf

WSJ: Search for Muni-Bond Guidepost Sputters.

Regulatory efforts to develop a better guidepost for retail investors in the $3.7 trillion municipal-bond market have been mired by concerns about the integrity of financial benchmarks like the scandal-tarred London interbank offered rate.

The Securities and Exchange Commission wants to give retail investors better access to quality pricing information about the enormous—and largely illiquid—muni market so they can become better informed when buying or selling bonds.

In the wake of Libor's problems, the SEC wants to ensure any new guidepost has "appropriate safeguards of reliability and absence of manipulation in order to protect investors, municipal issuers and the public," said John Cross III, the SEC's municipal-securities chief.

The SEC has struggled to reach agreement with another agency, the Municipal Securities Rulemaking Board, over how best to structure such a benchmark and ensure it can't be manipulated, people familiar with the matter said.

The MSRB, a self-regulator overseen by the SEC, wants a third party to develop a benchmark. But SEC officials are concerned such outsourcing could allow for manipulation and result in the MSRB inadvertently giving a regulatory stamp of approval to a faulty benchmark.

The SEC's concerns are part of a bigger conundrum plaguing Washington, as the Treasury Department and Federal Reserve struggle to find alternatives to Libor for use in financial transactions like swaps and the structuring of new securities. The Treasury last year notably left Libor off a list of potential index rates it asked market participants to consider as a benchmark for proposed securities with floating interest rates.

The project comes as the SEC is grappling with a host of problems in the muni market, including what it sees as lackluster investor disclosures. In a first-of-its-kind case, the agency on Monday settled securities-fraud charges with an Indiana school district and its underwriter for falsely telling investors in a 2007 bond offering that it was meeting promises it made to investors in an earlier bond sale.

The SEC's efforts also come as the muni market has been spooked by the largest-ever municipal bankruptcy, in Detroit, which has more than $18 billion in liabilities, and on the heels of a major debt-market selloff in the second half of June amid fears the Federal Reserve was close to tapering its bond-buying program. Some $22 billion has fled tax-exempt mutual funds since the beginning of June, according to Investment Company Institute data.

Existing muni-market benchmarks couldn't keep up with the rapid movement in market interest rates for several weeks in June, greatly hampering the market's ability to trade. "So a new benchmark, sponsored by a regulator, is making a debut at a very difficult time," said Matt Fabian, managing director at Municipal Market Advisors, which compiles its own benchmark of high-rated debt.

At issue is the inherent subjectivity of deciding which trades in a largely illiquid market should be used as part of a benchmark. Multiple banks have acknowledged trying to rig Libor, which is based on daily estimates by banks about how much it would cost them to borrow from other banks. Libor serves as the basis for rates on everything from residential mortgages to derivatives.

"Anything that has any level of subjectivity is going to have people questioning it," said Dan Toboja, vice president of capital markets at investment bank B.C. Ziegler & Co., Chicago. "A single muni bond can go for months without a single trade in some cases, so it's hard to set a price."

The MSRB is expected to take several more months to complete its muni benchmark, as it works to develop strict controls that prevent an outsourced benchmark from potential for manipulation, according to people familiar with the matter. The MSRB says it doesn't have the resources to develop the benchmark on its own and is reluctant to launch new products that undercut the private sector.

A retail benchmark for munis would have a much smaller footprint than Libor, on which up to $800 trillion of financial transactions are thought to be valued. Yet the SEC sees the benchmark as an important addition for tax-exempt municipal debt, which differs from corporate bonds in that there isn't a single liquid benchmark like U.S. Treasurys to help investors and state and local governments assess their bonds' relative value.

While some pricing information is available to the public, retail investors generally can't find it, aren't sophisticated enough to use it or don't want to pay fees needed to access it, the SEC argues. About 45% of municipal debt is held by households, according to the Federal Reserve.

SEC officials have long argued that muni investors receive second-class treatment, citing the opacity of the market and stale disclosures by states and localities. They also point to key disadvantages for retail investors, including a dearth of pricing information.

As part of a sweeping SEC initiative to boost transparency in the muni market, the agency last summer asked the MSRB to “promptly” ensure retail investors have better access to pretrade pricing information, including benchmark information. The MSRB was asked to post the pricing information on an online web portal, which collects and publishes muni disclosures and trade data.

The MSRB has talked primarily with Municipal Market Data, a unit of Thomson Reuters Corp., about compiling a daily benchmark based on the trade data filed with the MSRB. The Thomson Reuters unit already publishes a proprietary benchmark widely used by banks and institutional investors as a guidepost for pricing new bonds from around the country or for evaluating bonds already in the market. The existing benchmark is based in part on large trades of triple-A-rated munis.

SEC officials warned this spring that the MSRB plan needed more work, saying the board couldn’t just post data from the Thomson Reuters division without getting a better handle on the methodology.

Regulators already are concerned that existing benchmarks in the muni market are set with little transparency. SEC officials have investigated whether muni bankers have sought to tinker with the existing Thomson Reuters benchmark in the same way bankers have been accused of rigging Libor.

But those concerns haven’t stopped the MSRB from working with Thomson Reuters on the retail project, according to people familiar with the matter. The SEC investigation of possible muni-market rigging is ongoing.

A Thomson Reuters spokeswoman didn’t respond to requests for comment.

MSRB officials said they are continuing to discuss the matter with Thomson Reuters, as well as other potential vendors, to provide new price-discovery tools to retail investors.

There are other indexes that provide muni-pricing information, though many are behind subscription paywalls and don’t provide the level of detail individual investors would need for trading purposes.

Commission Charges City of Miami and Former Budget Director with Municipal Bond Offering Fraud.

The Commission today charged the city of Miami and its former budget director with securities fraud in connection with several municipal bond offerings and other disclosures made to investors.

An SEC investigation found that beginning in 2008, Miami and Michael Boudreaux made materially false and misleading statements and omissions about certain interfund transfers in three 2009 bond offerings totaling $153.5 million. They similarly included false and misleading information in the city’s fiscal year 2007 and 2008 Comprehensive Annual Financial Reports (CAFRs) that are distributed to broad segments of the investing public, including investors in previously issued city debt. Boudreaux orchestrated the transfers from the city’s Capital Improvement Fund to its General Fund in order to mask increasing deficits in the General Fund, which is viewed by investors and bond rating agencies as a key indicator of financial health.

The SEC’s action also charges Miami with violating an SEC cease-and-desist order that was entered against the city in 2003 based on similar misconduct. This is the first time the SEC has alleged further wrongdoing by a municipality subject to an existing SEC cease-and-desist order.

“Miami actively marketed bonds to the investing public while hiding the true reason for interfund transfers to boost the image of its primary operating fund," said George S. Canellos, Co-Director of the Division of Enforcement. "The fact that a city official would enable these false and misleading disclosures to investors merely a few years after Miami had been reprimanded by the SEC for similar misconduct makes this repeat behavior all the more appalling and unacceptable. We will hold accountable not only municipalities, but also individual municipal officials for fraudulent disclosures to investors."

Eric I. Bustillo, Director of the SEC's Miami Regional Office, added, "Miami cannot continue to play shell games with its finances. Investors and the markets deserve complete transparency in assessing the city's municipal bond offerings."

According to the SEC's complaint filed in U.S. District Court for the Southern District of Florida, Boudreaux initiated the city's transfer of approximately $37.5 million between the funds. Miami did not disclose to bondholders that the transferred funds included legally restricted dollars which, under city code, may not be commingled with any other funds or revenues of the city. Miami also failed to disclose that the transferred funds were allocated to specific capital projects that still needed those funds as of the end of the fiscal year, or in some instances already had spent that money. The transfers enabled Miami to meet or come close to meeting its own requirements relating to the General Fund's reserve levels. In the wake of the transfers, the city's bond offerings were all rated favorably by credit rating agencies.

According to the SEC's complaint, Miami was forced to reverse most of the transfers following a report by its Office of Independent Auditor General (OIAG). The city then declared a state of fiscal urgency once it failed to meet statutorily mandated fund levels in its General Fund, and bond rating agencies consequently downgraded their ratings on the city's debt.

The SEC's complaint charges Miami with violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. It also charges the city with violating the SEC's 2003 cease-and-desist order. The complaint charges Boudreaux with violations of Section 17(a) of the Securities Act and violations and aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5. The SEC's complaint seeks injunctive relief and financial penalties against Miami and Boudreaux, and an order commanding the city to comply with the SEC's 2003 order.

The SEC's investigation was conducted in the Miami Regional Office by Rachel K. Paulose, Andre J. Zamorano, and Michelle Lama under the supervision of Chedly C. Dumornay. The investigation followed an examination conducted by Paul Anderson and Carlos A. Gutierrez under the supervision of Nicholas A. Monaco and the oversight of John C. Mattimore. The SEC's litigation will be led by Christopher E. Martin and Amie Riggle Berlin. [SEC v. City of Miami and Michael Boudreaux (S.D. Fla. Civil Action No. 1:13-cv-22600] (2013-130; LR-22753)

Miami Case Shows SEC Increasingly Targeting Individuals; Willing to Fine Cities.

The Securities and Exchange Commission's recent enforcement action against Miami, Fla. signals the commission's seriousness about both upholding prior cease and desist orders and holding public officials accountable, market participants said.

The lawsuit, filed July 19 in a federal court in Florida, charges both the city and former budget director Michael Boudreaux with securities fraud. It also nails the city for violating an existing cease and desist order issued in 2003, the first time the SEC has charged a city for violating such prior orders.

“This shows that the cease and desist orders have teeth,” said John McNally, a bond lawyer at Hawkins, Delafield & Wood LLP. Cease and desist orders bar a government, individual or organization from causing further violations like the ones in a settlement and have been seen by some market participants as slaps on the wrist.

While the SEC lawsuit does not specify an amount, it asks the court to impose a financial penalty on the city for allegedly failing to abide by the terms of its 2003 agreement and sliding back into the same type of conduct that led to the earlier enforcement action. This is the second time the SEC has tried to impose a civil financial penalty on a city, with Victorville being the first.

“If you violate the cease and desist, they can ratchet up the penalties,” McNally said. “Normally, people are not returning to the same kind of conduct.”

Robert Dean Pope, an attorney at Hunton & Williams LLP, said the actions show that issuers need to take a close look at interfund transfers, since the SEC’s case against the city rests heavily on what the commission says were impermissible transfers to the general fund designed to mask a growing deficit and secure better bond ratings. Pope said the action goes against the SEC’s longtime policy of not imposing civil penalties on municipal issuers, which ultimately burden the taxpayers, though Miami is a special case because of its apparent pattern of misconduct. “Does this represent a change in that policy? I don’t think so,” Pope said.

Observers agreed that the latest action represents the next step in a pattern of recent enforcement actions against municipal issuers, several of which have seemed to set new precedents for what issuers can expect the SEC to do. Illinois settled with the commission on March 11 after being charged with fraud for misleading pension disclosures in bond documents between 2005 and 2009. The next month, the commission tagged Victorville, Calif., as well as officials and an underwriter for defrauding investors by inflating valuations of property in connection with a 2008 bond offering. The SEC charged Harrisburg, Pa. in May with misleading investors through public statements and other non-bond documents, and that same month filed a complaint against South Miami, Fla. for making false statements in documents certifying that bond proceeds were being properly used.

While the Harrisburg action tread new ground in establishing that speeches by public officials and documents not traditionally part of bond disclosure could cause securities law violations, many market participants wondered why no individuals were held accountable in that case. The South Miami case also was a first in terms of focusing on bond documents not expected to reach investors.

In a speech on May 10 at the 45th Annual Rocky Mountain Securities Conference in Denver, SEC commissioner Daniel Gallagher said the commission would be taking the kid gloves off when dealing with issuer officials in the future.

“Although cities and municipal issuers are distinct legal entities, in fact they act through individuals,” Gallagher said. “And they meet their primary and continuing disclosure obligations under state and federal law through the conduct of public officials. So when we find material misstatements or omissions by public officials in connection with municipal securities, we can, should, and will take action to hold the appropriate public officials accountable.”

Paul Maco, a partner at Bracewell & Giuliani LLP, said the recent enforcement actions and Gallagher’s comments combine to offer a picture of SEC intent going forward.

“The tough stance taken by the SEC in Miami is less of a surprise in light of the build-up in enforcement actions against municipal issuers this spring alone, the Harrisburg 21(a) report and commissioner Gallagher’s May 10 speech on holding public officials accountable,” Maco said. “They appear to signaling greater use of a ‘name and shame’ approach to enforcement actions against municipal issuers and officials.”

Muni consultant and advisor Robert Doty said the action against Miami should be noted by all muni professionals but added that the full implications will not be known until the case plays out in court. Doty is president of the municipal finance consulting firm AGFS and senior advisor and counsel to the executive team at the financial advisory firm, Government Financial Strategies, Inc., both located in Sacramento, Calif. Miami has denied wrongdoing. Still, Doty agreed, the case is a sign that the expected crackdowns on issuers are coming to pass.

“It shows seriousness, and it will have an influence,” he said.

by: KYLE GLAZIER

SIFMA Proposes 'Execution With Diligence' Standard for Municipal Trading

New York, NY, July 26, 2013— SIFMA today issued its proposed execution-with-diligence standard for municipal trading, following its initial proposal to the MSRB in June 2013 that an execution-wit--diligence standard be applied to trades in municipal securities. This is a higher standard for dealers to meet than what is currently in place.

The SIFMA proposal promotes effective and efficient regulation of the municipal securities market and would enhance investor protection without harming liquidity. It would also impose higher standards on municipal securities dealers that would advance public trust and confidence in the municipal securities market, and would result in a principles-based rule that does not favor one execution venue or counterparty over another.

The standard was developed by a working group of members following the July 2012 SEC Report on the Municipal Securities Market. It was approved by an overwhelming majority of members of SIFMA’s Municipal Securities Division.

“SIFMA’s proposal moves the industry forward in a robust way that further enhances standards so that customers receive fair and reasonable prices,” said David Cohen, managing director and associate general counsel. “The proposal recognizes the unique characteristics of the municipal market and would strengthen regulation in a manner consistent with the way the market operates.”

Since municipal bonds are not traded on a central exchange and there is no central aggregator of quotes, the execution standard in the municipal market cannot mirror that for equities. The municipal securities market also has fundamental differences from other debt markets, including its diverse and fragmented nature, small securities trade sizes and far less frequent trading than corporate bonds. SIFMA supports efforts to improve trade execution standards while noting that, because of the unique characteristics of the municipal market, there is not one path for dealers to take for execution with diligence. Accordingly, we have proposed a principles-based rule.

The SIFMA proposal includes concepts similar to FINRA’s approach to corporate fixed income securities but with modifications applicable to the municipal market. It would define “market” as encompassing those brokers, dealers, and municipal securities dealers that are known to trade in a particular security and would require periodic review of trading counterparties, which would be a new regulatory requirement.

To enact the recommendation, SIFMA is encouraging the Municipal Securities Rulemaking Board (MSRB) to amend its Rule G-18 to reflect an "execution-with-diligence" concept of execution. In conjunction with its proposal, SIFMA is also encouraging the MSRB to consider the short term and long term costs and potential benefit of any rule making before formally proposing any changes.

SIFMA's recommendation can be found here: http://www.sifma.org/issues/item.aspx?id=8589944578

SIFMA Proposes Muni Trade Standard; Wants MSRB to Seek Public Input.

The Securities Industry and Financial Markets Association is proposing a new "execution-wit--diligence" standard for municipal trading that would require a dealer to use "reasonable diligence" to determine the market for a bond so the price it provides to a customer is "fair and reasonable under prevailing market conditions."

The term "market" would be defined to encompass other broker-dealers known to trade the muni security.

Dealers also would be required to conduct post-trade reviews that, among other things, would compare their muni prices with the prices they could have obtained from other dealers.

SIFMA is proposing the Municipal Securities Rulemaking Board adopt the new standard in lieu of a best execution rule that the Securities and Exchange Commission's July 2012 muni report recommended the MSRB consider adopting for the muni market.

The MSRB is expected to take up the SIFMA proposal at its meeting in Boston this week.

Under the SEC's best execution rule, brokers are legally required to seek the best execution reasonably available for their customers' orders. Brokers must evaluate the orders they receive from all customers in the aggregate and periodically assess which competing markets, market makers, or electronic communications networks, offer the most favorable terms of execution.

"Best execution does not work in the current municipal market because it's an over-the-counter market" where there is no one place where a dealer can go to compare muni bond prices, David Cohen, a SIFMA managing director and associate general, said Thursday.

The SEC report also recommended the MSRB consider ways to encourage dealers to use alternative trading systems or other electronic networks that widely disseminate quotes and provide fair access.

Cohen said any kind of central trading platform or exchange for munis is "years down the road."

"We are proposing a rule that works in the current market structure … that is obtainable [in the near term] through the normal rulemaking process,' he said.

The SEC's muni market report said the secondary market for munis "is relatively opaque" and that the prices at which market participants may be willing to buy or sell a muni are "not broadly available."

"The relatively high overall levels of markups and other transaction costs in the municipal securities market generally are attributable to the illiquidity and opacity of the …market,” the SEC said. “In addition, some studies have found that markups and transaction costs tend to be higher for smaller-sized ‘retail’ trades than for larger institutional trades.”

Cohen said the SEC report “raised some legitimate issues so we worked with our members to put forward a standard or proposal that would improve the public trust and confidence in the municipal securities market.”

“This project has been one of the top priorities of SIFMA’s municipal securities division this year,” he said.

Cohen said SIFMA’s proposed standard is “much more robust and substantive than the rule that currently exists.”

The existing rule, the MSRB’s Rule G-18 on execution of transactions, is one sentence long and requires broker-dealers, when executing trades for or on behalf of a customer as an agent, to make a “reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.”

Like other MSRB rules, there are a series of interpretations of it.

Cohen said SIFMA’s proposed standard, which would be adopted as a new Rule G-18, would adapt for the muni market, the concepts and requirements in the Financial Industry Regulatory Authority’s Rule 5310 for equities and corporate bonds. “We said, ‘What is in this rule that would work for the muni market,’” he said.

SIFMA described its proposal in a four-page letter sent to the MSRB last month. The group urged the MSRB to issue it as a concept release with an expanded comment period so that it can be fully vetted by market participants.

SIFMA members would need an implementation period of at least six to nine months to be able to develop policies and procedures and make system changes, the letter said.

In an attachment and supplementary material, SIFMA included a non-exhaustive list of factors that dealers could consider to make a reasonable diligence determination that their prices were fair and reasonable.

The factors include the market for the muni, including the demand for it, the availability of it, the price, the volatility of the market, the relative liquidity of it, as well as the size of the issue and the issuer. Dealers could also consider: the size and type of the transaction; information about the market for similar securities; the accessibility of quotations and the likelihood of execution at a particular price; any customer bids, offers or conditions; and whether the broker-dealer is acting as a principal for itself and its inventory, or for as an agent for the customer.

SIFMA said that broker-dealers would have to meet the reasonable diligence standard regardless of whether they were acting as a principle or agent and that they could not excuse themselves by saying they did not have enough resources, technology, or information.

by: LYNN HUME

Ex-UBS Muni Derivative Desk Head Ghavami Gets 18 Months.

Former UBS AG (UBSN) managing director Peter Ghavami was sentenced to 18 months in prison for rigging what should have been competitive bids for municipal bond investment deals.

Ghavami, 45, and former UBS colleagues Gary Heinz and Michael Welty were sentenced today in Manhattan by U.S. District Judge Kimba Wood for their roles in the scheme. Heinz, 40, was sentenced to 27 months in prison as the judge weighed failed charges against him of witness tampering. Welty, 49, received a 16-month sentence.

"The offenses for which these three are being sentenced are very serious," Wood said today in court. "They were part of a corrupt corporate culture that spanned years."

The case stemmed from a five-year federal antitrust probe into the $3.7 trillion municipal bond market. Zurich-based UBS, Bank of America Corp. and other banks have paid more than $700 million to settle U.S. claims over the scheme.

Prosecutors alleged that the three men conspired with competitors and brokers to manipulate bidding for dozens of deals from about 2001 to 2004, costing municipalities, school districts and other bond issuers, as well as the U.S. Treasury, millions of dollars in losses.

Community Service

In addition to their prison sentences, Heinz and Welty were each ordered to serve 500 hours of community service and to pay fines of $400,000 and $300,000, respectively. Ghavami, who was accused of leading the scheme, was ordered to pay $1 million.

"They casually violated the regulations expecting that they would never be caught," Kalina Tulley, an attorney with the Justice Department's antitrust division, argued at the sentencing hearing.

The government sought far stiffer punishments than Wood imposed, requesting a combined total of at least 48 years for all three men. Wood found that prosecutors' financial loss calculations, which formed much of the basis of their sentencing requests, were "theoretical." She opted not to use most of them in making her decision.

The judge also said she took factors into account such as the defendants' charitable efforts and Ghavami's success overcoming of an abusive family life.

Ghavami, a Belgian citizen, will probably be deported after he finishes his sentence.

'Constant Cruelty'

The former executive "suffered a childhood marked by almost unbearable, constant cruelty that would have crushed a weaker person," Wood said. His "admirable history and character argue for some leniency," she said.

All three were convicted by a jury in August of wire-fraud conspiracy for rigging bids. Ghavami and Heinz were also found guilty of wire fraud.

Issuers of tax-exempt municipal bonds must use competitive bidding when selecting firms to handle deals to invest the proceeds of a bond sale, according to the government. Rather than submitting competitive offers, Ghavami and co-conspirators reached out to other financial firms and engineered bids that were most beneficial to their companies, prosecutors alleged.

"They got to name their price," Tulley said today.

While working for the bank's municipal bond reinvestment and derivatives desk in New York, the defendants handled as many as 38 investment deals where they rigged bids, prosecutors alleged.

Bond Proceeds

The deals involved proceeds of bond offerings by entities such as Puerto Rico, Massachusetts, the Mississippi Development Bank and the New Mexico Educational Assistance Foundation, according to court documents.

Prosecutors had sought a sentence of at least 17 1/2 years for Ghavami, 19 1/2 years for Heinz and at least 11 1/4 years for Welty.

"We are thankful that the court forcefully rejected the government's over-the-top, draconian sentencing request," Marc Mukasey, a lawyer for Heinz, said in an e-mail after the hearing.

Lawyers for Ghavami, Charles Stillman and James Mitchell, said outside the courtroom that their client's sentence was fair.

"We are very pleased at the outcome today and we feel that justice was done," Stillman said.

The case is U.S. v. Ghavami, 10-cr-1217, U.S. District Court, Southern District of New York (Manhattan).

MSRB Holds Quarterly Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 24-26, 2013, where it addressed themes of transparency and pricing in the municipal market, continued to streamline rules for municipal securities dealers and discussed the City of Detroit bankruptcy. It also approved new officers, board members and a strategic plan to guide the Board's activities beginning October 1, 2013.

To support the MSRB's ongoing commitment to increasing transparency in the municipal market related to pricing of municipal securities, the Board agreed to publish the second concept release in a series of releases on the MSRB's existing transaction reporting system. The new concept release will seek public comment on improving the quality and usefulness of available post-trade information and the appropriate standards for the collection and dissemination of pre-trade information on the MSRB's Electronic Municipal Market Access (EMMA®) website.

"The MSRB is evolving our EMMA website with the goal of creating a central transparency platform for the municipal securities market," said MSRB Chair Jay Goldstone. "We continue to engage the market in an incremental process to provide public access to a consolidated display of all possible sources of pricing-related market data."

To advance the MSRB's discussion of fair pricing in the municipal market, the Board agreed to take a two-step approach to clarifying, and potentially expanding the fair pricing obligations of dealers. First, it agreed to consolidate into a new rule municipal securities dealers' obligations related to fair pricing outlined in a number of existing rules and interpretations. The decision is consistent with MSRB efforts to streamline its rulebook, in particular the numerous interpretations to MSRB Rule G-

17 on fair dealing. The Board will seek public comment on condensing relevant requirements described in MSRB Rule G-30 on fair pricing, MSRB Rule G-18 on agency transactions and interpretations to MSRB Rule G-17 on fair dealing.

Second, the Board also agreed to publish a concept release on the merits of requiring municipal securities dealers to take specific steps to obtain the best price for investors buying and selling municipal securities. The corporate bond and equity market have so-called “best execution” rules. However the municipal market does not have similar standard, a concern highlighted in the July 2012 report from the Securities and Exchange Commission on the municipal securities market. The MSRB plans to seek public comment on whether such a standard is necessary for the municipal market, the benefits that would be attained, as well as on the costs of establishing a more structured approach for documenting how dealers satisfy their existing obligation to obtain a fair price for investors.

“Although there appears to be growing acceptance to applying certain best execution-like principles to our market, the Board looks forward to gathering broad public input in order to be as fully informed as possible before making any specific recommendations,” Goldstone said.

The Board discussed the developing aspects of the Detroit bankruptcy related to bondholders and is committed to acting as an independent and neutral resource on the issue. The MSRB’s EMMA website provides free public access to Detroit bond filings as well as current and historical trade price information. The Board is reminding market participants that in times of market volatility, the MSRB’s educational resources are especially relevant for investors and issuers. The MSRB’s Investor Toolkit addresses the risks of and considerations for buying and selling municipal securities.

At its meeting, the Board approved another action related to its effort to streamline existing MSRB rules and provide greater clarity and efficiency for dealers. The MSRB will publish a draft rule that would consolidate the numerous provisions and rules related to registering with the MSRB into a single MSRB registration rule.

The MSRB Board also discussed observations raised in a January 2012 General Accountability Office report, and also discussed in the MSRB’s initial concept release on the central transparency platform, about preferential dissemination of trade information to institutional investors. The Board agreed to further evaluate trade data and industry practices to determine whether municipal market participants are using information in a way that would be inconsistent with the principles of fair dealing.

At its meeting, the Board prepared itself for fiscal year 2014 by electing officers for the year that begins October 1, 2013, and electing seven new Board of Directors members who will serve three-year terms. Their names will be announced next week. The Board also approved a strategic plan that will guide the MSRB’s activities over the next three years, and a fiscal year 2014 operating plan and budget that supports the MSRB’s role as the primary regulator of the municipal market. Details about the strategic and operating plans will be available on October 1, 2013.

SEC to Consider Municipal Advisers in 'Near Term' – Commissioner.

The U.S. Securities and Exchange Commission will likely unveil and vote on a long-awaited definition of municipal advisers soon, but the timing depends on two new commissioners joining the federal regulatory agency.

“That will be in the near term I think,” Commissioner Dan Gallagher, a Republican, said on Thursday about consideration of the definition of who counts as a municipal adviser, a crucial element to carrying out the Dodd-Frank financial reform law.

“But one of the things we have to deal with here, too, is we are going to have two new commissioners come on,” he added. “I think they are pretty savvy folks … but they will still need some time to get up to speed.”

Gallagher said he had not read documents detailing the proposed definition. A source within the SEC also said the definition has moved toward the top of the commission’s agenda since Chairman Mary Jo White was confirmed in April.

Dodd-Frank required oversight of those who advise the cities, states and authorities selling municipal debt. More than two years ago, the SEC pulled its initial definition of an adviser after the $3.7 trillion municipal bond market universally panned it for being too broad. The commission then put in place a temporary rule on advisers that expires Sept. 30.

Regulators are concerned that a definition that is too narrow could create loopholes that will make it hard to ensure issuers’, and the public’s, interests are protected.

According to a market source who has tracked the adviser definition, if the U.S. Congress confirms SEC nominees Michael Piwowar and Kara Stein before its August recess, then the commission will likely vote on the final definition in September to give them time to become familiar with the rule. If the nominees are not confirmed, then a vote could come sooner.

In March, the head of the SEC’s municipal bond office, John Cross, said it was close to finishing a new definition that took into account the market’s concerns.

MSRB Provides State and Local Governments with Tool to Improve Disclosure of Financial Information.

To assist state and local governments in meeting their obligations to make financial information available to municipal bondholders on a timely basis, the Municipal Securities Rulemaking Board has created a service to allow state and local governments to schedule automated email reminders about an approaching deadline for providing annual and quarterly financial disclosures.

http://www.msrb.org/msrb1/pdfs/Financial-Disclosure-Email-Reminders-Fact-Sheet.pdf

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DOL Fiduciary Redraft Has "Left the Station."

Confirmation of Tom Perez as new Labor secretary will not hamper fiduciary reproposal, industry officials say

The confirmation of Assistant Attorney General Tom Perez as secretary for the Department of Labor on Thursday will not hinder the DOL’s release of its fiduciary reproposal, which the Department says will come in October.

The Senate confirmed Perez by a vote of 54-46, making him the only Latino in President Barack Obama's cabinet.

The ultimate compliance goal is to help ensure that everyone associated with an advisory firm acts ethically at all times. Advisors and RIAs should do the right thing, even when regulators are not looking over their shoulders.

Registration Requirements for Investment Advisor Representatives (IARs)

When individuals launch an advisory firm, they must avoid marketing themselves or the firm as investment advisors before they are properly approved and registered. Otherwise, they are subject to severe penalties.

Despite recent attempts by lawmakers — and those in the industry — to stymie the DOL's re-release of its fiduciary rule, the DOL's Employee Benefits Security Administration's Semiannual Regulatory Agenda, released July 3, states that a reproposal to amend the definition of fiduciary under the Employee Retirement Income Security Act (ERISA) will come in October.

Fred Reish, partner and chairman of the financial services ERISA team at Drinker Biddle & Reath, says the DOL's controversial fiduciary plan could become a "point of contention" in letters from lawmakers or any potential upcoming hearings that Congress may have with Perez. But DOL's fiduciary "train has left the station."

Reish expects the DOL's fiduciary redraft to be at the Office of Management and Budget in the next few weeks.

The next step will be "to see the proposed regulation and the related proposed prohibited transaction exemptions," Reish says. "If the DOL has responded to the most important concerns of the private sector, then the reproposal could be less controversial than contemplated."

Robert Lewis, vice president of legislative affairs for the Financial Services Institute, agrees that Perez's confirmation will not change DOL's fiduciary course. "DOL has been moving forward [on its fiduciary plan] most of the year with an acting secretary," he says. "We do not expect anything to change with the confirmation today."

FSI, which has been a staunch opponent of DOL's fiduciary plan, said in a statement that it "looks forward to working with [Perez] in the future, especially as his department moves forward on their rule redefining the definition of 'fiduciary.'"

FSI said that it was "certain" that Perez "shares our concerns about small investor access to financial advice" under the DOL's fiduciary reproposal, and that FSI was "eager to work with him to protect middle-class Americans."

EBSA head Phyllis Borzi has been saying for some time that a rerelease of the proposed rule would come this fall.

But in the last couple of months, lawmakers have been pushing legislation to halt those efforts. First came the Retail Investor Protection Act, a bill introduced by Rep. Ann Wagner, R-Mo., which passed the House Financial Services Committee in mid-June by a 44-13 vote. The bill would require that the DOL wait to repropose its fiduciary rule until 60 days after the SEC issues its fiduciary proposal. The bill advanced to the House Education and Workforce Committee.

Borzi said in mid-June that she would not wait until after the SEC published its rule to release DOL's.

Then in early July, Sen. Orrin Hatch, R-Utah, introduced legislation that would return oversight of IRAs to the Treasury Department— stripping that oversight from DOL.

DOL has received significant pushback regarding its plan to include IRAs in its rule to amend the definition of fiduciary under the Employee Retirement Income Security Act (ERISA), with the most notable complaint being that advisors would lose their ability to earn commissions on IRA advice.

But it's unlikely either of those bills will receive any traction before October.

Lawmakers Give SEC Until Fall for MA Definition.

Pressure is mounting for the Securities and Exchange Commission to complete its rulemaking defining municipal advisors, with congressional aides saying a House panel will likely hold a hearing on potentially preemptive legislation after the August recess.

A congressional aide said that while lawmakers are content to give the SEC a little more time while other high-priority issues take center stage, the House may preempt the commission if the MA definition does not drop before the start of college football season. SEC chairman Mary Jo White and the commission's muni chief John Cross have both publicly voiced the preference that Congress not pass laws related to current SEC rulemaking until after the rules are finalized.

The looming stick is H.R. 797, which would clarify Section 975 of the Dodd-Frank Act and define MAs as those engaged with issuers to provide financial advice for compensation. The bill contains exceptions for dealers seeking to be underwriters and those providing related advice, as well as bankers, swap dealers and governmental board members.

Cross said such legislation could force the SEC back to square one to begin the rulemaking process anew.

The bill, sponsored by Reps. Steve Stivers, R-Ohio, and Gwen Moore, D-Wisc., takes the same tack as a bill sponsored by former Rep. Bob Dold, R-Ill., that passed the House during the last Congress but failed to move forward in the Senate.

An aide familiar with the scheduling of the House Financial Services Committee, which has jurisdiction over securities issues, said housing reform legislation is the top priority right now but that committee chairman Jeb Hensarling, R-Texas, would probably schedule the Stivers/Moore bill in September.

"There is some pressure to move on this by the fall," the aide said.

Stivers and Moore sent the commission a letter in May urging that the SEC's final registration rule for MAs resemble H.R. 797 in substance. In it, they expressed dismay at the commission's initial 2010 stab at a definition, saying the proposal went beyond the scope of what lawmakers who enacted the Dodd-Frank Act intended.

The pair received a non-committal response from White but subsequent public comments from Cross indicate that the SEC will address some of their concerns in the final registration rule. There has not been further official communication on the matter since then.

The Stivers/Moore bill enjoys the support of dealer groups, but has been criticized by non-dealer financial advisors and others who fear it creates a way for banks, swap advisors and others to circumvent Dodd-Frank. Some market participants have questioned the bill's premise that the Dodd-Frank Act was never intended to be so broad, and accused the lawmakers of creating legislative intent "after the fact."

An aide said the MA definition remains a very high priority for Stivers, who wants to maintain pressure on the SEC to release the rule. Many municipal market professionals remain unsure if they will fall into the category of MA, so further muni rulemaking is largely predicated on the definition.

The Municipal Securities Rulemaking Board has been waiting for the definition, which has held up its efforts to author new rules and rule changes for MAs. MSRB executive director Lynnette Kelly has said the board is ready to spring into action as soon as the SEC releases its final rule.

Cross has said the definition will be released in late summer, but it was originally expected to come out in 2011, then 2012, then the first quarter of 2013.

The House recesses on Aug. 2 and returns Sept. 9.

by: KYLE GLAZIER

MSRB Board of Directors Meeting Discussion Items.

The Municipal Securities Rulemaking Board (MSRB) Board of Directors will meet July 24–26, 2013, where it will discuss the following rulemaking topics. 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.

Fair Pricing

The Board will discuss the proposed consolidation of current MSRB Rule G-18 and G-30 and interpretive guidance to create one new rule on fair pricing.

Best Execution

The Board will discuss requesting public comment on a concept proposal relating to the application of "best execution" concepts for transactions in municipal securities.

Trade Reporting Concept Release

The Board will discuss requesting public comment on enhancing existing post-trade data and collecting pre-trade information.

MSRB Registration Rule

The Board will discuss a proposal to combine registration requirements from existing MSRB rules into a single registration rule.

Front Running

The Board will discuss a proposed new rule to address concerns relating to trading in municipal securities by persons in possession of material, non-public trade information.

[MSRB to Consider Taking Action on Front Running, Best Execution.]

The Municipal Securities Rulemaking Board, at its meeting in Boston next week, will consider whether to create a rule to crackdown on front running as well as request comments on applying best execution practices for municipal bonds.

There is currently no MSRB rule on front running, a type of insider trading that occurs when a dealer uses non-public knowledge to execute advantageous trades either for preferred customers or the firm's own accounts. A dealer might that has a customer who wants to sell a large dollar amount of securities might, for example, to choose to sell off its own holdings of that debt before the big sale hits the market and depresses the price. It could also include trading on other types of inside information, such as unreleased rating agency reports or financial data.

The Financial Industry Regulatory Authority has a rule that prohibits front running, and it is already specifically regulated in all other securities markets. Observers said it will be interesting to see whether the MSRB mimics FINRA's Rule 5270, which a member firm from buying or selling securities or other financial instruments if it has material information that is not publicly available.

The board may also decide to solicit comments on best execution, a concept which could be difficult to define, but could provide an opportunity for the MSRB to use an existing FINRA rule as a guide. The MSRB has been mulling the creation of a best execution rule since last year, when it was recommended by the Securities and Exchange Commission in its report on the municipal market.

Speaking at Securities Industry and Financial Market's 2012 Municipal Bond Summit, MSRB executive director Lynnette Kelly said any such rule, if based on FINRA's rule, would not require dealers to quote the best price to a customer. FINRA's rule requires dealers to have "written policies and procedures in place that address how [they] will determine the best interdealer market for such a security in the absence of pricing information or multiple quotations." It also requires dealers to document their compliance with those policies and procedures.

Malcolm Northam, the former head of fixed income regulation at the Financial Industry Regulatory Authority who now has his own consulting firm, said the discussion is complex because pricing is not the only factor to consider when determining the best execution for a customer. Some customers might be seeking liquidity, he noted, and even if that means they aren't getting the best price they might still be getting the best execution. Northam said it will be interesting to see the board's approach.

Paul Maco, a partner at Bracewell & Giuliani LLP and former SEC muni chief, had similar thoughts.

"This is an interesting concept," Maco said. "How are they going to define that? What does best execution mean in the context of a thinly traded over the counter market?"

The board will also discuss consolidating into a new rule two existing rules and guidance on fair pricing, a controversial topic that is likewise difficult to define. A recent study by the Fairfax, Va.-based Securities Litigation and Consulting Group, Inc. claimed widespread markup abuse but drew a sharp retort from dealers. Other topics include whether the board should request public comments on enhancing existing post-trade data and collecting pre-trade information, or combine existing registration requirements into one rule.

by: KYLE GLAZIER

Basel III Rules Likely to Curb Big Banks' Muni Purchases.

U.S. banking regulators this month published two rules that may damp investment by banks in municipal bonds.

The more significant change will require the largest banks to account for any credit or interest-rat--related price drops in their investments, including municipals, in their available-for-sale portfolios, thus reducing capital available to back further investments. Smaller banks or savings and loans can opt out of the rule.

Under the other rule, adopted over objections from the muni industry, revenue bonds will maintain a 50% risk weighting, making it more expensive for banks to hold them than general obligation bonds, which retain a 20% risk weighting.

The changes stem from the combined efforts of the Office of the Comptroller of the Currency within the Department of the Treasury, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation to revise risk-based and leverage capital requirements for banks as required by the Third Basel Accord. The final rule, published in two stages on July 2 and one week later, consolidates three separate notices of proposed rulemaking that the OCC, the Fed, and the FDIC published last year.

The regulating government agencies’ set a mandatory compliance date of Jan. 1, 2014, for the largest banking organizations that are not savings and loan holding companies. All other covered banking organizations must be in compliance one year later.

Banks’ muni bond holdings have increased to about 10% of total bonds outstanding in the $3.73 trillion market from 6% in 2007, according to the latest Fed flow of funds numbers. Through the first quarter of 2013, they’ve risen 85%, to $374.2 billion from $202.0 billion in the six years.

The change in capital treatment for the largest banks doesn’t sit well with the American Bankers Association, their trade association. It’s unclear, though, just how institutions will choose to handle it, said Cecelia Calaby, a senior vice president for the ABA’s center for securities, trust and investments.

“We don’t think this is a good thing that the larger banks have to flow unrealized gains and losses through capital, because we believe it exacerbates the volatility of bank capital in a way that is not useful or helpful to investors,” Calaby said.

When banks hold securities, they have to place them into held-to-maturity or available-for-sale portfolios for accounting purposes. Marking to market a security in a bank’s held-to-maturity portfolio is unnecessary. It’s required for those securities held in its available-for-sale portfolios.

There are two approaches to capital treatment in the new rule for banks. The advanced approach applies to banks generally with consolidated total assets of at least $250 billion, or consolidated total on-balance-sheet foreign exposures of at least $10 billion.

All other banks fall under the standard approach, which lets them opt out of the treatment for “accumulated other comprehensive income.” This amount consists of accrued unrealized gains and losses on certain assets and liabilities that haven't been included net income, yet are included in equity under U.S. generally accepted accounting principles, such as those gains and losses on securities designated as available-for-sale, according to the specifics of the rule.

"All but the advanced approach banks can elect not to flow unrealized gains and losses through capital," Calaby said. "We expect most will take that decision."

Long-term muni purchases at the largest banks will be affected as a result of the accounting requirement for their available-for-sale portfolios, a managing director in the muni group at a large bank said. The largest banks control about 50% of banking assets in long-term fixed-rate municipal paper, he said, while the 8,000 banks that comprise the other half of the banking system still have the ability to buy those without having them affect regulatory capital.

"If it was believed that the top-10 banks in the country were going continue adding munis at the rate they had been adding them for the last two years, I'd guess that rate of increase in purchases has to decline with this," the banker said.

This is because, as the value of an asset dropped, banks would have to effectively take a charge against capital for that drop in market value, said Michael Decker, a managing director and co-head in the municipal securities division of the Securities Industry and Financial Markets Association. "And they would be able to treat as added capital an increase in the value of their assets," he added.

As interest rates rise and banks incur unrealized losses in their muni holdings, thus reducing capital, they will have to meet their capital ratios some other way or must have buffers against those losses, Calaby said. "One technique or tool they may use to better position themselves from an interest-rate risk perspective is to shorten the maturity of the securities in their available-for-sale portfolio," she said.

Regarding the risk weightings of GO and revenue bonds, GO bonds remain in a relatively low risk-weighting category, Sifma's Decker said. Revenue bonds do as well, but are in a higher category than GOs.

Still, banks would have to hold two-and-a-half times as much capital against revenue bond assets as they would for GO bonds.

Sifma was disappointed that the Fed chose to disregard arguments the association made in October that there is no significant difference in credit performance between GO and revenue bonds, Decker said.

"This rule, once it's fully implemented, will affect some banks' decisions on which municipals they might want to hold and what volume of municipals they might want to hold," he said. "In that respect, there are going to be some market implications."

Banks' increase in their muni holdings has been particularly significant in the last several years, Decker said. Their participation in the market has had the effect of keeping borrowing costs for state and local governments lower than they might otherwise be.

Others in the industry said the effects of the rule changes will probably be marginal.

For one thing, many banks have regarded the rules as inevitable and have planned accordingly, said Peter Hayes, head of municipal bond portfolio management, trading and research at BlackRock. Furthermore, he added, banks are likely to view the low risk weighting of municipals relative to other securities in a favorable light.

"Across the investment-grade spectrum, munis do carry a lower risk weight than other asset classes," Hayes said. "And some banks I talk to think it's going to be beneficial, in terms of a contribution to their bottom line."

SEC Lifts Ban on Hedge Fund Ads.

Hedge funds and other firms that seek private investments will be allowed to advertise publicly for the first time under a rule adopted Wednesday by the Securities and Exchange Commission.

Adopted by a 4-1 vote, the rule eliminates an 80-year regime of advertising restrictions intended to safeguard small investors from taking on potentially dangerous risk. The rule covers the way issuers raise funds through private offerings, a process that is exempt from requirements to report public financial statements.

While the rule would authorize firms to raise unlimited amounts via mass advertising of private offerings, it would require reasonable steps to ensure that buyers are so-called accredited investors — who are wealthier and deemed better able to gauge investment risks.

The rule would also make it easier for start-up businesses to raise funding without immediately requiring compliance with SEC disclosure rules. The measure is the first adopted by the SEC under a mandate in the 2012 Jumpstart Our Business Startups Act approved by Congress and signed by President Obama.

The SEC adopted the rule while unanimously approving a separate rule to ban most felons and other "bad actors" from involvement in private offerings.

A proposal that could eventually require issuers to notify the SEC 15 days before starting offerings and at the conclusion of sales won a split 3-2 vote approval. The proposal, which will now be opened for public comment, could also require private securities issuers to give the SEC more information about themselves, their companies and the offerings.

"We want this new market, and the private markets in general, to thrive in a safe and efficient manner, and the rules we adopt and propose today are designed to facilitate that objective," said SEC Chairman Mary Jo White.

Commissioner Luis Aguilar dissented on the decision to lift the advertising ban, arguing that it would "come at the expense of investors and place investors at greater risk."

Commissioners Troy Paredes and Daniel Gallagher voted against the proposal that could require companies that use private offerings to provide more information to the SEC. They said it could hinder business growth.

"It threatens real harm to the private markets which are so important to capital formation," said Gallagher.

Jennifer Openshaw, president of Finect, an online network for the financial industry, said the SEC's lifting of the advertising restriction should be followed by strong investor protections.

"It's all the more important to be vigilant against bad actors," said Openshaw. "More information will now be accessible to investors through the use of social media, and the ability of bad actors to pursue unaccredited, unsophisticated investors will grow."

But John Frankel, founding partner of ff Venture Capital, a company that helps fledgling businesses, said the SEC action would "bring the high returns of early-stage investing into the limelight and facilitate more money to early-stage firms and thus to start-ups."

MSRB to Ease Standard of Independence for Board Members.

The Municipal Securities Rulemaking Board has filed rule changes with the Securities and Exchange Commission that would ease the standard of independence for its board.

Some market participants said the MSRB is resisting bringing issuer officials onto the board and wants to keep the board more industry-oriented by choosing retired industry officials as public members. They said the board should not be allowed to loosen or undermine the independence standards. But others claimed the rule changes are needed so that institutional investor representatives can join the board, a current problem because many them have broker-dealer arms to market Section 529 college savings plans, which the SEC has said involves muni securities..

The Dodd-Frank Act mandated the MSRB to have a majority public board. Before the act, the board consisted of 15 members — five from banks, five from securities firms and five from the public, at least one of whom must represent issuers and one of whom must represent institutional investors Members had three-year staggered terms so that five rolled off the board every year.

In Dodd-Frank, Congress said the MSRB must fall in line with other self-regulatory organizations and have more public than industry members, but left it up to the board to determine how to change the board.

The MSRB expanded its board to 21 members, 11 of which are to be independent of any muni broker-dealers, banks or muni advisors, at least of whom represents issuers, one institutional investors, and one who has 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. Board members still serve three-year staggered terms, with seven rolling over every year.

Currently the board defines public members who are "independent of any regulated entities" to mean individuals who have "no material business relationship" with any regulatory entities. The individuals are not, and have not been, associated with a regulated entity for two years and do not have any compensatory or other relationship with a regulated entity that would affect the independence of their decision-making.

But the MSRB told the SEC in its notice, "In practice, this standard has precluded consideration of otherwise viable candidates who are knowledgeable of matters related to the municipal securities market from service as public representatives" because they are associated with regulated entities.

"This standard of independence disqualifies many individuals with expertise and knowledge to represent investors because such persons have a regulated entity within their employer's corporate structure," the board said.

The MSRB told the SEC it is proposing "a more function oriented approach to defining independence" that will specify an individual has "no material business relationship" with a regulated entity such as broker-dealer, bank or muni advisor, if it is not, and within the last two years was not, an officer, director, employee or controlling person of the regulated entity. The term director would not cover independent directors.

"The proposed rule change will … allow the MSRB to consider candidates who are associated with regulated entities solely by virtue of the corporate structure of their employer," the MSRB said.

But Jeanine Rodgers Caruso, president of the National Association of Independent Public Finance Advisors, said, "NAIPFA is disappointed with the MSRB amendment to MSRB Rule A-3. The MSRB is removing the phrase "associated with" from the language of the rule and is replacing it with the phrase officers, employees, etc. of a broker-dealer. The net effect is that employees of broker-dealer affiliates will be considered to be independent for purposes of the board's composition regardless of whether they are currently employed by such an affiliate. In other words, if Goldman Sachs had a non-municipal securities dealer affiliate with employees, that individual would be considered to be independent regardless of their current employment state with the affiliate."

The board told the SEC that all board members, whether public of regulated, "have a fiduciary duty to the MSRB and are bound by a duty of loyalty and duty of care and are obligated to act in the best interests of the organization and to avoid conflicts of interest."

by: LYNN HUME

Brokers Willing to Pay Up for Fiduciary Standard: SIFMA.

Financial Planning Coalition says BDs with fiduciary accounts see stronger asset growth; Schwab says RIAs must beware of harmonization.

A uniform fiduciary standard implemented by the Securities and Exchange Commission would hit brokers with $8 million in new compliance costs, according to the Securities Industry and Financial Markets Association.

Updating disclosure documents would cost $3 million, and the initial build-out of compliance systems and training would cost another $5 million, said SIFMA, which represents banks, securities firms and asset managers.

Whether an RIA is SEC or state-registered, the firm must have policies and procedures in effect to protect clients' privacy. Policies and procedures should explicitly require an RIA to send out its privacy notice each year.

Registration Requirements for Investment Advisor Representatives (IARs)

When individuals launch an advisory firm, they must avoid marketing themselves or the firm as investment advisors before they are properly approved and registered. Otherwise, they are subject to severe penalties.

But Ira Hammerman, SIFMA's senior managing director and general counsel, told AdvisorOne on Monday that BDs "are generally willing to incur" the above mentioned additional compliance costs "in order to arrive at a new fiduciary standard."

The Financial Planning Coalition of advisory industry trade groups argues that advisors at BDs who deliver advice under a fiduciary standard experience stronger asset growth, and that the conversion of fee-based brokerage accounts to fiduciary, nondiscretionary advisory accounts would impose "little if any additional cost or burden."

Charles Schwab, however, flipped the scenario around, telling the SEC in its comment letter what it would cost for registered investment advisors to comply with BD rules should the agency decide to include "harmonizing" BD and advisor rules in its fiduciary rule proposal.

Depending on how broadly the commission would apply "harmonized rules — whether to some or all RIAs," harmonized rules could cost the RIA industry a whopping $1 billion, Christopher Gilkerson, Schwab's senior vice president and deputy general counsel, told the SEC.

SIFMA, Schwab and the coalition members — which include the Financial Planning Association, the National Association of Personal Financial Advisors and the CFP Board — expressed their views in comment letters to the SEC as part of the agency's March 1 request for information on the costs and benefits of a uniform fiduciary standard. The comment period ended July 5.

Hammerman told the SEC that "SIFMA remains strongly supportive of a uniform fiduciary standard for broker-dealers and investment advisors when providing personalized investment advice about securities to individual retail clients."

SIFMA surveyed 18 of its member firms — 12 large BDs and six regional ones — to arrive at the $8 million in additional compliance costs under a fiduciary standard. SIFMA said that it focused on two specific areas where its members believe they would be hit hard by a fiduciary rule — the costs of developing and maintaining a disclosure form similar to Form ADV Part 2A, and the costs of developing and maintaining new supervisory systems, procedures and training programs to implement the new standard.

SIFMA noted in its comment letter that as the SEC has not issued a "concrete" fiduciary proposal yet, "it is not possible to adequately identify and estimate all the costs of establishing a uniform fiduciary standard."

The coalition used Cerulli Associates data from 2007 to back up its argument that the conversion of non-fiduciary, fee-based brokerage accounts to fiduciary, nondiscretionary advisory accounts would impose "little if any additional cost or burden."

SIFMA Submits Cost Estimates to SEC on Fiduciary Rulemaking.

SIFMA has released its response to a data request by the Securities and Exchange Commission (SEC) to help inform the agency's cost-benefit analysis of a uniform fiduciary standard for broker-dealers and investment advisers under Section 913 of the Dodd-Frank Act. For the first time, the industry provides estimates on the cost of complying with a uniform fiduciary standard.

"SIFMA remains strongly supportive of a uniform fiduciary standard for broker-dealers and investment advisers when providing personalized investment advice about securities to individual retail clients," said Ira Hammerman, senior managing director and general counsel. "In our effort to be most helpful and responsive to the SEC, we surveyed our member firms to collect data and information about the costs of creating and updating disclosures, systems and procedures to implement a uniform fiduciary standard. We also suggest the types of data and information the SEC should consider in their cost-benefit analysis. While the costs projected by our members clearly are not insignificant, these are costs our industry is generally willing to bear in order to benefit retail clients with a fiduciary standard."

The letter reiterates SIFMA's long-held support for a uniform fiduciary standard of conduct, as well as its support for broader harmonization of broker-dealer and investment adviser regulations.

SIFMA's letter also raises concerns about potential rulemaking by the Department of Labor to expansively redefine fiduciary under the Employee Retirement Income Security Act. SIFMA points out that the DOL's proposal could conflict with the SEC's potential rulemaking under Section 913, and could otherwise have a broad and negative impact on small investors' access to cost-effective advice in IRA accounts.

In response to the SEC's explicit request, SIFMA's letter also details and clarifies why simply overlaying the Advisers Act fiduciary duty onto broker-dealers would create a high risk of confusion and misapplication, and will negatively impact client choice and access to the products and services that best suit their needs. SIFMA reiterated its strong opposition to this approach.

Lastly, SIFMA provided estimates as to the cost of implementing a uniform fiduciary standard for brokers-dealers in two specific ways. The estimates were derived from a survey of 18 SIFMA member firms (12 large broker-dealers, 6 regional broker-dealers)

The costs of developing and maintaining a disclosure form and customer relationship guide.

Responding firms said they would need to furnish the broker-dealer relationship guide to a combined total of approximately 50.6 million retail customers;

Over 75 percent said they planned to hire outside legal counsel to help prepare the guide;

The vast majority of firms' estimated costs fell into out-of-pocket expenses and employee and staff-related costs, which included:

$1.2 to $3.9 million to initially developing the BD relationship guide and maintaining it for the first year. The average cost was $2.6 million

The average per annum cost of updating and maintain the relationship guide was estimated to be about $631,000

The costs of developing and implementing a new, comprehensive compliance and supervisory system and procedures and related training programs to adapt to the uniform fiduciary standard.

The largest cluster of firms, a group of 9 firms, estimated the total costs of initially developing the necessary infrastructure and maintain and implementing it for one year in the range of approximately $1 to $6 million. The average was approximately $5 million.

Those same firms estimated that it would cost an estimated $2 million per year to update, maintain and implement those systems, procedures and programs.

As a point of comparison, we asked firms to report the total costs incurred to date to implement FINRA's new suitability rule, Rule 2111, which took effect in July 2012.Of 17 responding firms, the average firm estimated it had spent approximately $4.6 million to comply with the new rule.

The full letter can be found at the following link:

http://www.sifma.org/issues/item.aspx?id=8589944317.

Finra Postpones Action on Recruitment Disclosure Rule.

Proposal would require brokerages to inform customers about incentive deals with reps.

The Financial Industry Regulatory Authority Inc. has postponed action on a controversial proposal to require disclosure to customers of broker recruitment deals.

As reported earlier, a notice on Finra's site said the Finra board would "consider an updated [disclosure] proposal" at its board meeting July 11.

But Finra spokesperson Nancy Condon said the organization's board had pushed off consideration of the rule to a later date, due to tight scheduling. She had no further information.

The SRO's board must give its approval before Finra staff can file rules with the Securities and Exchange Commission.

In January, the industry regulator asked for comment about its initial disclosure proposal. The plan would require a brokerage firm to disclose to customers the upfront or back-end bonuses, accelerated payouts and other forms of transition assistance given to a new recruit. The disclosure rule would apply to customers who are solicited for a period of one year following that broker's transfer to the new firm. The rule, as initially proposed, would not apply to incentives totaling less than $50,000.

Several hybrid advisers said they wanted Finra to act on the rule.

"I think it's very much needed and long overdue," said Jonathan Heller, founder of JG Heller Private Wealth Advisors Inc.

"Reps get an enormous amount of money, and the [recruiting] firms counsel the adviser to just focus on the positives of the new firm," Mr. Heller said. "But in reality, if there's a multimillion-dollar check involved, clients have no knowledge of that."

"I'm in full favor of it," Gerard Gloisten, president of GBS Financial Corp., said about Finra's proposal. "The reality is, there are a certain number of reps who hop from firm to firm for the bonus. It's not fair for anyone involved."

Finra's initial plan generated over 60 comment letters. In comments, industry trade groups said they supported disclosure, but wanted the proposal narrowed or changed.

The Securities Industry and Financial Markets Association urged Finra to adopt a plain-English disclosure model focusing on potential conflicts for firms to use.

The National Association of Insurance and Financial Advisors wanted Finra to increase the compensation threshold for disclosure to $100,000, and decrease the time frame to less than one year.

The Financial Services Institute Inc. said disclosure should also apply to retention bonuses as well as to recruiting deals.

GAO: Most SEC-registered Advisers Not Subject to Surprise Exams.

Most of the investment advisers registered with the Securities and Exchange Commission who maintain custody of their clients' investment funds are not subject to surprise annual examinations, according to a new federal report.

A study released on Monday by the Government Accountability Office. found that 4,446 of the 9,982 SEC-registered advisers had control over client money as of April 1, amounting to more than $14 trillion in client assets.

Of those who had custody, 1,321 are subject to annual surprise examinations by independent public accountants. A total of 2,956 advisers with custody do not have to undergo surprise exams.

Advisers can be exempted from surprise inspections if they have custody of client assets only to deduct fees from client accounts or are "operationally independent" of the custodian.

There are 169 advisers who have possession of client funds but don't have to undergo annual surprise audits because they are "operationally independent" from their custodian, even though the adviser and custodian are owned by the same entity. In these cases, the adviser and the custodian cannot have common supervision or share the same premises.

The GAO conducted a performance audit of 12 investment advisers from September through July to determine the costs of the inspections. It found that the firms paid anywhere from $3,500 to $31,000 for the surprise examinations.

The charge for the audits is based on a number of factors, including the number of clients and the amount of assets in custody. The advisers reviewed had between one and more than 1 million clients under custody.

Internal control reporting requirements cost between $25,000 and $500,000, according to accounting firms the GAO interviewed.

The GAO custody study was mandated by the Dodd-Frank financial reform law.

Most investment advisers house their clients' assets with a third-party custodian such as Charles Schwab & Co. Inc. or TD Ameritrade Inc.

In 2009, the SEC amended the custody rule to expand surprise inspections in response to the Ponzi scheme perpetrated by Bernard Madoff that bilked investors of more than $50 billion. The scheme revolved in part around the fact that Mr. Madoff's firm had custody of his clients' money.

In a March investor alert, the SEC said that roughly one-third of advisory firms examined last year — about 140 — were flagged for problems with how they held or had access to their clients' assets.

The SEC exams found that many advisers didn't know that they had inadvertently become custodians. The designation can be triggered by actions such as serving as a trustee for a client, signing checks on clients' behalf or withdrawing funds from client accounts to pay bills.

http://www.investmentnews.com/article/20130709/FREE/130709930

MSRB Releases Report on Municipal Bond Continuing Disclosure Documents.

The Municipal Securities Rulemaking Board (MSRB) has released a report summarizing the type and number of continuing disclosure documents submitted by issuers of municipal securities to the MSRB's Electronic Municipal Market Access (EMMA®) website between July 2009 and March 2013.

Continuing disclosures report the financial or operating condition of a municipal bond issuer over time, as well as specific events occurring after issuance that can affect the ability of the issuer to repay the bond. The EMMA website has been the official repository for municipal security continuing disclosure documents since July 1, 2009.

Between July 2009 and March 2013, the MSRB received 505,395 continuing disclosure documents, according to the Continuing Disclosure Statistical Summary. The report shows a steady increase in the annual number of disclosure documents submitted to the MSRB by municipal bond issuers and obligated persons.

Other highlights of the report include:

- Bond calls accounted for 38 percent of all continuing disclosure documents submitted to EMMA between July 2009 and March 2013.
- The State of California and its municipalities continued to submit the largest share of the continuing disclosure documents to the MSRB, accounting for nearly 12 percent, or 61,441, of all disclosures between July 2009 and March 2013.
- With the exception of December 2012, the number of financial and operating disclosure submissions received by the MSRB over the last three years has increased every month over the same month in the previous year.

The MSRB's EMMA website is a centralized online database that provides free public access to more than 800,000 official disclosure documents and data on more than 70 million trades associated with municipal bonds issued in the United States. The EMMA website makes available real-time trade prices, primary market and continuing disclosure documents, and current credit ratings for more than one million outstanding securities, as well as current interest rate information, liquidity documents and other information for most variable rate municipal securities.

http://msrb.org/msrb1/pdfs/MSRB-Continuing-Disclosure-Report-July-2013.pdf

MSRB to Offer New Email Reminder Tool for Recurring Financial Disclosures.

The Municipal Securities Rulemaking Board (MSRB) will soon launch a new tool to help issuers of municipal securities keep track of due dates for recurring financial disclosures to the Electronic Municipal Market Access (EMMA®) website. State and local governments and other entities with annual or quarterly disclosure deadlines will be able to schedule email reminders to alert multiple recipients when it is approaching the time to make a financial disclosure submission to EMMA. Look for more information and resources on financial disclosures from the MSRB soon.

MSRB to Launch Disclosure Tool; Will it Lead to Dispute with DAC?

The Municipal Securities Rulemaking Board announced that it will soon launch a new tool to help municipal securities issuers keep track of the dates they must file periodic financial disclosures to its EMMA website.

But the announcement, which did not contain any details, has led some market participants to question whether this new tool will cause a dispute between the MSRB and Digital Assurance Certification, which sued the operator of a predecessor disclosure system in part because it alerted issuers when their disclosure documents were to be filed.

Asked about the this issue, MSRB Executive Director Lynnette Kelly wrote in an email on Wednesday, "We have assured ourselves that what we propose to do will not be precluded by any intellectual property claims of DAC."

Kelly said also that the MSRB has not entered into any arrangements with DAC.

Paula Stuart, chief executive officer of Orlando-based DAC, could not be reached for comment.

DAC sued the Texas Municipal Advisory Council, which operated the Central Post Office, a central collection place for issuers' secondary market disclosure documents, in January 2007, less than a month after DAC obtained a patent for its disclosure services.

The CPO was created by the Texas MAC for the Muni Council, about 20 muni market groups trying to improve muni bond disclosure. It began operating in September 2004 and was billed as a "one-stop" system for muni issuers or their agents to file secondary market disclosure documents.

The Securities and Exchange Commission's Rule 15c2-12 bars firms from underwriting muni securities unless the issuers have contractually agreed in writing to file annual financial information and operating data, as well as notices when material events occur.

Initially issuers had to file the documents with several nationally-recognized municipal securities information repositories, but issuers complained about the duplicative efforts. Additionally, the NRMSIRs operated their systems and filed the documents differently, making it hard to some dealers and banks to meet their disclosure obligations, which included checking issuers' material event notices and determining if issuers were filing financial disclosures on the dates they had specified for bondholders.

So the Muni Council worked with the Texas MAC to create the CPO, which collected issuers disclosures and sent them to the NRMSIRs.

In its lawsuit against the Texas MAC, which was filed in a federal court in Florida, DAC claimed that it had created a disclosure collection and dissemination system about three years before the CPO started operating and that DAC's system it was designed to be a one-stop filing system for issuers. It asked the court to shut down the CPO.

The Texas MAC fought the suit, claiming the MSRB had started collecting disclosure documents long before DAC began operating.

DAC even forced the SEC to both remove any mention of the CPO from its website and to back away from the idea of essentially requiring issuers to use the CPO in order for firms to underwrite their bonds.

In May 2007, DAC and the Texas MAC agreed to the first of a series of steps to resolve the litigation, including that the Texas MAC would no longer send issuers receipts for their disclosure documents or alerts when those documents were due or not received on time.

The suit was finally settled in June without any money exchanging hands. The Texas MAC agreed to make changes, including disabling a feature that sent emails to CPO customers alerting them to filing deadlines for their annual financial and operating information.

In December, the SEC designated the MSRB's EMMA system as a free, central repository to which issuers must file bond-related secondary market documents beginning on July 1, 2009. At that time, the MSRB essentially replaced the CPO and the NRMSIRs as a collector and repository of secondary market disclosure filings. MSRB had been collecting and maintaining primary disclosure documents — official statements and escrow agreements for refundings — for many years before that.

by: LYNN HUME

[SEC Approves JOBS Act Requirement to Lift General Solicitation Ban.]

The Securities and Exchange Commission has adopted a new rule to implement a JOBS Act requirement to lift the ban on general solicitation or general advertising for certain private securities offerings.

Fact Sheet:

http://www.sec.gov/news/press/2013/2013-124-item1.htm

In connection with this new rule, the Commission voted to issue a rule proposal requiring issuers to provide additional information about these securities offerings to better enable the SEC to monitor the market with that ban now lifted. The proposal also provides for additional safeguards as this market changes and new practices develop.

The SEC also adopted rules that disqualify felons and other bad actors from participating in certain securities offerings as required by the Dodd-Frank Act.

[Reminder: Amendments to MSRB Rules G-37 and G-8 Become Effective Today.]

Effective today, MSRB Rules G-37 and G-8 require the public disclosure of additional information related to bond ballot campaign contributions and the municipal securities business engaged in by dealers resulting from voter approval of the bond ballot measure to which such contributions relate. The MSRB reminds brokers, dealers and municipal securities dealers that the additional quarterly disclosures must be submitted to the MSRB no later than October 31, 2013 for the quarter commencing on July 1, 2013 and each quarter thereafter.

Read the original approval notice:

http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-09.aspx

[MSRB's Proposal to Change Rules Related to Retail Order Periods Published in Federal Register.]

The Municipal Securities Rulemaking Board (MSRB)'s request for approval on a proposed rule change to MSRB Rule G-8, Rule G-11 and Rule G-32 has been published in the Federal Regiser.http://www.gpo.gov/fdsys/pkg/FR-2013-06-28/pdf/2013-15492.pdf

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[FINRA Selects Morningstar for Re-Launch of Market Data Center.]

The Financial Industry Regulatory Authority (FINRA) announced today that it selected Morningstar, Inc. to provide financial data, technology and design for the re-launch of FINRA's Market Data Center. FINRA's Market Data Center makes available to retail investors a wealth of information on a broad spectrum of financial instruments. With an emphasis on bond market information, including price information from FINRA's Trade Reporting and Compliance Engine (TRACE), the Market Data Center has brought retail investors unprecedented transparency to the corporate bond market. By working with Morningstar, FINRA's revamped Market Data Center is now a comprehensive and powerful platform offering expansive market data as well as FINRA Investor Education materials and tools.

"FINRA is pleased to work with Morningstar to give retail investors new resources and features to help them make better-informed investing decisions. TRACE has been vital to bringing transparency to the bond market, and our updated Market Data Center will make it easier for investors to use and understand this and other information," said FINRA Vice President Ola Persson.

Morningstar designed the new Market Data Center and provides comprehensive intra-day pricing and fundamental data for U.S. fixed income securities, equities, options, indexes, mutual funds and exchange-traded funds (ETFs).

"We are pleased that FINRA selected us to redesign the Market Data Center," Kunal Kapoor, head of global client solutions for Morningstar, Inc., said. "We share a common commitment with FINRA to improve transparency in the bond markets, an area where investors have traditionally had a hard time finding timely and meaningful information. The newly redesigned Center offers investors a wide breadth of financial data and tools, and better surfaces the rich set of information FINRA has to offer."

The Market Data Center provides retail investors with information on a range of financial instruments, including:

- a comprehensive source for unbiased financial information provided without advertising;
- information on a broad spectrum of financial instruments, including equities, options, mutual funds, ETFs and bonds;
- the most comprehensive free bond market information on the Web, with advanced screening tools allowing investors more flexibility to conduct searches and find the information they need;
- bond data that includes descriptions of corporate bonds, municipal securities and treasury and agency bonds, credit rating information from the three major rating agencies, TRACE- and MSRB-reported price information, scrolling real-time tickers for most recently traded bonds and links to the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA); and

- improved graphing capabilities to give investors more tools to understand market data.

FINRA is dedicated to educating investors and demystifying the bond market. To that end, FINRA has developed a comprehensive online learning center – Smart Bond Investing – where retail investors can become familiar with the full range of bond types, features and considerations when investing in bonds. FINRA Investor Alerts, including a recent warning highlighting the importance of duration risk, give investors timely information and helpful tools to assist them in making smarter financial choices.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules, enforcing those rules and the federal securities laws, informing and educating the investing public, providing trade reporting and other industry utilities, and administering the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

SEC Cracks Down on Disclosure in Municipal Bond Sales.

The Securities and Exchange Commission is cracking down on municipalities that it suspects of hiding information from investors when they sell bonds to them, with more cases expected to be announced in the coming months.

The effort reflects the agency's frustration about its limited authority in a market that's especially popular with ordinary Americans, who don't pay federal taxes on interest on municipal bonds. Today, retail investors directly hold about half of the $3.7 trillion in municipal debt, which is used to finance schools, roads, hospitals and other projects.

While the SEC oversees the investment banks that localities hire to make bond offerings, it does not directly oversee the municipalities or review the bonds before they're offered to the public. Last year, the agency urged Congress to grant it more muscle in that arena.

But with congressional action nowhere in sight, the agency has turned to the most powerful tool in its arsenal: enforcement actions. After creating an enforcement unit devoted solely to muni bonds in 2009, the SEC ramped up its scrutiny of the market.

The agency filed its first securities case against a state in 2010, charging New Jersey with misleading investors about two major pension funds. That year, the agency also fined four former San Diego officials for misleading investors about the city's fiscal problems. The SEC said it had never before secured penalties from city officials in a municipal bond fraud case.

Last year, the SEC launched an inquiry into internal audits by the D.C. Office of the Chief Financial Officer that were not released to bondholders. And this year alone, the agency has brokered settlements with Illinois and three localities, an unusual pace for these kinds of cases, muni bond experts said.

"There's more in the pipeline," said SEC Commissioner Elisse B. Walter, who led the effort to produce a lengthy report last year detailing the agency's concerns about the way that market operates. "You're seeing the marketplace sitting up and taking notice."

The scrutiny comes at a time of turbulence in the muni bond market because of bankruptcies in a handful of major cities, such as Detroit, and a rash of bond-selling triggered by uncertainties about the end of the Federal Reserve's stimulus policy.

The SEC's cases have focused on lapses in disclosure.

Localities that issue bonds agree to continuously disclose their finances and certain material events, defined as those that a reasonable investor would consider significant.

In its report last year, the SEC concluded that the muni bond market is so opaque that investors who purchase these bonds can't make fully informed decisions about what they're buying. The enforcement cases aim to remedy that phenomenon.

One of the more notable ones this year involved Pennsylvania's capital city, which the SEC accused of making fraudulent statements about its financial condition. Harrisburg had failed for years to file the disclosures for investors, so the SEC held the city liable for what it said in its State of the City address and other online documents.

FINRA Fines StateTrust Investments $1 Million and Orders $353,000 in Restitution for Charging Unfair Prices in Bond Transactions.

Head Trader and Chief Compliance Officer Fined and Suspended

WASHINGTON — The Financial Industry Regulatory Authority (FINRA) announced today that it has fined StateTrust Investments, Inc. $1.045 million and sanctioned the firm's head trader, Jose Luis Turnes, for charging excessive markups and markdowns in corporate bond transactions and, 85, in particular, that operated as a fraud or deceit upon the customers. FINRA also ordered StateTrust to pay more than $353,000 in restitution, plus interest, to customers who received unfair prices. In addition, Turnes was suspended for six months and fined $75,000. In a related April 2012 action, Jeffrey Cimbal, StateTrust's Chief Compliance Officer, was fined $20,000 and suspended for five months in a principal capacity for failing to supervise Turnes.

FINRA found that StateTrust charged excessive markups/markdowns to customers in a total of 563 transactions. In 227 instances, the markups or markdowns exceeded 5 percent. In 85 of those instances, StateTrust, acting through Turnes, charged excessive markups and markdowns, ranging from 8 percent to over 23 percent away from the prevailing market price, which operated as a fraud or deceit upon the customers. In each of the 85 instances, StateTrust either bought bonds from its bank or insurance affiliate and then sold the bonds to customers at a price that was 8 percent or more away from the prevailing market; or bought bonds from customers at prices that were 8 percent or more below the prevailing market, and then sold them to its bank or insurance affiliate at a slight markup. During that period, Turnes was also the chairman and largest indirect shareholder of the bank and its insurance affiliates.

Thomas Gira, FINRA Executive Vice President and Head of Market Regulation, said, "FINRA will continue to aggressively pursue firms and individuals who charge customers excessive markups and markdowns. StateTrust charged customers unfair prices in corporate fixed income transactions, and the firm and the Chief Compliance Officer failed to properly supervise its head trader, who priced these transactions."

In concluding the settlements, StateTrust, Turnes and Cimbal neither admitted nor denied the charges, but consented to the entry of FINRA's findings. FINRA's investigations were conducted by the Departments of Market Regulation, Member Regulation and Enforcement.

Investors can obtain more information about, and the disciplinary record of, any FINRA-registered broker or brokerage firm by using FINRA's BrokerCheck. FINRA makes BrokerCheck available at no charge. In 2012, members of the public used this service to conduct 14.6 million reviews of broker or firm records. Investors can access BrokerCheck at www.finra.org/brokercheck or by calling (800) 289-9999. Investors may find copies of this disciplinary action as well as other disciplinary documents in FINRA's Disciplinary Actions Online database.

FINRA, the Financial Industry Regulatory Authority, is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules, enforcing those rules and the federal securities laws, informing and educating the investing public, providing trade reporting and other industry utilities, and administering the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

MSRB Reminder: Amendments to MSRB Rules G-37 and G-8 Become Effective July 1, 2013.

SEC APPROVES AMENDMENTS TO REQUIRE THE PUBLIC DISCLOSURE OF ADDITIONAL INFORMATION RELATED TO DEALER CONTRIBUTIONS TO BOND BALLOT CAMPAIGNS UNDER MSRB RULES G-37 AND G-8

The Securities and Exchange Commission ("SEC") has approved amendments to MSRB Rules G-37 (on political contributions and prohibitions on municipal securities business) and G-8 (on books and records to be made by dealers) to require the public disclosure of additional information related to broker, dealer and municipal securities dealer ("dealer") contributions to bond ballot campaigns. Specifically, the amendments to Rule G-37 require the public disclosure of additional information related to contributions made by dealers, their municipal finance professionals ("MFPs"), political action committees ("PACs") controlled by the dealer or their MFPs and non-MFP executive officers to bond ballot campaigns and the municipal securities business engaged in by dealers resulting from voter approval of the bond ballot measure to which such contributions relate. The additional information will be required to be reported on revised MSRB Form G-37 and submitted to the MSRB. The amendments to Rule G-8 require dealers to maintain records pertaining to the additional information disclosed under the amendments to Rule G-37. The effective date of the amendments is the start of the second quarter following the date of SEC approval, which is the quarter beginning July 1, 2013.

BACKGROUND

Since February 1, 2010, the MSRB has required public disclosure under Rule G-37 of contributions to bond ballot campaigns made by dealers, their MFPs, dealer-controlled PACs, and their non-MFP executive officers. Dealers are not required to disclose contributions made by MFPs and non-MFP executive officers to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if such contributions, in total, do not exceed $250 per ballot initiative. Rule G-37 also requires dealers to maintain records of certain reportable contributions to bond ballot campaigns pursuant to Rule G-8. The requirements resulted, in part, from industry concerns that certain contributions to bond ballot campaigns could assist dealers with obtaining municipal securities business, as well as the MSRB's concern about the lack of effective public transparency regarding information on bond ballot campaign contributions. The existing Rule G-37 prohibition on engaging in municipal securities business is not triggered by contributions that are made to bond ballot campaigns by dealers, MFPs or their PACs.

The approved amendments to Rule G-37 add greater specificity to the public disclosures relating to contributions made by dealers and dealer personnel to bond ballot campaigns, and any municipal securities business awarded as a result of the corresponding bond ballot measures. Further, access to such information in a centralized format on the MSRB's EMMA website (through Form G-37) will increase the amount of information available to market participants, furthering the goals of market transparency and market integrity. The revisions also will assist the MSRB in its on-going review of Rule G-37 and potential conflicts of interest or other practices that may present challenges to the integrity of the municipal securities market related to the political contributions by dealers and dealer personnel.

SUMMARY OF AMENDMENTS

Rule G-37(e)(i)(B)(2) is amended to provide that, in disclosing the contribution amount made to a bond ballot campaign, the dealer also must include, in the case of in-kind contributions, the value and nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign. The amendments also require dealers to disclose the specific date on which such contributions to bond ballot campaigns were made.

Rule G-37(e)(i)(B) is amended to require dealers to disclose the full issuer name and full issue description of any primary offering resulting from voter approval of a bond ballot measure to which a contribution required to be disclosed has been made. Such information is required to be reported in the same calendar quarter in which the closing date for the issuance that was authorized by the bond ballot measure occurred.

The amendments also provide a look-back provision for bond ballot campaign contributions that are made by an MFP or a non-MFP executive officer during the two years prior to an individual becoming an MFP or a non-MFP executive officer of a dealer. The look-back provision limits the additional disclosures required under Rule G-37(e)(i)(B) to those items that would have been required to be disclosed if such individual had been an MFP or a non-MFP executive officer at the time of such contribution. Rule G-37(e)(i)(B) also requires dealers to disclose both the amount and source of any payments or reimbursements related to any bond ballot contribution received by a dealer or its MFPs from any third party.

Rule G-37(g) is amended to expand the definition of "contribution" and create a new term, the "reportable date of selection." The amendments to the definition of "contribution" distinguish between contributions made to an official of an issuer and contributions made to a bond ballot campaign. The term "reportable date of selection" means the specific date on which a dealer is selected, either in writing or orally, to engage in municipal securities business that must be reported on Form G-37.

Finally, conforming amendments to Rule G-8(a)(xvi)(H) and (I) require dealers to maintain records of the supplemental information related to bond ballot campaign contributions that are required to be disclosed on Form G-37 pursuant to the amendments.

The MSRB reminds dealers that the amendments apply only with respect to municipal securities offerings with a sale or issuance date on or after July 1, 2013, the effective date of the amendments. Thus, dealers will not be required to supplement bond ballot campaign disclosures made with respect to offerings that are prior to July 1, 2013. However, dealers must disclose the full issuer name and full issue description of any primary offering with a sale or issuance date on or after July 1, 2013 resulting from voter approval of a bond ballot measure to which a contribution required to be disclosed has been made, even if such contribution was made by the dealer, its MFPs, any dealer controlled PAC, or its non-MFP executive officers prior to July 1, 2013 but on or after February 1, 2010 (the date on which dealers were first required to record and disclose contributions to bond ballot campaigns). The additional disclosures required under the amendments must be submitted to the MSRB no later than the last day of the month following the end of each calendar quarter starting July 1, 2013. Hence, the additional disclosures must first be submitted to the MSRB no later October 31, 2013 for the quarter commencing on July 1, 2013 and ending on September 31, 2013.

Questions about the amendments may be directed to Leslie Carey, Associate General Counsel, at 703-797-6600.

Dealers Like MSRB Retail Order Proposals; MAs Warn Issuers Can Be Exploited.

Dealer groups said Tuesday that they support Municipal Securities Rulemaking Board proposed rule changes on retail order periods, but non-dealer financial advisors warn issuers can be exploited, with underwriters simply determining for them which "retail" investors can buy the bonds in offerings.

The reaction comes after the MSRB filed rule changes with the Securities and Exchange Commission Monday that are designed to ensure underwriters follow issuers' orders that a certain amount of their bonds be offered to retail investors at the initial offering price.

"The proposed rule change addresses concerns related to retail order periods presented from issuers, dealers and municipal advisors," the MSRB said in its filing. "Those concerns include the mischaracterization of orders as "retail" and the failure of syndicate managers to disseminate timely notice of the terms and conditions of a retail order period to all dealers, including selling group members.

The board also said that another concern is that pricing information was required but not delivered at all or in time to allow the requesting dealer's retail customers to determine whether they would like to purchase the bonds.

"To address these concerns, the proposed rule change establishes specific obligations on the senior syndicate manager to disseminate to the syndicate and selling group members detailed information about the terms and conditions of any retail order period," the board said. "The proposed rule change also requires dealers to capture certain additional information in connection with orders placed under a retail order period to ensure that such orders are from bona fide retail customers."

Bond Dealers of America president and chief executive officer Mike Nicholas said BDA is pleased the MSRB did not develop one definition of retail orders for all issuers because this would have proven costly and unnecessary.

"The BDA believes retail order periods can be beneficial both to the issuer and retail customer as long as issuers are permitted to proscribe how they want dealers to document their compliance with the retail order period, rather than establish a one-size-fits-all dealer mandate that does not provide additional issuer benefit but does add compliance costs by requiring the production of information that is, potentially, not necessary," Nicholas said.

David Cohen, managing editor and associate general counsel at the Securities Industry and Financial Markets Association, said his group had supported moving forward with existing MSRB guidance, such as the board's Rule G-17 on fair dealing.

"Now the MSRB has decided to reorganize some of its interpretive guidance associated with MSRB Rule G-17 into new or revised rules," Cohen said. "Consequently, we support the proposed rule changes to the extent they would protect dealers that follow issuers' instructions and require timely notice of retail order period terms and conditions to all syndicate and selling group members."

National Association of Independent Public Finance Advisors president Jeanine Rodgers Caruso said some issuers could be left vulnerable by the MSRB's proposal.

"Where issuers do not retain municipal advisors, they will likely place an undue amount of trust in their underwriter and will rely upon them to supply a definition of 'retail,' which may result in issuers receiving less favorable sales outcomes than they may otherwise have been able to achieve," said Rodgers Caruso, a muni advisor with Fiscal Advisors and Marketing, Inc.

The board punted on the controversial issue of whether to develop interpretative guidance to its Rules G-17 and R-30 on prices that would have addressed whether underwriters could offer munis at different prices to retail and institutional customers. Some market participants have complained that some underwriters set up two CUSIPs for the same bond, one to be sold to institutional investors at a lower price and one to retail investors at a higher price.

"The comments received on retail order periods and the board's study of such programs does not establish a basis for additional pricing guidance at this time," the MSRB told the SEC. "In particular, the MSRB is mindful that any guidance should be grounded in further study and analysis and should consider the extent to which pricing differentials may affect an issuer's willingness to use a retail order period."

Instead, the MSRB is asking the SEC to approve changes to its Rule G-8 on books and records, G-11 on primary offering practices and G-32.

The board is recommending a two-stage implementation process, with the changes to Rules G-8 and G-11 occurring six months after SEC approval and the changes to Rule G-32 implemented no later than March 31, 2014 or at a later announced date. This longer period would allow the MSRB to design an automated system for dealers to report to the EMMA system.

"These provisions will establish basic protections for issuers and customers and provide additional tools to assist with the administration and examinations of retail order periods," the MSRB said in the filing.

In the proposed changes to Rule G-11, the MSRB wants to define "retail order period" to mean when "going away orders" will be solicited from customers that meet the issuer's designated eligibility criteria. A going away order means an order for which a customer is already conditionally committed.

The MSRB proposes the senior syndicate manager deliver to other members of the syndicate a written statement of all terms, conditions and pricing information required by the issuer and to obtain the issuer's approval of the statement. An underwriter must provide the issuer's information to each dealer with which it has an arrangement with to market the issuer's securities.

Any dealer placing an order during a retail order period would have to provide certain information, possibly through an electronic order entry system, before the time of formal award of the bonds. This would include, among other things, whether the order met the issuer's eligibility criteria, whether the order was a going away order and the par amount of the order.

Under the proposed changes to Rule G-8, the syndicate manager for each primary offering must maintain records that show various things such as: the description and aggregate par value of the securities; the name and percentage of participation of each syndicate member; the terms and conditions required by the issuer; all orders received for the purchase of the securities from the syndicate; the dates of the settlement with the issuer and the closing of the account; and a reconciliation of profits and expenses of the account. An underwriter must keep similar records, including for those instances in which it accorded equal or greater priority over other orders to orders for its own account or its related accounts and the specific reason for doing so.

The proposed changes to Rule G-32 requires underwriters to report to EMMA whether a primary offering included a retail order period and the period during which it was conducted.

by: LYNN HUME and KYLE GLAZIER

FINRA Fines Two Firms $62,500 for Muni Rule Violations.

Two broker dealers were fined a total of $62,500 for municipal bond fair pricing and trade reporting violations, while two individuals were fined $35,000 and suspended for violating other muni rules, the Financial Industry Regulatory Authority said Monday.

The sanctions were detailed in FINRA's just-released monthly disciplinary actions.

RBC Capital Markets, LLC was fined $42,500 and ordered to pay customers $17,870.60 in restitution for violating the Municipal Securities Rulemaking Board's Rules G-30 on prices and commissions, G-17 on fair-dealing, and G-34 on CUSIP numbers, new issue and market information requirements.

Morgan Stanley Smith Barney LLC was fined $20,000 for violating the MSRB's Rule G-14 on trade reporting.

Both New York City-based firms neither admitted nor denied the findings but accepted the sanctions. RBC Capital could not be reached for comment. A spokesperson for Morgan Stanley declined to comment.

FINRA said RBC Capital Markets, in 15 transactions between its own account and customers during the second quarter of 2010 and the first quarter of 2011, either purchased or sold munis at aggregate prices that were not fair and reasonable "taking into consideration all relevant factors, including the best judgment of the broker … as to the fair market value of the securities at the time of the transaction," as well as expenses and the fact that the dealer is entitled to a profit.

In exhibits included in enforcement documents, FINRA found RBC owed a customer $3,570 for selling 100 of 2005 Metropolitan Transportation Authority revenue bonds at 104.958 in April 2010.

It owed another customer $2,983.50 for buying 85 of Maryland Health and Higher Educational Facilities Authority's 1998 revenue bonds at 89.100. These were the highest amounts of restitution owed to customers.

FINRA also found that the firm, during the second quarter of 2011, failed to submit to the MSRB accurate interest rate reset dates for variable rate demand obligations in 462 instances. The firm also failed to provide information on the results of auctions for auction rate securities and information on interest rate resets within the required time frame in 94 instances.

FINRA fined Morgan Stanley $20,000 for failing to report correct trade information to the MSRB. The self-regulator said that, during the fourth quarter of 2010 the firm reported 44 trades, when they were interdealer deliveries of securities or "step outs" and not reportable interdealer trades. During the third quarter of 2011, the firm report 27 trades that were "step outs" and should not have been reported as interdealer trades, FINRA said.

FINRA fined Richard Lee Reno, Sr., who resides in Beaver Falls, Pa. and was the chief compliance officer of Fortune Financial, $30,000 and suspended him for a year for conducting business in Section 529 college savings plans without proper qualification and without a properly qualified principal, in violation of MSRB Rules G-2 and G-3 on standards and classifications. In addition, the firm failed to have a supervisory system for such municipal securities, in violation of Rule G-27, FINRA said.

These are college savings plans set up under Section 527 of the Internal Revenue Code to allow parents or others to invest on a tax-advantaged basis to save for the costs of college for a beneficiary. The sanctions are a "default decision" against Reno, FINRA said, because he never answered the self-regulator's complaint. Reno is not currently associated with any firm.

FINRA fined Joseph H. Johnson from Sayville, N.Y. $5,000 and suspended him for 30 days for engaging in unsuitable short-term trading and switching municipal bond closed-end funds in customers' joint brokerage account. According to FINRA, Johnson recommended a joint account purchase shares of closed-end muni bond funds with long-term, conservative objectives and then sold the shares in a relatively short period of time. The joint account suffered losses of about $25,000 and was charged about $14,000 in commissions.

by: LYNN HUME

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SEC to Seek Admissions in Some Settlements: White

(Reuters) – Securities regulators are going to try to extract admissions of wrongdoing from defendants in some of their settlements, a move that could ultimately force more cases to go to trial, Securities and Exchange Commission Chair Mary Jo White said Tuesday.

The announcement from White marks a departure from the typical practice at the SEC and many other civil federal regulatory agencies of allowing defendants to settle cases without admitting or denying the charges.

That practice has come under scrutiny following the financial crisis, leading some federal judges to challenge or strike down proposed settlements with defendants.

“I have reviewed the policy,” White said at the annual “CFO Network” event hosted in Washington by the Wall Street Journal.

“We are going to in certain cases be seeking admissions going forward. I think … public accountability in particular kinds of cases can be quite important and if we don’t get them, then we litigate them.”

White’s planned changes to settlement policy come as the SEC is awaiting a critical decision from a New York appeals court after U.S. District Judge Jed Rakoff declined to approve a proposed $285 million settlement with Citigroup Inc over whether the bank misled investors during the financial crisis.

White told reporters on the sidelines of the event that people should not interpret the change as a criticism of the settlement policy and in fact a “majority” of cases will still likely be settled with defendants neither admitting nor denying any wrongdoing.

“This is not a criticism of the past practice and having ‘no admit, no deny’ settlement protocols in your arsenal as a civil enforcement agency … (is) critically important to maintain,” she said.

She added that cases will need to meet certain criteria in order for the SEC to seek admissions. Those include cases where there was “widespread harm to investors” or “egregious intentional misconduct,” she said.

Rakoff, who has been arguably the most vocal about the SEC’s settlement policy, declined to comment on the changes White announced.

NYT: S.E.C. Has a Message for Firms Not Used to Admitting Guilt.

The days of cop-out settlements in big securities cases may be waning.

In a departure from long-established practice, the recently confirmed chairwoman of the Securities and Exchange Commission, Mary Jo White, said this week that defendants would no longer be allowed to settle some cases while “neither admitting nor denying” wrongdoing.

“In the interest of public accountability, you need admissions” in some cases, Ms. White told me. “Defendants are going to have to own up to their conduct on the public record,” she said. “This will help with deterrence, and it’s a matter of strengthening our hand in terms of enforcement.”

In a memo to the S.E.C. enforcement staff announcing the new policy on Monday, the agency’s co-leaders of enforcement, Andrew Ceresney and George Canellos, said there might be cases that “justify requiring the defendant’s admission of allegations in our complaint or other acknowledgment of the alleged misconduct as part of any settlement.”

They added, “Should we determine that admissions or other acknowledgment of misconduct are critical, we would require such admissions or acknowledgment, or, if the defendants refuse, litigate the case.”

Ms. White said that most cases would still be settled under the prevailing "neither admit nor deny" standard, which, she said, has been effective at encouraging defendants to settle and speeding relief to victims.

The policy change follows years of criticism that the S.E.C. has been too lenient, especially with the large institutions that were at the center of the financial crisis. Bank of America, Goldman Sachs, Citigroup and JPMorgan Chase were among the defendants that settled charges related to the financial crisis while neither admitting nor denying guilt, although Goldman was required to admit that its marketing materials were incomplete.

That this approach became such a heated public issue is in large part because of the provocative efforts of Judge Jed S. Rakoff of Federal District Court, who has twice threatened to derail settlements with large financial institutions that neither admitted nor denied the government's allegations.

In late 2011, he ruled that he couldn't assess the fairness of the agency's settlement with Citigroup in a complex mortgage case without knowing what, if anything, Citigroup had actually done. In his ruling, he said that settling with defendants who neither admit nor deny the allegations is a policy "hallowed by history but not by reason."

He described the settlement, which was for $285 million, as "pocket change" for a giant bank like Citigroup. Other judges have followed Judge Rakoff's lead, and an appeal of his Citigroup ruling is pending before the Court of Appeals for the Second Circuit.

The new policy would seem to vindicate Judge Rakoff, at least in spirit, but Ms. White said the decision was rooted in her experience as United States attorney in New York, where defendants in criminal cases are almost always required either to enter a guilty plea or go to trial.

"Judge Rakoff and other judges put this issue more in the public eye, but it wasn't his comments that precipitated the change," she said. "I've lived with this issue for a very long time, and I decided it was something that we should review, and that could strengthen the S.E.C.'s enforcement hand." (Judge Rakoff, who is presiding over a trial in Fresno, Calif., said he couldn't comment, citing the appeal of his Citigroup ruling.)

Those concerned that Ms. White, who before her confirmation as chairwoman of the S.E.C. was head of the litigation department at the prominent corporate law firm Debevoise & Plimpton, might be too cozy with the big banks and corporations that were formerly her clients, can breathe easier. Even some of the S.E.C.'s harshest critics were at least somewhat mollified.

"It's an important step in the right direction," said John Coffee, a professor at Columbia Law School and a vocal critic of S.E.C. settlements he deems too lenient. "There's clearly a public hunger for accountability. Mary Jo White has shown she is sensitive to this."

Ms. White agreed. "There's no question I share the desire for more accountability in cases where that is warranted," she said. "I do think there are situations where public accountability is particularly important, and that will be our focus. I don't want to overstate this — no admit, no deny will still be the way most cases are resolved — but I think it's an important change."

There's little doubt that extracting admissions of wrongdoing gives the S.E.C. enormous new leverage, and not just because defendants want to avoid the damage to their reputation that comes with admitting misconduct. Any admission is likely to be seized upon by private litigants in civil lawsuits, including class actions, with potentially devastating financial consequences.

“If they admit culpability to the S.E.C., plaintiffs will cite that in their cases, and that could mean hundred of millions or billions in damages,” Professor Coffee said. “It’s not just the stigma they’re worried about.”

Those concerned that the S.E.C. already has too much power, including many corporate defense lawyers, were critical.

“I don’t like this at all,” said Brad Karp, a litigator and chairman of Paul, Weiss, Rifkind, Wharton & Garrison who represented Citigroup in its settlement talks with the S.E.C. “It gives them enormous leverage. A financial institution cannot fight a primary regulator and win. They have you. They have complete leverage over you. Even if you fight and win over a year, the damage will outweigh any litigation result.”

But Ms. White’s emphasis on public accountability suggests that she sees admissions of guilt as far more than a bargaining chip to extract bigger settlements. In the type of prominent cases cited by the enforcement staff, the S.E.C. may be unwilling to negotiate over an admission of wrongdoing and will force defendants to go to trial.

That could cut two ways. Some corporate defendants have settled cases, even when they believed they were innocent, to avoid the cloud of litigation, and treated any fines simply as a cost of doing business. Now, if the S.E.C. takes a case to trial, it will be forced to prove its case.

“If they take a hard line where admissions are an inevitable cost of resolving the case, it will force defendants to trial,” Mr. Karp said. Defendants will “try to find every way possible to avoid that outcome. If they can negotiate around it, there will be early settlements. But if not, they’ll go to trial.”

Citigroup has said that if Judge Rakoff’s ruling is upheld and its settlement is overturned, it will go to trial rather than admit wrongdoing.

Ms. White said that “our aim is to apply this policy in appropriate cases, and we’ll do this in the public interest.” She continued: “Will this lead to more cases going to trial? It’s hard to say going in, but it might. We have to be prepared to go to trial, and we have to make people believe we’re prepared.”

That may be a tall order. Defense lawyers and judges have raised questions about the S.E.C.’s trial competence in complex cases. The S.E.C. responded that of its last 11 cases that went to trial, it prevailed in eight.

An important test of that litigation capacity is likely to come next month, when Fabrice Tourre, a former Goldman Sachs trader who is accused of misleading clients in a complex mortgage deal, is scheduled to go on trial.

Exactly which cases, and how many, will result in admissions of wrongdoing remain to be seen.

“It will be very interesting to see how this plays out in six months or a year,” Mr. Karp said.

The S.E.C. memo cites three criteria: “misconduct that harmed large numbers of investors or placed investors or the market at risk of potentially serious harm”; “egregious intentional misconduct”; or “when the defendant engaged in unlawful obstruction of the commission’s investigative processes.”

Relatively few of the financial crisis cases, including the big mortgage fraud cases settled by Citigroup, JPMorgan and Goldman Sachs, would seem to meet those criteria, because the purported misconduct wasn't that egregious, the evidence in some cases was ambiguous and the victims were limited to a few sophisticated financial institutions rather than large numbers of the investing public.

Ms. White declined to comment on any specific cases, but said: "No one case precipitated this. From this point forward, we'll be looking for appropriate cases in which to apply the policy. Most will still be resolved on a no admit, no deny basis. But we'll be scrutinizing this."

Professor Coffee said the agency should go even further, by identifying and holding more individuals responsible.

Still, he said, "You have to give Mary Jo credit: She has shown she is less tone deaf" to public demands for accountability. "The S.E.C. may have to bring fewer cases and pursue them harder," he added. "But that could be a good thing."

Reuters: FINRA Reviewing Brokerages' Use of Social Media.

Wall Street's Financial Industry Regulatory Authority is looking at how brokerage firms supervise their use of communication outlets such as Facebook, Twitter and LinkedIn, the industry-funded regulator said.

FINRA, which conducts periodic "sweeps," or targeted checks on Wall Street brokerages, sent out letters to firms earlier this month requesting information about their use and monitoring of social media communications for the companies and individual employees.

The letter, which FINRA posted to its website on Monday, included requests for information such as how firms monitor whether their use of social media complies with industry rules.

FINRA also asked for specific data such as the URLs for each social media site used by firms and the identity of all individuals who post or update content of those sites.

"Everyone is looking at social media these days," said Francis Curran, a New York-based lawyer with McCormick & O'Brien LLP, adding that FINRA's issuance of the letter is reflective of a broader industry interest in the use of social media.

Firms use social media for purposes such as marketing, communications and client outreach, but they have to be careful not to breach rules concerning advising and making recommendations for clients.

FINRA published an initial social media regulatory notice in January 2010, providing guidance on the industry's use of blogs and social media networking sites, "so it makes sense to incorporate social media reviews into our routine surveillance," FINRA spokesman George Smaragdis said.

In its letter, FINRA also requested a list of the firms' top 20 producing advisers who used social media for business purposes to interact with clients between Feb. 4 through May 4, including the dollar amount of sales made and commissions earned during that period.

The Wall Street watchdog regularly issues "targeted examination letters" to gather information about the industry's response to certain regulations. The number of firms included in the sweeps can vary from a handful to dozens.

FINRA did not disclose the number of firms to which the letters were sent.

“They want to be sure the representatives and firms are complying with various communications,” Curran said. “You really have firms running the gamut, where they absolutely don’t want registered representatives doing anything on Twitter versus other firms that are trying to embrace the communication without creating problems for FINRA or the SEC.”

MSRB Releases "What to Expect" Videos for Municipal Bond Investors.

The Municipal Securities Rulemaking Board (MSRB) today released new educational videos for municipal securities investors about what they should expect from their brokers when investing in the municipal securities market. Designed to easily communicate important concepts, the videos focus on the key obligations of brokers when engaging in municipal securities transactions. The videos are a key addition to the MSRB’s Investor Toolkit, an online resource to equip investors with basic information to successfully navigate the municipal securities market.

Investors should also always understand the costs and risks associated with investing in municipal securities. The Investor Toolkit also includes Evaluating a Municipal Bond’s Interest Rate Risk, which addresses how a municipal bond’s value can fluctuate due to changes in interest rates and What to Know When Selling a Municipal Bond Prior to Maturity which reminds investors what they should consider when selling their municipal securities.

“The MSRB is committed to continually providing investors with access to objective resources to help them understand how the municipal market works,” said MSRB Executive Director Lynnette Kelly. “We hope the additions to the Investor Toolkit will provide investors with information that previously was difficult to obtain in one place.”

Highlights of the MSRB’s Investor Toolkit include:

- Getting started when investing in municipal securities
- Learning more about the municipal securities market
- Using the EMMA® website

http://www.msrb.org/Municipal-Bond-Market/Investor-Resources/Investor-Toolkit.aspx

http://www.msrb.org/msrb1/EMMA/pdfs/Evaluating-Interest-Rate-Risk.pdf

http://www.msrb.org/msrb1/EMMA/pdfs/Selling-Before-Maturity.pdf

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MSRB Files with the SEC Amendments to MSRB Rules on Retail Order Periods.

The Municipal Securities Rulemaking Board (MSRB) today requested approval from the Securities and Exchange Commission for a proposed rule change to MSRB Rule G-8, Rule G-11 and Rule G-32. If approved, the proposed changes would help to address concerns that new issues of municipal bonds are not being distributed among different types of retail investors according to the preferences of the state or local government issuing the bonds.

The rule filing is available at:

http://msrb.org/Rules-and-Interpretations/SEC-Filings/~/media/Files/SEC-Filings/2013/SR-MSRB-2013-05-SEC-Filing.ashx

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Dealers Like MSRB Proposed Rules for SMMPs, But Want More.

Dealers generally like the Municipal Securities Rulemaking Board's proposed rules governing sophisticated municipal market professionals, which need less protection than retail investors, but are seeking some clarifications and suggesting the rules be expanded to cover small hedge funds.

They made the requests in comment letters filed Wednesday on MSRB proposed rules, D-15 which would define SMMPs and G-48, which detail dealer regulatory obligations to SMMPs.

The adoption of the rules, as written, would not change the substance of an SMMP notice issued by the MSRB in July 2012, but could allow the board to drastically pare down the many pages of interpretive guidance currently included along with its rule G-17 on fair dealing.

The definitional rule would define an SMMP as a customer of a broker, dealer, or municipal securities dealer that is a financial institution such as a bank, a registered investment advisor, or an investor with assets of at least $50 million. If a customer satisfies any of those requirements and the dealer has a "reasonable basis" to believe the customer is capable of weighing the investment risks appropriately, that investor would be an SMMP under Rule D-15. An investor could affirm, either orally or in writing, that they are an SMMP.

The Securities Industry and Financial Markets Association is generally happy with the MSRB's approach, according to managing director and associate general counsel David Cohen, who authored SIFMA's comments.

"We think they got it right on the substance," Cohen said in an interview.

But SIFMA also told the MSRB that for every rule dealers do not have to comply with in part, or at all, for the rule should state clearly that dealers have fewer or no obligations for SMMPs. When dealing with an SMMP, proposed rule G-48 makes clear the dealer would not have to meet the requirements of Rule G-47 on time of trade disclosure to ensure the dissemination of material information that is readily available. The dealer would also have no obligations under Rule G-18 on transaction pricing to ensure that certain transactions were executed at fair and reasonable prices. There also would be no obligation for the dealer to perform a suitability analysis under rule G-19.

"We think those rules in themselves should say there are reduced obligations to SMMPs," Cohen said.

Cohen also told the board that some of the group's members mentioned a group of customers that do not fall under the SMMP definition as written: hedge funds with assets under management of less than $50 million. SIFMA members believe that such customers could be considered sophisticated despite being smaller, even though Financial Industry Regulatory Authority also uses a $50 million cap to determine sophisticated investors under its suitability rule.

The MSRB used a $100 million cap until a change last year brought it in line with FINRA.

“The MSRB and FINRA should consider expanding the definition of institutional account holders and SMMPs in future rulemaking to include this type of customer,” Cohen wrote.

Cohen also said the proposed rules should be implemented simultaneously with other MSRB rules currently spelled out in G-17 guidance because they are closely related.

The MSRB has said it would send all such rule proposals to the Securities and Exchange Commission at the same time, but Cohen said that is not the same thing as having the same effective dates.

The Bond Dealers of America also expressed support for the MSRB’s proposals but asked the board to consider making it easier to identify an SMMP, as well as make some clarifications in its rulemaking, especially with regard to harmony with FINRA rules.

BDA president and chief executive officer Mike Nicholas, who wrote the group’s comments, said there should be an avenue other than a customer affirmation for identifying SMMPs. For example, if a dealer firm conducts regular reviews of its SMMP customers, it should be able to use such a review as affirmation of SMMP status, as long as the customer’s circumstances have not changed, Nicholas told the MSRB.

The BDA also expressed some concern about the MSRB’s approach to the definition. While Nicholas said that the BDA is comfortable with the $50 million definitional threshold, it has some concerns about the MSRB’s proposed language, which states dealers should consider the type of securities under management. FINRA has no such requirements, Nicholas’ letter points out, and a dealer’s judgment that the customer is an SMMP should suffice.

Once the MSRB has reviewed comments and approved the rules, they would still need to be approved by the SEC before they could take effect.

by: KYLE GLAZIER

[MSRB Reminds Investors, Market Professionals to Assess Terms of Build America Bonds and other Direct-Pay Bonds in Light of Federal Sequester.]

The Municipal Securities Rulemaking Board (MSRB) today reminded municipal securities investors, dealers and other market professionals to review the terms of Build America Bonds and other so-called “direct-pay bonds” in order to understand how federal budget cuts to bond subsidies under sequestration could affect the bonds’ market value. In some cases, issuers of the bonds may have the right to redeem the bonds under certain extraordinary redemption provisions that should be analyzed carefully.

The notice is available at:

http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-13.aspx

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[Fiduciary Advocates Warn SEC Not to Water Down Uniform Standard.]

Advocates for strengthening investment-advice rules for brokers are warning the Securities and

Exchange Commission not to dilute the standard that currently applies to investment advisers — acting in the best interests of clients.

As the July 5 deadline approaches for comments on a SEC cost-benefit analysis of a potential uniform fiduciary standard, investment-adviser groups are concerned about assumptions included in the request for information.

The parameters are designed to give respondents an idea of how a uniform fiduciary duty might work. But they are making fiduciary proponents nervous.

“Don’t water down this [fiduciary] duty that has been very well-established and do not create different standards of care for different kinds of clients,” David Tittsworth, executive director of the Investment Adviser Association, said Monday during the InvestmentNews Regulatory Roundtable in Washington.

Mr. Tittsworth’s organization was one of nine that signed a June 4 letter to SEC Chairman Mary Jo White asserting that if the parameters in the cost-benefit analysis request were used to draft a uniform fiduciary rule, it would significantly weaken the fiduciary standard for investment advisers. Advisers must act in the best interest of a client, while brokers meet a less strict suitability standard when selling financial products.

“This approach is one that would have negative consequences for advisers and is one we would vigorously oppose,” the letter states.

The parameters include those that follow provisions in the Dodd-Frank financial reform law, such as allowing brokers to continue charging commissions and selling from a menu of proprietary products and not subjecting them to a continuing duty of care or loyalty to a retail client.

Another guideline in the SEC release is that the application of the fiduciary standard of care could be determined in a contractual arrangement between an adviser and client, which closely follows the fiduciary framework submitted to the SEC by the Securities Industry and Financial Markets Association in July 2011.

“A key concept is missing from these assumptions, and that is ‘the best interest of the client,’” Marilyn Mohrman-Gillis, managing director of public policy and communications at the Certified Financial Planner Board of Standards Inc., said during the roundtable. “[The] assumptions seem to lead to a disclosure-only fiduciary standard.”

Throughout the information request, the SEC reiterates that the assumptions do not automatically influence any rule that is drafted.

Ira Hammerman, SIFMA’s senior managing director and general counsel, said that his organization supports a best-interests investment advice standard. In addition, he noted that the Dodd-Frank law stipulates that a uniform standard must be no less stringent than the one advisers currently meet.

“Everyone should have the comfort that Dodd-Frank itself, the actual law, prevents any watering down,” Mr. Hammerman said at the roundtable discussion. “No one is looking for fiduciary-light or any sort of minimal fiduciary standard. What we are looking for is clear guidance” on how a uniform standard would work across advice business models.

Many industry participants argue that a uniform fiduciary standard must not limit access to advice for investors with modest assets, who may not be able to afford fee-only advisers.

“Our bottom line is, we’re looking to avoid those unintended consequences of not giving advice to the small investors,” Dale Brown, president and CEO of the Financial Services Institute, said at the roundtable.

The Dodd-Frank law authorizes the SEC to release a uniform fiduciary-duty standard, but the agency has moved slowly on the rule.

A big challenges is writing a rule that can apply equally to advisers and brokers.

“It’s the context that makes the difference,” A. Heath Abshure, Arkansas’ securities commissioner and president of the North American Securities Administrators Association Inc., said during the InvestmentNews event.

SEC Charges Top Officials at Investment Adviser in Scheme to Hide Theft from Pension Fund of Detroit Police and Firefighters.

The Securities and Exchange Commission (Commission) charged the leader of a Detroit-based investment adviser for stealing nearly $3.1 million from the pension fund that the firm manages for the city’s police officers and firefighters so he could buy two strip malls in California. The SEC charged four other top officials at the firm for helping him try to cover up the theft.

The SEC alleges that Chauncey C. Mayfield, who is the founder, president, and CEO of MayfieldGentry Realty Advisors, took the money from the Police and Fire Retirement System of the City of Detroit without obtaining permission. He used it to purchase the shopping properties and title them in the name of a MayfieldGentry affiliate. Other executives at MayfieldGentry gradually became aware that Mayfield had siphoned money away from their biggest client. Rather than come clean about the theft and risk losing the sizeable business the firm received from the pension fund, MayfieldGentry officials instead devised a plan to secretly repay the pension fund by cutting costs at the firm and selling the strip malls. Their plan ultimately failed when MayfieldGentry could not raise enough capital to put the stolen amount back into the pension fund.

Mayfield and his firm agreed to settle the charges by paying back the stolen amount.

“Mayfield stole pension money from Detroit’s retired police officers, firefighters, and surviving spouses and children to buy strip malls,” said Andrew Ceresney, Co-Director of the SEC’s Division of Enforcement. “To make matters worse, other senior officers at the firm joined together with him to cover up his deceitful and grave betrayal of trust, all for the purpose of keeping the client.”

The other MayfieldGentry executives charged in the SEC’s complaint are chief financial officer Blair D. Ackman, chief operating officer Marsha Bass, chief investment officer W. Emery Matthew, and chief compliance officer and general counsel Alicia M. Diaz.

According to the SEC’s complaint filed in federal court in Detroit, Mayfield took the money from a trust account for the pension fund in 2008. The stolen money could have provided a year of benefits for more than 100 retired police officers, firefighters, and surviving spouses and children. Shortly thereafter, Mayfield told Ackman about the misappropriation, and by May 2011 the other principals at MayfieldGentry were aware of the misdeed. They proceeded to hide the theft by affirmatively misleading the pension fund.

The SEC alleges that during a critical budget meeting with fund trustees in 2011, Diaz stressed MayfieldGentry's success in generating a cash return for the pension fund. He stated that "the cash we deliver at the end of the day is the ultimate testimony in terms of what we do." Diaz touted a projection that MayfieldGentry would remit $4.96 million to the pension fund in 2012. Diaz never told the pension fund trustees that the cash remittance would be reduced by more than 60 percent once the stolen money was taken into account. At the same meeting, Matthews claimed that MayfieldGentry had achieved a benchmark-beating 6.8 percent return for the pension fund. He didn't explain that the 6.8 percent return would be materially impacted by the $3.1 million theft.

According to the SEC's complaint, MayfieldGentry and its executives continued to cover up the theft until they finally informed the pension fund on the evening before the SEC filed a complaint against Mayfield and his firm in May 2012 for their participation in a "pay-to-play" scheme involving the former mayor and treasurer of Detroit. Upon learning of the theft, the pension fund promptly terminated its relationship with MayfieldGentry.

The SEC's complaint alleges that MayfieldGentry and Chauncey Mayfield violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and Ackman, Bass, Matthews, and Diaz aided and abetted those violations. Mayfield and his firm agreed to pay disgorgement in the amount of $3,076,365.88 and be permanently enjoined from violating Sections 206(1) and 206(2) of the Advisers Act. They neither admit nor deny the allegations in the settlement, which is subject to court approval. In a parallel criminal matter, Mayfield is awaiting sentencing in connection with his guilty plea for participation in the pay-to-play scheme.

The SEC's investigation was conducted jointly by the Chicago Regional Office, the Division of Enforcement's Asset Management Unit, and the Municipal Securities and Public Pensions Unit. The investigation was conducted by Brian D. Fagel, Eric A. Celauro, Peter K.M. Chan, and John J. Sikora, Jr. The SEC's litigation against the remaining four defendants will be led by Timothy S. Leiman. (Press Rel. 2013-106; LR-22720)

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Reuters: Analysis: Tailoring FINRA Rules to Suit Smaller Firms.

NEW YORK (Reuters) – Wall Street's industry-funded regulator, which usually looks over the shoulders of brokers, is about to examine its own work more carefully as it prepares a review of whether its rules make sense for all firms.

The Financial Industry Regulatory Authority is kicking off the long-anticipated review of the costs and benefits relating to each of its existing rules for Wall Street, said Richard Ketchum, FINRA's chairman and chief executive.

The review will consider, among other things, whether some of those rules should continue to apply across the industry regardless of a firm's size or business model, Ketchum said earlier in the week at the Reuters Global Wealth Management Summit.

"We're not all large integrated firms," said Ketchum. "We have a lot of cats and dogs in our membership," he said, referring to a variety of brokerage sizes and specialties. But some industry rules do not take those differences into account.

For example, some brokerages that limit their business to a niche – such as finding private securities offerings for certain institutional investors – are bound by rules often aimed at protecting individual retail investors, said Ketchum, questioning whether that made sense.

FINRA's review follows a push by the U.S. Securities and Exchange Commission to provide more details about the economic aspects of rule proposals FINRA submits to the agency for approval.

Many small and specialty brokerages, at the same time, have been complaining to FINRA that it is impractical for them to follow rules put in place mainly for large retail brokerages.

The regulator, which oversees 4,250 firms and nearly 630,000 brokerages, expects to publish an initial update about its progress by October, Ketchum said.

FINRA recently hired Jonathan Sokobin, a former high-ranking Treasury Department official, to oversee the review as the regulator's first chief economist.

Ketchum's acknowledgment that all industry rules may not be practical for all firms was met with relief by compliance professionals who advise small and specialty firms.

"I'm glad to see that Rick Ketchum has finally heard the message that people are telling him over and over again," said Howard Spindel, senior managing director of Integrated Management Solutions, a New York-based compliance consultancy. "One-size-fits-all works maybe with socks, but broker-dealers are very heterogeneous," Spindel said in a telephone interview on Thursday.

RIPPLE EFFECT

FINRA's economic review is part of a broader effort by securities regulators to more deeply scrutinize the potential costs and benefits of securities industry rules.

The SEC wants FINRA to better support the economic aspects of proposals it submits to for review, Robert Colby, FINRA's chief legal officer, said last year.

Wall Street's major lobbying group, the Securities Industry and Financial Markets Association (SIFMA), has also been calling for the SEC to conduct a deeper economic analysis of its rules.

While U.S. law already requires the SEC to analyze the economic impact of its rules, enhancing those efforts could help spare the agency from embarrassing and crippling legal challenges by industry groups.

A federal court in 2011, for example, overturned an important SEC rule required by the 2010 Dodd-Frank Wall Street reform law that made it easier for shareholders to nominate directors to corporate boards. The agency's economic analysis was flawed, the court said.

The securities industry has pressed for more economic analysis, but investor advocates say it can hamper efforts to regulate the industry properly. In May, a divided U.S. House of Representatives passed a Republican-sponsored bill that would force the SEC to conduct more economic analysis before adopting rules for Wall Street.

"This is a proxy for disemboweling regulation," said former SEC Commissioner Arthur Levitt this week at the Reuters Global Wealth Management Summit.

The SEC already makes “painstaking efforts” to determine costs and benefits of its rules, Levitt said.

PRACTICAL SOLUTIONS

FINRA’s own review, however, may ultimately lead to overhauling some rules that don’t make sense when applied at certain firms, said Spindel of Integrated Management Solutions.

One rule, for example, requires a firm’s chief executive to certify in writing each year that he met with the firm’s compliance officer and ascertained there were processes in place to ensure compliance with industry rules.

That may work fine in a large firm where the chief executive and chief compliance officer are two different individuals.

However, one person may often wear both those hats in a smaller brokerage, Spindel said. That would make a required meeting between the two executives tricky, said Spindel.

“Who would he be talking to?” Spindel asked. “Himself?”

6/6/2013

By Suzanne Barlyn

Issuers Warned About Contracts, Unregistered MAs.

Panelists at a conference here on Monday warned issuer officials to be wary of dealer contracts that might violate municipal securities rules and to make sure they are using properly registered municipal advisors.

Speaking at a session on financial advisors at the annual Government Finance Officers Association’s meeting, Eric Johansen, director at Public Financial Management, Inc. in Portland, Ore. and a former GFOA debt management committee chair, cautioned issuers about dealer contracts that appear to violate Municipal Securities Rulemaking Board Rule G-23.

The rule prohibits a firm from serving as a financial advisor and as an underwriter on the same bond transaction. It also says a financial advisory relationship exists if a firm gives advice “with respect to” an issuance of securities. Under the Dodd-Frank Act, municipal advisors are subject to a fiduciary duty to put their client’s interest first, before their own.

In recent months, some dealers have agreed to provide financial advisory services to issuers, but their contracts say their work will not meet the regulatory definition of FA services, they do not have a fiduciary duty to the issuer, and if there is an opportunity to underwrite bonds, they may seek to do so.

Johansen told the group they should be aware of this if they get a contract from a dealer firm that “looks a little funny.”

“They try to establish this notion of ‘gee, we can do everything,'” Johansen said, adding, “It has the attention of the MSRB.”

Johansen added that it might be important for issuers to receive more education in this area, especially if these kinds of contracts are widespread.

“If it is at all widespread, it may be appropriate for GFOA to issue guidance to its members,” he said.

Patrick McCoy, director of finance at the Metropolitan Transportation Authority in New York, told local finance officials that they need to be aware of the rules governing municipal advisors so that their debt management does not suffer down the line.

Although the Securities and Exchange Commission has not yet released its definition of municipal advisor, those who will certainly be included have been required to register with both the SEC and the MSRB since 2010. In addition, they have had a fiduciary duty to issuer clients since then.

The SEC has not taken any enforcement actions against unregistered advisors yet, but McCoy told the issuers they should be checking to make sure that individuals or firms giving them financial advice are properly registered.

“It’s a fair question,” McCoy said, “because they should be.”

by: KYLE GLAZIER

SEC: Money Market Fund Reform; Amendments to Form PF.

The Securities and Exchange Commission (Commission) today proposed reforms to money market fund regulation. The proposal includes two alternative reforms that could be adopted alone or in combination. The proposed new rules and rule amendments are designed to mitigate money market funds’ susceptibility to heavy redemptions during times of stress, improve money market funds’ ability to manage and mitigate potential contagion from high levels of redemptions, and improve the transparency of risk in money market funds. The first proposed alternative would require all institutional prime money market funds to operate with a floating net asset value instead of a stable share price. The second proposed alternative would require non-government money market funds generally to impose a 2% liquidity fee if the fund’s level of weekly liquid assets falls below 15% of its total assets, unless the fund’s board determined that not imposing the fee or imposing a lesser fee was in the best interest of the fund. Under these circumstances, the fund’s board would also be able to temporarily suspend redemptions in the fund for up to 30 days in a 90 day period. Among other things, the proposed amendments would also tighten diversification requirements, enhance disclosure requirements, strengthen fund stress testing, and improve money market fund portfolio reporting. Finally, it would require similar portfolio holdings reporting by advisers of unregistered private liquidity funds that could serve as alternatives to money market funds.

The Commission is seeking public comment on the proposal. Comments must be submitted within 90 days of publication in the Federal Register.

The full text of the release proposing the rule amendments is available at:

http://www.sec.gov/rules/proposed/2013/33-9408.pdf

SIFMA Statement on SEC's Proposed Money Market Fund Reform.

New York, NY, June 5, 2013—SIFMA today released the following statement from Timothy Cameron, managing director and head of SIFMA's Asset Management Group (AMG), after the Securities and Exchange Commission (SEC) today voted on proposed rules to reform money market funds (MMFs).

"While SIFMA's Asset Management Group continues to believe that the need for additional regulation is premature in light of the SEC's 2010 reforms, we are encouraged that the SEC has limited the scope of its proposal and believe that the imposition of redemption gates and fees is the most effective path forward.

"Overly broad regulation of MMFs, including a general mandate to float net asset values, would lead to serious negative consequences for the U.S. financial system and the broader economy and would be ineffective in preventing runs. Investors would have fewer choices for cash investing and would lose the benefits of these relatively safe and highly liquid products that provide an attractive alternative to a deposit account. Corporations and financial institutions would find it more difficult and more expensive to access the short-term funding they need to carry out their daily operations, pay their employees and spur the economic growth that creates jobs.

"SIFMA AMG maintains that the SEC's 2010 reforms have sufficiently increased the resiliency of MMFs, as proven by the funds' ability to withstand unusual market volatility over the past three years in the face of increased Eurozone risks, a U.S. debt ceiling crisis and the first-ever downgrade of the U.S. credit rating. We urge the SEC to keep any final reform limited in scope and supported by empirical data. As detailed in our January 2013 comment letter to FSOC, we believe that a combination of redemption gates and redemption fees is the only way to truly stop a run in MMFs.

"We will review this proposal in more detail with our members and look forward to providing more substantive comments."

MSRB Files with the SEC Amendments to Require Additional Information from Dealers on 529 College Savings Plans.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) proposed new MSRB Rule G-45 and proposed amendments to MSRB Rules G-8 and G-9. If approved, the proposed rule changes will require dealers acting in the capacity of underwriters to submit to the MSRB certain information for the 529 plans they underwrite, on a semi-annual basis.

The proposed rules are available at:

http://msrb.org/Rules-and-Interpretations/SEC-Filings/~/media/Files/SEC-Filings/2013/MSRB-2013-04%20Filing.ashx

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SEC, FINRA Probing Dealers Over Issuers' Continuing Disclosure Compliance.

In a precedent-setting action, the Securities and Exchange Commission is investigating whether underwriters are fulfilling their obligations to determine if issuers are complying with their continuing disclosure requirements.

The probe, which appears to initially be focused in California, has led underwriters to fear enforcement action may be forthcoming, with SEC charging firms for violating its Rule 15c2-12 on disclosure, Municipal Securities Rulemaking Board rules, or even securities fraud laws.

In addition, the Financial Industry Regulatory Authority is examining whether dealers have checked issuers' continuing disclosure compliance before selling their bonds, leading dealers to fear it could fine them for rule violations, sources said.

The SEC and FINRA probes have spurred firms to start scrutinizing their practices and whether they have policies and procedures in place to track issuer disclosure filings and compliance.

One bond lawyer said dealers are nervous about being caught in a "pincer" between the two regulatory bodies. If that happens, he said, it could be a shock that puts even smaller firms on alert.

The SEC probes appear to have originated from the commission's San Francisco office and a heavily-redacted copy of an SEC document request has circulated among some bond lawyers. The request, sent to at least one dealer and several issuers, asks for all documents showing disclosure-related communication between the issuer and underwriter, as well as the names of all issuer officials involved in the drafting of official statements and all underwriter personnel involved in the solicitation and underwriting of several series of bonds.

Rule 15c2-12 requires underwriters to reasonably determine that the issuer will comply with its continuing disclosure agreement before underwriting any new municipal securities. The SEC has said that underwriters may not rely solely on the word of the issuer that it has been and will remain in compliance. Underwriters are required to determine themselves if an issuer has a history of failing to comply with its disclosure obligations. An issuer is supposed to disclose in official statements any material failures to comply with its obligations over the past five years.

In addition, dealers are required to have a reasonable basis for recommending the sale of an issuer's bonds and that includes checking its compliance with its continuing disclosure obligations. An issuer is supposed to file a material event notice to disclose when fails to comply with these obligations.

Broker-dealers are also required, under the Municipal Securities Rulemaking Board's Rule G-27, to have written policies and procedures to ensure they comply with the Securities Exchange Act of 1934, including Rule 15c2-12.

The probes comes after the SEC issued a risk alert on March 19 last year warning that some underwriters do not have adequate written evidence to show they have adequately determined whether state and local governments have met their continuing disclosure requirements before underwriting or selling their bonds to investors.

The SEC has never taken enforcement action against an underwriter for failing to check to see if an issuer has met its disclosure filing obligations, perhaps because the commission is sensitive that its entire disclosure regulatory scheme must go firms to get to issuers since it cannot regulate issuers.

But California could prove to be fertile ground for the SEC if it means to initiate an enforcement action. Several sources believe SEC enforcement action is forthcoming. The Golden State accounts for more bond volume than any other and it has already been demonstrated that many issuers there are woefully out of compliance.

A 2011 California Debt and Investment Advisory Commission report found that more than one in four issuers in the state failed to file their annual financial reports on time, and that only 60% of K-12 school districts filed on time. The report showed that 18% of school districts did not file at all. One market participant, who preferred not to be named, said the SEC could make a case against an underwriter under this rule very easily. Instead of the depositions and other legwork involved in a typical fraud enforcement case, regulators would need only to identify a non-compliant issuer and then obtain a copy of an official statement to demonstrate a shortcoming in the underwriter's approach.

"There's not a whole lot of heavy lifting involved," the market participant said.

The combination of the risk alert, the SEC investigation in California, and the FINRA examinations have thrown a scare into dealers, with many now doing more research on issuers' disclosure compliance.

"What we're seeing is a great deal more attention to it," said Bob Feyer, an attorney at Orrick, Herrington & Sutcliffe LLP. Feyer said firms are now either bringing in outside firms to do the necessary research or assigning an in-house teams to tackle it. On some occasions underwriters have insisted an issuer take some remedial action before underwriting the securities, such as hiring compliance reporting company DAC Bond. Feyer said the more intense scrutiny has shown that compliance problems at issuers are widespread. "Many issuers, including some very sophisticated ones, have made some mistakes," he said.

Bill Hirata, a lawyer at Parker Poe in Charlotte, N.C., agreed that underwriters are sitting up and taking notice of the SEC's intentions. "There is a lot more underwriter attention to past failings," Hirata said.

A securities lawyer who did not want to be named said current SEC and MSRB rules and guidance make it clear that underwriting firms have to have policies and procedures in place to properly assess issuers, but that it remains murky as to what minimum protocols would satisfy the rule.

Leslie Norwood, managing director, co-head of the municipal securities group and associate general counsel at the Securities Industry and Financial Markets Association said the group is not working on any specific guidance but is supportive of more disclosure enhancement. "While we are not currently engaged in a specific project focused on what minimum policies and procedures satisfy 15c2-12, SIFMA has long supported efforts to improve disclosure and to help foster compliance with disclosure requirements," Norwood said. "We wholeheartedly supported the establishment of EMMA and previous amendments to 15c2-12 which were necessary to accommodate the continuing disclosure service, as they promote market efficiency, protect investors by giving free Internet access to this information, and assist the compliance obligations of market participants and the regulatory oversight responsibilities of regulators. SIFMA also supports enhancements to EMMA that would send periodic reminders to issuers as certain annual continuing disclosure deadlines approach."

Kyle Glazier

The Bond Buyer

WSJ: South Miami Charged With Defrauding Bond Investors.

For the second time in a month, federal securities regulators have charged a U.S. city with defrauding municipal-bond investors with improper disclosures.

The Securities and Exchange Commission on Wednesday charged South Miami, Fla. with misleading investors about the tax-exempt eligibility of a downtown public-parking garage and retail development.

South Miami, a city of 11,000 residents, agreed to settle the charges and hire an independent third-party consultant to oversee its internal controls for municipal-bond disclosures.

The SEC said that the city borrowed $12 million in two bond offerings through the Florida Municipal Loan Council. Proceeds from the first offering were loaned to a private developer, and the loan agreement was restructured, jeopardizing the project's tax-exempt financing, the SEC said.

In order for investors to get the tax advantages of municipal bonds, the debt must be used largely for a public purpose. The Internal Revenue Service allows projects to be financed by tax-exempt bonds only if their use by a for-profit developer is kept to a minimum.

The SEC said the city's decision in 2005 to lease both the parking garage and retail space to a private developer jeopardized the tax-exempt status of the bonds.

South Miami officials failed to disclose to investors that the bonds' tax-exempt status had been jeopardized, according to the SEC.

Instead, the SEC said, the city continued to make annual certifications to the Florida Municipal Loan Council from 2003 to 2009 stating falsely that it was in compliance with the terms of the loan agreement.

"The tax-exempt status of their bonds is very material to bond holders," Elaine Greenberg, chief of the SEC's Municipal Securities and Public Pensions unit said in an interview. "That is one of the key features that investors look for in deciding whether to invest in municipal bonds."

City Attorney Thomas Pepe declined to comment on the specifics of the settlement because he said the SEC hadn't contacted him directly about it. Mr. Pepe added that he hoped "the city can put the whole matter behind it."

According to the SEC, South Miami neither admits nor denies the agency's findings in the case.

The SEC recently has ramped up its enforcement cases against municipal borrowers.

Earlier this month, the SEC charged Harrisburg, Pa., with securities fraud for allegedly failing to disclose information on its financial troubles. In March, the agency charged the state of Illinois for failing to adequately disclose in bond documents the shaky condition of the state pension system. Harrisburg and Illinois agreed to settle the charges without admitting wrongdoing.

The SEC settlement didn't require South Miami or any of its officials or former officials to pay a fine.

But the SEC noted that the city paid the IRS about $260,000 as part of a separate settlement.

SEC Approves Amendments to MSRB Rule G-39 on Telemarketing.

The Securities and Exchange Commission ("SEC") has approved amendments to MSRB Rule G-39, on telemarketing,[1] that expand the scope of the rule to include additional provisions that are substantially similar to Federal Trade Commission ("FTC") rules prohibiting deceptive and other abusive telemarketing acts or practices.[2] Rule G-39 requires brokers, dealers, and municipal securities dealers ("dealers") to, among other things, maintain do-not-call lists and limit the hours of telephone solicitations to customer residences. The effective date for the amendments is August 22, 2013.

SUMMARY OF PRINCIPAL AMENDMENTS

General Telemarketing Requirements

Rule G-39(a)(iv) informs dealers that engage in telemarketing that they are also subject to the requirements of relevant state and federal laws and rules, including the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telephone Consumer Protection Act,[3] and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers.[4]

Maintenance of Do-Not-Call Lists

The amendments to Rule G-39(d)(vi) maintain the requirement that a dealer making telemarketing calls must maintain a record of a caller's request not to receive further calls. However, the amendments delete the requirement that a dealer honor a firm-specific do-not-call request for only five years from the time the request is made. SEC staff directed the MSRB to delete this provision because the time for which the firm-specific opt-out must be honored under the FTC's Telemarketing Sales Rule[5] is indefinite, rather than five years as currently provided in Rule G-39.[6] Additionally, the amendments clarify that the record of do-not-call requests must be permanent.

Outsourcing Telemarketing

Rule G-39(f) continues to state that, if a dealer uses another entity to perform telemarketing services on its behalf, the dealer remains responsible for ensuring compliance with all provisions contained in the rule. The amendments clarify that dealers must consider whether the entity or person that a dealer uses for outsourcing is appropriately registered or licensed, where required.

Caller Identification Information

Rule G-39(g) provides that dealers engaging in telemarketing must transmit caller identification information and are explicitly prohibited from blocking caller identification information. The telephone number provided must permit any person to make a do-not-call request during regular business hours. These provisions are similar to the caller identification provisions in the FTC rules.[7]

Unencrypted Consumer Account Numbers

Rule G-39(h) prohibits a dealer from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. This provision is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[8] Additionally, the amendments define "unencrypted" to include not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This definition is substantially similar to the approach taken by the FTC.[9]

Submission of Billing Information

Rule G-39(i) provides that, for any telemarketing transaction, a dealer must obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information and a free-to-pay conversion feature, the dealer must: (1) obtain from the customer, at a minimum, the last four digits of the account number to be charged; (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number; and (3) make and maintain an audio recording of the entire telemarketing transaction. For any other telemarketing transaction involving preacquired account information, the dealer must: (1) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number. The amendments are substantially similar to the FTC's provision regarding the submission of billing information.[10]

Abandoned Calls

Rule G-39(j) prohibits a dealer from abandoning any outbound telephone call made for the purpose of, among other things, selling municipal securities or services. The abandoned calls prohibition is subject to a "safe harbor" under subparagraph (j)(ii) that requires the dealer: (1) to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues; (2) for each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; (3) whenever a dealer is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, to promptly play a recorded message stating the name and telephone number of the dealer on whose behalf the call was placed; and (4) to maintain records establishing compliance with the "safe harbor." These provisions are substantially similar to the FTC's provisions regarding abandoned calls.[11]

Prerecorded Messages

Rule G-39(k) prohibits a dealer from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement to receive such calls. The amendment also requires that all prerecorded outbound telephone calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the "safe harbor" for abandoned calls under proposed subparagraph (j)(ii). These provisions are substantially similar to the FTC's provisions regarding prerecorded messages.[12]

Credit Card Laundering

Except as expressly permitted by the applicable credit card system, Rule G-39(l) prohibits a dealer from: (1) presenting to or depositing into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the dealer; (2) employing, soliciting, or otherwise causing a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or (3) obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system. These provisions are substantially similar to the FTC's provisions regarding credit card laundering.[13]

Exemption

Rule G-39(m) exempts business-to-business calls from most of the provisions of the amended rule. Specifically, the exemption provides that outbound telephone calls from a dealer to a business entity, government, or political subdivision, agency, or instrumentality of a government are exempt from the rule, other than sections (a)(ii) and (d)(i)-(iii), (v) and (vi). The sections of the rule that still apply to business-to-business calls relate to the firm-specific do-not-call list[14] and procedures related to (i) maintaining a do-not-call list, (ii) training personnel on the existence and use of the do-not-call list, (iii) the recording and honoring of do-not-call requests, (iv) application to affiliated persons or entities, and (v) maintenance of do-not-call lists.

Definitions

Rule G-39(n) includes the following definitions, which are substantially similar to the corresponding definitions in the FTC's Telemarketing Sales Rule:[15] "acquirer," "billing information," "caller identification service," "cardholder," "charitable contribution," "credit," "credit card," "credit card sales draft," "credit card system," "customer," "donor," "free-to-pay conversion," "merchant," "merchant agreement," "outbound telephone call," "preacquired account information" and "telemarketer." Additionally, the amendments delete the reference to "telephone solicitation."

Rule G-39(n) also includes definitions of "person" and "telemarketing" that differ slightly from the FTC's and FINRA's definitions to be more appropriately tailored to the municipal securities market. Specifically, the definition of "person" in MSRB Rule G-39(n)(xvii) tracks the definition in the FTC and FINRA rules to include any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, but further defines a "person" to include a government, or political subdivision, agency, or instrumentality of a government. The definition of "telemarketing" is limited to calls "pertaining to municipal securities or municipal financial products."

Questions about the amendments may be directed to Lawrence P. Sandor, Deputy General Counsel, or Darlene Brown, Assistant General Counsel, at 703-797-6600.

May 29, 2013

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TEXT OF AMENDMENTS[16]

Rule G-39: Telemarketing

(a) General Telemarketing Requirements. No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall initiate any outbound telephone call solicitation, as defined in paragraph (g)(ii) of this rule, to:

(i) Time of Day Restriction. Any residence of a person before the hour of 8:00 a.m. or after 9:00 p.m. (local time at the called party's location), unless

(A) the broker, dealer or municipal securities dealer has an established business relationship with the person pursuant to paragraph (g)(i)(A)(1) (n)(xii)(A),

(B) the broker, dealer or municipal securities dealer has received that person's prior express prior consent invitation or permission, or

(C) the person called is a broker, dealer or municipal securities dealer;

(ii) Firm-Specific Do-Not-Call List. Any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the broker, dealer or municipal securities dealer; or

(iii) National Do-Not-Call List. Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(iv) Compliance with Other Requirements. This rule does not affect the obligation of any broker, dealer or municipal securities dealer that engages in telemarketing to comply with relevant state and federal laws and rules, including, but not limited to, the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101 – 6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

(b) National Do-Not-Call List Exceptions. A broker, dealer or municipal securities dealer making outbound telephone solicitations calls will not be liable for violating paragraph (a)(iii) if:

(i) Established Business Relationship Exception. The broker, dealer or municipal securities dealer has an established business relationship with the recipient of the call. A person's request to be placed on the broker, dealer or municipal securities dealer's firm-specific do-not-call list terminates the established business relationship exception to that the national do-not-call list provision for that broker, dealer or municipal securities dealer even if the person continues to do business with the broker, dealer or municipal securities dealer;

(ii) Prior Express Written Consent Exception. The broker, dealer or municipal securities dealer has obtained the person's prior express written consent invitation or permission. Such permission consent must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq. ("E-Sign Act")) between the person and the broker, dealer or municipal securities dealer, which states that the person agrees to be contacted by the broker, dealer or municipal securities dealer and includes the telephone number to which the calls may be placed; or

(iii) Personal Relationship Exception. The associated person broker, dealer or municipal securities dealer making the call has a personal relationship with the recipient of the call.

(c) Safe Harbor Provision. A broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer making outbound telephone solicitations calls will not be liable for violating paragraph (a)(iii) if the broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer demonstrates that the violation is the result of an error and that as part of the broker, dealer or municipal securities dealer's routine business practice, it meets the following standards:

(i) Written procedures. The broker, dealer or municipal securities dealer has established and implemented written procedures to comply with the national do-not-call rules;

(ii) Training of personnel. The broker, dealer or municipal securities dealer has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the national do-not-call rules;

(iii) Recording. The broker, dealer or municipal securities dealer has maintained and recorded a list of telephone numbers that it may not contact; and

(iv) Accessing the national do-not-call database. The broker, dealer or municipal securities dealer uses a process to prevent outbound telephone solicitations calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) 31 days prior to the date any call is made, and maintains records documenting this process.

(d) Procedures. Prior to engaging in telemarketing, a broker, dealer or municipal securities dealer must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(i) Written policy. Brokers, dealers and municipal securities dealers must have a written policy for maintaining a do-not-call list.

(ii) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(iii) Recording, disclosure of do-not-call requests. If a broker, dealer or municipal securities dealer receives a request from a person not to receive calls from that broker, dealer or municipal securities dealer, the broker, dealer or municipal securities dealer must record the request and place the person’s name, if provided, and telephone number on the firm’s do-not-call list at the time the request is made. Brokers, dealers and municipal securities dealers must honor a person’s do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty 30 days from the date of such request. If such requests are recorded or maintained by a party other than the broker, dealer or municipal securities dealer on whose behalf the telemarketing outbound telephone call is made, the broker, dealer or municipal securities dealer on whose behalf the telemarketing outbound telephone call is made will be liable for any failures to honor the do-no--call request.

(iv) Identification of sellers and telemarketers. A broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer making an outbound telephone call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the broker, dealer or municipal securities dealer, an address or telephone number at which the broker, dealer or municipal securities dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(v) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person’s do-not-call request shall apply to the broker, dealer or municipal securities dealer making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) Maintenance of do-not-call lists. A broker, dealer or municipal securities dealer making outbound telephone calls for telemarketing purposes must maintain a permanent record of a caller person’s request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.

(e) Wireless Communications. The provisions set forth in this rule are applicable to brokers, dealers and municipal securities dealers telemarketing or making outbound telephone solicitations calls to wireless telephone numbers.

(f) Outsourcing Telemarketing. If a broker, dealer or municipal securities dealer uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the broker, dealer or municipal securities dealer remains responsible for ensuring compliance with all provisions contained in this rule.

(g) Definitions.

(i) Established business relationship.

(A) An established business relationship exists between a broker, dealer or municipal securities dealer and a person if:

(1) the person has made a financial transaction or has a security position, a money balance, or account activity with the broker, dealer or municipal securities dealer or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer within the eighteen months immediately preceding the date of the telemarketing call;

(2) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of the telemarketing call; or

(3) the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a broker, dealer or municipal securities dealer's affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(ii) The terms telemarketing and telephone solicitation mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(iii) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

(iv) The term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts, or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(v) The term "broker, dealer or municipal securities dealer of record" refers to the broker, dealer or municipal securities dealer identified on a customer's account application for accounts held directly at an issuer of municipal fund securities or by the issuer's agent.

(g) Caller Identification Information.

(i) Any broker, dealer or municipal securities dealer that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the broker, dealer or municipal securities dealer's telephone carrier, the name of the broker, dealer or municipal securities dealer, to any caller identification service in use by a recipient of an outbound telephone call.

(ii) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(iii) Any broker, dealer or municipal securities dealer that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(h) Unencrypted Consumer Account Numbers. No broker, dealer or municipal securities dealer shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer's billing information to process a payment pursuant to a telemarketing transaction.

(i) Submission of Billing Information. For any telemarketing transaction, a broker, dealer or municipal securities dealer must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the broker, dealer or municipal securities dealer must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (i)(i)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (i)(i), the broker, dealer or municipal securities dealer must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (i)(ii)(A).

(j) Abandoned Calls.

(i) No broker, dealer or municipal securities dealer shall "abandon" any outbound telephone call. An outbound call is "abandoned" if a called person answers it and the call is not connected to a broker, dealer or municipal securities dealer within two seconds of the called person's completed greeting.

(ii) A broker, dealer or municipal securities dealer shall not be liable for violating paragraph (j)(i) if:

(A) the broker, dealer or municipal securities dealer employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(B) the broker, dealer or municipal securities dealer, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(C) whenever a broker, dealer or municipal securities dealer is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, the broker, dealer or municipal securities dealer promptly plays a recorded message that states the name and telephone number of the broker, dealer or municipal securities dealer on whose behalf the call was placed; and

(D) the broker, dealer or municipal securities dealer retains records establishing compliance with paragraph (j)(ii).

(k) Prerecorded Messages.

(i) No broker, dealer or municipal securities dealer shall initiate any outbound telephone call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (j)(ii)(C) unless:

(A) the broker, dealer or municipal securities dealer has obtained from the recipient of the call an express agreement, in writing, that:

(1) the broker, dealer or municipal securities dealer obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the broker, dealer or municipal securities dealer to place prerecorded calls to such person;

(2) the broker, dealer or municipal securities dealer obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;

(3) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific broker, dealer or municipal securities dealer; and

(4) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the broker, dealer or municipal securities dealer allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (d)(iv), followed immediately by a disclosure of one or both of the following:

(1) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii) at any time during the message. The mechanism must:

(a) automatically add the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) once invoked, immediately disconnect the call; and

(c) be available for use at any time during the message;

(2) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(a) automatically adds the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) immediately thereafter disconnects the call; and

(c) is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the broker, dealer or municipal securities dealer complies with all other requirements of this rule and other applicable federal and state laws.

(ii) Any call that complies with all applicable requirements of paragraph (k) shall not be deemed to violate paragraph (j).

(l) Credit Card Laundering. Except as expressly permitted by the applicable credit card system, no broker, dealer or municipal securities dealer shall:

(i) present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the broker, dealer or municipal securities dealer;

(ii) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(iii) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(m) Exemption. Outbound telephone calls from a broker, dealer, or municipal securities dealer to a business entity, government, or political subdivision, agency, or instrumentality of a government are exempt from this rule, other than sections (a)(ii) and (d)(i)-(iii), (v) and (vi).

(n) Definitions.

For purposes of this rule:

(i) The term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(ii) The term "acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(iii) The term “billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. A “donor” means any person solicited to make a charitable contribution. A “charitable contribution” means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(iv) The term “broker, dealer or municipal securities dealer of record” refers to the broker, dealer or municipal securities dealer identified on a customer’s account application for accounts held by the issuer’s agent for municipal fund securities.

(v) The term “caller identification service” means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

(vi) The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(vii) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(viii) The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(ix) The term “credit card sales draft” means any record or evidence of a credit card transaction.

(x) The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(xi) The term “customer” means any person who is or may be required to pay for goods or services offered through telemarketing.

(xii) The term “established business relationship” means a relationship between a broker, dealer or municipal securities dealer and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the broker, dealer or municipal securities dealer or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer within the eighteen months immediately preceding the date of an outbound telephone call;

(B) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of an outbound telephone call; or

(C) the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the three months immediately preceding the date of an outbound telephone call.

A person’s established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a broker, dealer or municipal securities dealer's affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(xiii) The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(xiv) The term "merchant" means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(xv) The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(xvi) The term "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.

(xvii) The term "person" means any individual, group, unincorporated association, limited or general partnership, corporation, other business entity, government, or political subdivision, agency, or instrumentality of a government.

(xviii) The term "personal relationship" means any family member, friend, or acquaintance of the broker, dealer or municipal securities dealer making an outbound telephone call.

(xix) The term "preacquired account information" means any information that enables a broker, dealer or municipal securities dealer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(xx) The term "telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(xxi) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call pertaining to municipal securities or municipal financial products, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call.

[1] See SEC Release No. 34-69635 (May 24, 2013), File No. SR-MSRB-2013-02.

[2] The FTC initially adopted its rules prohibiting deceptive and other abusive telemarketing acts or practices (the "Telemarketing Sales Rule," codified at 16 CFR 310.1-9) in 1995 under the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101-6108. See FTC, Telemarketing Sales Rule, 60 FR 43842 (Aug. 23, 1995). The Telemarketing Sales Rule has

been amended since 1995, prompting the SEC to request the MSRB and other self-regulatory organizations to review their telemarketing rules.

[3] See 47 U.S.C. 227.

[4] See 47 CFR 64.1200.

[5] See 16 CFR 310.4.

[6] See Letter from Robert W. Cook, Director, Division of Trading and Markets, SEC, to Michael G. Bartolotta, then Chairman of the Board of Directors of the MSRB, dated May 10, 2011.

[7] See 16 CFR 310.4(a)(8); see also FINRA Rule 3230(g).

[8] See 16 CFR 310.4(a)(6); see also FINRA Rule 3230(h).

[9] See FTC, Telemarketing Sales Rule, 68 FR 4580, 4616 (Jan. 29, 2003).

[10] See 16 CFR 310.4(a)(7); see also FINRA Rule 3230(i).

[11] See 16 CFR 310.4(b)(1)(iv) and (b)(4); see also FINRA Rule 3230(j).

[12] See 16 CFR 310.4(b)(1)(v); see also FINRA Rule 3230(k).

[13] See 16 CFR 310.3(c); see also FINRA Rule 3230(l).

[14] For example, if a dealer solicits an issuer official to obtain municipal securities underwriting business and the issuer official requests that the dealer place the telephone number on the dealer's do-not-call list, the dealer must honor the request and retain the individual's telephone number on the do-not-call list indefinitely.

[15] These definitions are also substantially similar to definitions in FINRA Rule 3230, with the exception of "telemarketer," which is not defined in FINRA's rule.

[16] Underlining indicates new language; strikethrough denotes deletions.

Reuters: Wielding Harrisburg Example, SEC Cajoles Cities Nationwide.

At first glance, a federal regulator's rebuke of the city of Harrisburg this month over fraudulent statements and long overdue disclosures to its bondholders could be seen as a warning to state and local politicians who offer too rosy a view of their financial health.

But clear-cut cases such as Harrisburg of officials mis-stating their city's finances remain relatively rare, and the main goal of the U.S. Securities and Exchange Commission is far more basic – cajoling thousands of cities, counties and other organizations that sell bonds into complying with its disclosure rules.

When on May 6 the SEC charged the cash-strapped capital city of Pennsylvania, it effectively put officials across the country on notice that even political statements like annual state of the city addresses must not overstate financial conditions.

The message was “what you say can and will be used against you,” said Ben Watkins, head of Florida’s Division of Bond Finance. “What makes it precedent-setting is that it’s the first time there’s been an enforcement action on statements made by public officials.”

The SEC said Harrisburg had defrauded its creditors because numerous officials glossed over its disastrous finances and the city was overdue in its disclosures. While no individuals were held to account, a commissioner of the SEC said it would not show such restraint in future.

In a typical conclusion to SEC civil investigations, Harrisburg agreed to settle the charges without admitting or denying the regulator’s findings.

Now that the city of nearly 50,000 has become an example of mismanaged public finances and has a mountain of debt to clear while providing basic services, whoever is Harrisburg’s next mayor will be closely watched by the $3.7 trillion U.S. municipal bond market. On Tuesday, Democratic Party voters will choose their candidate in a primary election. There is no Republican mayoral primary.

DIVERSE POOL OF ISSUERS, THOUSANDS MISS DEADLINES

Compliance is sketchy given the diverse pool of issuers in the municipal bond market, some 50,000 entities ranging from states selling billions of dollars of bonds a year to tiny, quasi-governmental authorities that raise less than $1 million at a time. In the three financial years from mid-2009 to mid-2012, local issuers sent more than 5,000 notices of failure in providing financial information.

Moreover, that number does not capture the number of issuers behind schedule that have not reported even that fact to investors. That figure is unknown, according to regulators, because there is no central mechanism for automatically triggering a notice of a passed deadline.

And, adding to the confusion, filing deadlines are not standardized as they are with financial statements of publicly traded companies. Typically they are specified within individual underwriting contracts.

In the last month alone, 243 late report notices were posted on EMMA, the Electronic Municipal Market Access website.

The greatest number came from Puerto Rico, which aims to have its financial statements completed before a $770 million debt refinancing before June 30, according to Government Development Bank for Puerto Rico communications director Betsy Nazario. The island’s employee retirement system delayed its report while hammering out major pension reforms, according to a notice filed by its administrator Hector Mayol Kauffmann.

In some cases, a missed deadline simply reflects the mundane rather than raising a financial red flag. Zion, Illinois, population 24,400 and 50 miles north of Chicago along the Lake Michigan shore, has run into scheduling conflicts with its outside auditor in past years, forcing it to miss deadlines for a day or two. The city, with about $31 million in bonds, recently enacted measures to have the audit completed earlier, said financial director David Knabe.

HARRISBURG REVERBERATES

Nevertheless, the SEC’s move against Harrisburg, which did not release its fiscal 2009 audit until July 2012, has clearly caught the eye of local officials across the country. The get-tough pledge is now a top agenda item for the Government Finance Officers Association when its members, who oversee many debt sales each year, gather in early June for an annual meeting.

The SEC presents officials a clear trade-off: either deliver timely information to investors or be held responsible for every bit of information in public speeches.

"Public statements, if they are materially misleading or omit material information, can lead to potential liability under the anti-fraud provisions of the federal securities laws," the SEC report said.

Those statements can be written or oral, it added. While it remains to be seen if that report will muzzle political speech, some expect officials to vet their references to finances in speeches and look into disclaimers for written statements.

"I don't think public officials should view this order as inhibiting anything they may want to say," said bond lawyer John McNally of the firm Hawkins Delafield & Wood LLP. "I think they should view it as caution that any statements expected to reach the market can be used for anti-fraud liability."

SEC'S AUTHORITY IS LIMITED

The SEC's authority in the muni market remains limited because of constraints on federal oversight of state and local governments. Its main tool is the authority to require underwriters to create agreements with issuers for annual financial updates and to disclose other events that may affect their bonds.

"The SEC used the authority that it has to enforce issuers' obligations, and I think they sent a useful message to the market that issuers in distressed situations should take care," said Michael Decker, co-head of the municipal division at the Securities Industry and Financial Markets Association.

In a report last summer, the SEC said it would seek greater authority over issuers, but Congress has yet to approve those powers. Still, the agency is trying to have a bigger impact in the market.

Three years ago it created a unit dedicated to municipal bonds and public pensions and has since taken on big-name cases such as the state of Illinois, delivering a rebuke comparable to Harrisburg.

SEC Charges City of South Miami with Defrauding Investors About Tax-Exempt Status of Municipal Bonds.

Washington, D.C., May 22, 2013 — The Securities and Exchange Commission today charged the City of South Miami, Fla., with defrauding bond investors about the tax-exempt financing eligibility of a mixed-use retail and parking structure being built in its downtown commercial district.

An SEC investigation found that the city of 11,000 residents located in Miami-Dade County borrowed approximately $12 million in two pooled, conduit bond offerings through the Florida Municipal Loan Council (FMLC). South Miami's participation in those offerings enabled it to borrow funds at advantageous tax-exempt rates. The city represented that the project was eligible for tax-exempt financing in various documents for the second offering that were relied upon by bond counsel in rendering its tax opinion. However, South Miami failed to disclose that it had actually jeopardized the tax-exempt status of both bond offerings by impermissibly loaning proceeds from the first offering to a private developer and restructuring a lease agreement prior to the second offering.

South Miami agreed to settle the charges and retain an independent third-party consultant to oversee its policies, procedures, and internal controls for municipal bond disclosures.

“South Miami’s fraudulent conduct put bondholders in danger of incurring significant additional costs associated with their investments,” said Elaine C. Greenberg, Chief of the SEC Enforcement Division’s Municipal Securities and Public Pensions Unit. “The tax-exempt status of municipal bonds is vitally important to bond investors, and we will closely scrutinize any conduct by issuers or others that threatens that tax exemption.”

Eric I. Bustillo, Director of the SEC’s Miami Regional Office, added, “Municipalities in South Florida and elsewhere cannot rely on a lack of internal procedures or experience in debt offerings to excuse fraudulent disclosures made to investors.”

According to the SEC’s order instituting settled administrative proceedings, South Miami sought financing to develop a public parking garage. The project ultimately became a mixed-use retail and public parking structure to be developed by a for-profit developer. Under the initial lease agreement between the city and the developer, the city was responsible for all construction costs except the retail portion. The city retained full control over the operation and maintenance of the parking garage portion and all parking revenues. The developer’s limited role was critical to the city receiving the benefits of tax-exempt financing. Under IRS regulations, the project could be financed on a tax-exempt basis only if its use by the for-profit developer was kept to a minimum.

According to the SEC’s order, South Miami approved the financing for construction of the tax-exempt portion of the project and moved ahead with its participation in the initial FMLC 2002 bond pool offering. However, upon receiving a copy of the city’s lease agreement with the developer, bond counsel identified a potential tax issue with the mixed public-retail nature of the project. During subsequent conference calls with the city’s then-finance director, bond counsel communicated to city officials that no funds from the bond offering could be used to finance the retail portion of the structure.

However, the SEC found that subsequent city finance directors were unaware of the substance of these discussions or how the lease agreement affected the tax status of the bonds. Moreover, subsequent city finance directors had no previous experience, training, or guidance on disclosure requirement or tax issues in bond offerings. When the lease agreement was revised in 2005 to lease not only the retail space to the developer but the parking garage as well, the updated terms caused the project to be considered private business use, which jeopardized the tax-exempt status of the bonds. South Miami did not inform the FMLC, bond counsel, or any third parties about the project changes. Documents for the second 2006 FMLC bond pool offering contained material misrepresentations and omissions about the use of the offering’s proceeds and the altered terms of the parking garage lease.

According to the SEC’s order, annual certifications made by the city to the FMLC from 2003 to 2009 incorrectly stated that South Miami was in compliance with the terms of the loan agreements, which included representations that no event had occurred affecting the tax-exempt status of the bonds. South Miami eventually filed a material event notice with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (EMMA) system in July 2010 that publicly acknowledged a potential adverse impact on the bonds’ tax exemption. Separately, the city settled with the IRS by paying $260,345 and defeasing a portion of the two prior bond offerings at a cost of $1.16 million. Because of the city’s settlement and payments, bondholders were not financially harmed and they’re not required to include any interest from the bonds in their gross incomes.

The SEC’s order directs South Miami to cease and desist from committing or causing any violations of Sections 17(a)(2) and (3) of the Securities Act of 1933. The city must retain an independent third-party consultant, who for three years will conduct annual reviews of the city’s policies, procedures, and practices related to its disclosures for municipal securities offerings. The city must abide by the independent consultant's determinations and implement all recommendations. South Miami neither admitted nor denied the SEC's findings. A full description of the undertakings can be found in the SEC's order.

This SEC's investigation was conducted in the Miami Regional Office by Senior Counsel Sean M. O'Neill under the supervision of Assistant Regional Director Jason R. Berkowitz, both members of the Municipal Securities and Public Pensions Unit.

The order can be found at:

http://www.sec.gov/litigation/admin/2013/33-9404.pdf

FINRA's Ketchum to SEC: Act Now on Fiduciary, or We'll Make Our Own Disclosure Rules.

CEO Ketchum says FINRA will also review the impact its rules have on BD firms—and will be asking for firms' input on which ones to review

Richard Ketchum, CEO of the Financial Industry Regulatory Authority, called on the SEC Tuesday to "act quickly" to finalize its rule to put brokers and advisors under a uniform fiduciary standard, but noted that in the absence of SEC action, FINRA would "look hard" at issuing "an additional disclosure rule with respect to broker-dealer firms."

At FINRA's annual conference in Washington, Ketchum said that it's time for the SEC to move toward finalizing a uniform fiduciary standard. After his speech, Ketchum told reporters that as SEC Commissioner Elisse Walter had noted, "there may be a role for FINRA in the area of disclosure leadership and controls either consistent with the SEC's action" on a fiduciary rule or outside of the SEC's rule.

The Need for Thorough and Effective Policies and Procedures

Whethere an advisor is SEC or state-registered, RIAs must revise their policies and procedures to address significant compliance problems occurring during the year, changes in business arrangements, and regulatory developments.

Privacy Policies and Rules

Whether an RIA is SEC or state-registered, the firm must have policies and procedures in effect to protect clients' privacy. Policies and procedures should explicitly require an RIA to send out its privacy notice each year.

Ketchum said that once FINRA has completed its "conflicts review" of firms, which the self-regulator launched at the end of 2012, FINRA would "look hard at additional disclosure with respect to broker-dealer firms." Disclosure, Ketchum added, will be a "major focus" for FINRA this year.

Another priority for FINRA in 2013, Ketchum told attendees, will be to review the impact its rules have on BD firms—and it will be asking for firms' input on which ones to review.

"We will be reviewing certain rules retrospectively to determine if the rules have achieved their intended purpose," Ketchum said. "And we will be analyzing the costs and benefits of existing and potential rulemaking."

The effort will be headed by FINRA's new chief economist, Jonathan Sokobin, who will be responsible for gathering and analyzing data on securities firms and markets. Said Ketchum: "Expect to hear more from us on the retrospective rule review later this year."

Ketchum told reporters that FINRA's broker bonus disclosure plan will be brought up at the self-regulator's July board meeting. He added that FINRA was "looking hard" at its failed proposal to require firms to link to BrokerCheck on their websites and would be "coming back" with a simplified proposal.

As to an SRO for advisors, Ketchum noted that as SEC Chairwoman Mary Jo White stated in her recent testimony, boosting advisor oversight is very important to her and "she's not going to be satisfied with the status quo." However, Ketchum said that while FINRA would support a bill allowing the SEC to assess user fees to fund advisor exams, he still believes it's "unrealistic" that such a bill, or a measure approving an SRO for advisors, will come to light in this Congress.

Reuters: Fiduciary Rule, Long Postponed, Faces More Delays, Lobbying.

The long-running Washington debate over whether and how to beef up ethical standards for Wall Street brokers who give financial advice shows no sign of ending.

Some industry lobbyists are even stepping up their lobbying on the so-called fiduciary rule. The traditional brokerage industry would like there to be room for industry practices like selling brokerage-branded funds that can be more expensive than alternatives.

At issue are plans to develop two different rulemakings, the process agencies use to develop and approve rules. The U.S. Securities and Exchange Commission has been mulling a requirement that brokers be fiduciaries. That would force them to put their clients' interests ahead of their own in every recommendation, a tougher standard than the current requirement that they simply recommend "suitable" investments.

The second rulemaking, in the works at the U.S. Department of Labor, would impose fiduciary responsibilities only on advisers serving workplace retirement plans and individual retirement accounts.

Draft legislation that could delay both of those rulemakings will be presented to the U.S. House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises on Thursday.

The proposal from Missouri Republican Ann Wagner would require the SEC to coordinate with the Labor Department and other agencies to ensure rules they establish are consistent. In addition, the SEC would have to do a cost-benefit analysis to justify its possible rule, according to the draft. The SEC would also have to determine whether retail customers are being harmed by the lack of the fiduciary standard.

The Financial Planning Coalition, a pro-fiduciary standard group, issued a statement on Wednesday saying the Wagner plan could add a roadblock to the rulemaking process and "may have the unintended consequence of frustrating any ongoing efforts to increase standards of care for financial professionals."

The securities industry has a different view. “I don’t think we want to rush into a regulatory position without adequate vetting,” said Judd Gregg, chief executive of the Securities Industry and Financial Markets Association (SIFMA), at a briefing for reporters on Monday. The group, which announced Gregg’s appointment Monday, represents hundreds of securities firms, including the largest retail brokerages.

While the Wagner plan may be a long shot for final enactment, it offers one more ray of hope for industry lobbyists who may be aiming to delay the SEC rule indefinitely.

“If our members have more time to prepare for the worst, they are in a better position,” said David Bellaire, executive vice president and general counsel for the Financial Services Institute, which represents many advisers who service smaller accounts such as IRAs.

Bellaire was referring to the Labor Department’s rule, which was first proposed in October 2010 and has been expected to be reproposed for comment in July. Now it may not surface until later in the year, Bellaire said. The group is concerned that the DOL’s plan will limit the types of fees advisers can collect for servicing IRA accounts. He did not comment on Wagner’s draft legislation, which he had not yet seen.

MORE TIME TO LOBBY

Industry groups, which could change how brokers do business, have churned up waves of industry lobbying. FSI, which put the fiduciary rule at the top of its lobbying issues in a recent federal disclosure, plans to bring about 150 members to Washington in July to voice concerns to their representatives and senators about the fiduciary rule and other issues. It spent $196,000 on lobbying in the first quarter of 2013; that’s almost half the $440,000 it spent in all of 2012.

SIFMA listed 10 lobbyists working on the DOL proposal and business conduct standards, among other concerns, in its recent federal disclosure form.

The National Association of Insurance and Financial Advisors (NAIFA) spent $665,000 lobbying multiple issues in the first quarter of 2013 and listed four lobbyists working on the DOL proposal and other regulatory issues. The group represents smaller advisers, many of whom would be affected by the implementation of a new Labor Department rule.

DODD-FRANK REDUX

The debate about the fiduciary standard was finally encoded in the 2010 Dodd-Frank financial reform law, which Wagner’s plan would amend. That law directed that the SEC study the issue and be authorized (but not required) to develop new rules.

Last week the House passed a bill from New Jersey Republican Scott Garrett on party lines that will force federal securities regulators to conduct more analysis of costs and benefits before adopting rules for Wall Street.

“This bill could truly keep us from moving forward,” said SEC Commissioner Elisse Walter at the Financial Industry Regulatory Authority’s annual meeting this week. “We would be more frozen in place than we are now.”

She said the SEC already has a “very high standard” of economic review.

Treasury Official: No Decision on Closing SLGS Window.

The Treasury Department has made no decision about whether to continue or halt sales of State and Local Government Series Securities when the suspension of the debt ceiling expires on May 19, but in either case would honor any requests received before that date, an official said.

"So if the window does close, and I'm not commenting on whether it will or won't, Treasury will provide advance notice about the closing of the window," Vicky Tsilas, Treasury associate tax legislative counsel, told the American Bar Association tax-exempt financing committee at its meeting here Friday.

"If Treasury decides to close the SLGS window in connection with the expiration of the temporary debt ceiling suspension, Treasury will honor subscriptions received prior to the closure. Treasury has done it in the past and it is the intent of Treasury to do that," she said.

Tsilas' remarks come after Sam Gruer and Matt Roggenburg, with the advisory firm Cityview Capital Solutions LLC, warned in a commentary in The Bond Buyer last month that the Treasury would be unlikely to deliver SLGS to muni issuers after May 19 even if they had already subscribed for them. They urged muni issuers to consider buying open-market Treasuries for advance refunding escrows.

But Tsilas, who made no reference to the commentary, said the Treasury will honor all SLGS subscriptions made before the window closes, even if the settlements are later.

The Treasury Department has closed the SLGS window nine times in the past 20 years, she said. When the federal government reaches the debt limit, the SLGS window is typically the first of several accounting measures used to ensure the government doesn't default on its debt obligations.

In February, President Obama signed legislation suspending the $16.4 trillion federal debt limit through May 18.

Meanwhile, Treasury Secretary Jacob Lew told CNBC late last week that the federal government will likely not hit its borrowing limit until September due in part to a one-time $59.4 billion payment from government-backed mortgage corporation Fannie Mae to boost federal coffers. This will allow Congress and the White House some extra breathing room to negotiate on a plan to raise the debt ceiling.

Tsilas also told lawyers at the meeting that the much anticipated arbitrage regulations, which will include guidance on issue price, will be released in the "next couple of months."

She said the Treasury is currently exploring what will be included in next year's guidance plans. The department has already received a handful of comments from market groups urging the department issue guidance on issue price and formalize some of the projects on this year's guidance plan such as reissuance and Tax Equity and Fiscal Responsibility Act of 1982, or TEFRA, regulations. Bond lawyers contend reissuance guidance does not cover tax-exempt bonds that issuers privately place with banks. They also want the Treasury to finalize rules easing TEFRA's public notice and hearing requirements for private activity bonds.

The Treasury Department has received comments requesting guidance concerning the application of the private business use tests for accountable care organizations and other arrangements that would be affected by the 2010 Patient Protection and Affordable Care Act, which will be implemented later this year. Some groups have expressed concern that Obamacare imposes a number of requirements on health care providers and hospitals and encourages partnerships between exempt organizations and entities that would otherwise be treated as private business users or tax exempt bond finance facilities.

"We certainly appreciate the urgency of providing that guidance," Tsilas said. "We welcome your comments on those points."

MSRB Releases Video.

The Municipal Securities Rulemaking Board (MSRB) has released a short video that tells the story of the organization and explains the MSRB's role in the $3.7 trillion municipal securities market. The MSRB plays a unique role in the financial market that raises capital for state and local governments to build roads, schools, bridges, hospitals and other public purpose facilities.

View the video at:

http://msrb.org/Videos-About-the-MSRB.aspx

MSRB Publishes First Quarter 2013 Municipal Market Statistics.

The Municipal Securities Rulemaking Board (MSRB) today released municipal market statistics for the first quarter of 2013, including data that provide details about the trading patterns and, continuing disclosure documents submitted to the MSRB and other figures for the $3.7 trillion municipal bond market. The MSRB, which regulates the municipal market, is an independent source of data on the market and operates the Electronic Municipal Market Access (EMMA®) website.

Among the first quarter 2013 highlights:

- Par amount traded in the municipal securities market in the first quarter of 2013 totaled $733.0 billion, 7.6 percent lower than the $793.4 billion traded in the same period one year ago.
- Trading of revenue securities accounted for approximately 67 percent of the total par traded and 63 percent of the number of trades in the first quarter of 2013.
- The number of continuing disclosure documents received by the MSRB totaled 44,409 in the first quarter of 2013, compared to 39,269 documents in the same period of 2012.

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. Daily and historical summaries of trade data based on security type, size, sector, maturity, source of repayment and coupon type are displayed in EMMA's Market Statistics section.

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.

The full report is available at:

http://www.msrb.org/News-and-Events/Press-Releases/2013/MSRB-Publishes-First-Quarter-2013-Municipal-Market-Statistics.aspx

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MSRB Adds Additional Primary Market Data to EMMA Website.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) announced today that additional information about new issues of municipal securities is now available on its Electronic Municipal Market Access (EMMA®) website.

EMMA now will display both the initial offering dollar price and yield for a bond, when available. These changes provide more meaningful primary market information to market participants about the initial offering price and facilitate comparisons to trade data, which is normally displayed with both a dollar price and yield.

Market participants also can now view on the EMMA website the time of formal award and time of first execution for most new issues of municipal securities to further promote increased access to these events. The time of formal award generally indicates when the bond purchase agreement was entered into between the issuer and the underwriter for negotiated sales or when the underwriter was awarded the deal on a competitive sale. The time of first execution generally reflects the time the underwriter plans to execute transactions in the new issue.

The new information on EMMA is provided by the New Issue Information Dissemination Service (NIIDS) operated by the Depository Trust and Clearing Corporation (DTCC). Effective today, the MSRB has integrated certain NIIDS data into the EMMA website to streamline the process by which underwriters make primary market submissions to the MSRB's EMMA system.

Dealers: MSRB's Suitability Rule Shouldn't Differ From FINRA's.

The Municipal Securities Rulemaking Board should craft a single rule to set suitability requirements for investors ranging from sophisticated municipal market professionals to 529 college savings plans, according to comments received by the board Monday.

The comments are in response to the MSRB's request for input on its proposal to modify Rule G-19 on suitability so that it mirrors the Financial Industry Regulatory Authority's suitability Rule 2111, which took effect in July 2012. The proposed changes are part of the board's effort to make its rules more efficient and effective by paring down the more than 30 pages of interpretive guidance that now accompanies its fair dealing rule.

Rule G-19 currently requires dealers to collect information about customers' financial and tax status, as well as investment objectives, before making recommendations to non-institutional customers. The proposal would expand that information to include the customer's age, investment time horizon, liquidity needs, investment experience and risk tolerance. Guidance to Rule G-17 on fair dealing already exempts dealers from requirements to perform a customer-specific suitability determination for recommendations to the sophisticated professionals, but the rulemaking board is breaking that part of the guidance out into a different rule.

That approach risks confusion, Securities Industry and Financial Markets Association managing director and associate general counsel David Cohen wrote. The association's members believe that the revised suitability rule should generally be the same as FINRA's rule, and breaking regulations included in Rule 2111 out into multiple rules could be problematic.

"We believe the MSRB should eliminate or justify any other differences – as separate rules covering the same conduct will unnecessarily lead to regulatory confusion and increased compliance costs," Cohen wrote. "The MSRB's omission of its SMMP exemption from this 'harmonized' suitability rule risks this unnecessary regulatory confusion."

Robert McCarthy, director of regulatory policy at Wells Fargo Advisors, also told the MSRB that taking a different approach from FINRA could be counterproductive.

"WFA respectfully requests that MSRB reconsider its plan to handle the SMMP exemption separately from the revised suitability rule," McCarthy wrote. "Treating a municipal dealer's suitability obligations to SMMPs differently than a FINRA member's institutional suitability duties as reflected in FINRA 2111(b) undermines MSRB's broader objective to 'promote regulatory efficiency.'"

Mike Nicholas, president and chief executive officer of the Bond Dealers of America, added the voices of smaller dealers in support of more closely-harmonized rules.

"While we are encouraged by many of the changes in Proposed Rule G-19 that would harmonize MSRB Rule G-19 with FINRA's Suitability Rule 2111, we are concerned that the differences in the Proposed Rule G-19 from FINRA's Suitability Rule are not necessarily justified, particularly with respect to the treatment of institutional investor accounts," Nicholas wrote.

Comments also indicate that dealers and investment firms do not think the MSRB should withhold suitability requirements for tax-advantaged 529 college savings plans from the revised G-19 and address it elsewhere.

"We appreciate the MSRB's specific attention to 529 plans," wrote Tamara Salmon, senior associate counsel at the Investment Company Institute. "We recommend, however, that, in lieu of adopting another suitability rule that would, presumably supplement Rule G-19 with respect to 529 plan recommendations, the MSRB incorporate provisions specific to 529 plans in Rule G-19."

The MSRB hopes to send its revised suitability rule, along with other rules stemming from G-17 interpretations, to the Securities and Exchange Commission for approval late this year.

Kyle Glazier

The Bond Buyer

Muni Experts: SEC Sent Message with Harrisburg Deal.

The Securities and Exchange Commission's fraud accusations and settlement with Harrisburg, Pa., could be an effective deterrent, some market observers say, even if Pennsylvania's capital city appeared to suffer little consequence from the SEC's actions.

"I think this is a very serious step that should not be taken lightly by any of the participants involved and certainly not the industry," said John Hallacy, director of municipal research for Bank of America Merrill Lynch.

On Monday, the SEC charged Harrisburg with securities fraud for providing misleading information about its deteriorating finances. The commission did not assess a fine, given the city's wobbly balance sheet, and city officials signed a cease-and-desist order.

"There was no monetary penalty, which irks some people, but perhaps more important is the emphasis that disclosure has to be transparent and truthful. That's the most important message," said Hallacy.

According to the SEC, Harrisburg failed to properly disclose required information to the Municipal Securities Rulemaking Board's EMMA website, and also made misleading statements about its credit rating and debt payments. From January 2009 to March 2011, the city failed to provide annual financial information or material event notices, forcing investors to seek out other public sources of information, the SEC said.

The U.S. attorney's office for the Middle District of Pennsylvania in Harrisburg is reviewing the SEC's report. "Beyond that, the U.S. attorney's office has no comment," said media relations officer Heidi Havens.

Harrisburg, with a population of 49,000, is staring at roughly $350 million of bond debt that it cannot pay, largely tied to financing overruns related to an incinerator retrofit project. It missed its last three general obligation payments and is under state receivership.

Hallacy said issuers are still on the hook, even if professional advisors erred or misled. "The professionals' task is to make sure everything is in order, but still it is the issuer's document. It's really a partnership," he said.

"Harrisburg never submitted formal audits, then withheld general obligation bond payments," said Bill Brandt, president and chief executive of Chicago workout firm Development Specialists Inc. and chairman of the Illinois Finance Authority. "I think if you're a troubled municipality with debt in the marketplace, you have to make the right disclosures on EMMA. Sunlight is the best disinfectant.

The SEC's action is "more of a knockdown pitch than chin music, whether it's aimed at a left-hander, a right-hander or the whole lineup. Harrisburg is the right kind of batter for this kind of pitch," Brandt added, invoking baseball analogies.

Anthony Figliola, vice president of Empire Government Strategies in Uniondale, N.Y., said that without proper disclosure, investors must rely on speeches and budget presentations as tools to decide whether to invest in municipal bonds.

"Budgets sometimes can be depicted as works of fiction," he said. "What's happening in Harrisburg is the tip of the iceberg for what happens in the whole municipal marketplace. Politicians have to be held accountable for what I call fuzzy math."

According to Hallacy, the municipal bond industry can better deal with the implications of financial troubles when local officials are more forthcoming. "Negative news is not always an impediment in coming to the markets, although it might have an effect on pricing" he said. "But a distressed community can obtain financing. It can happen."

James Spiotto, head of the special litigation, bankruptcy and workout group at Chapman and Cutler LLP, agreed with Brandt and Hallacy about the deterrent effect.

“Sometimes it’s like the grammar school teacher telling you not to do it, and then the message will get across for all. It’s important that the SEC get that message out.”

Spiotto said fractured leadership breeds the worst cases of municipal distress. In Harrisburg, for instance, Mayor Linda Thompson and the City Council have fought repeatedly. The council three times in 2011, all by 4-3 votes, rejected a state-sponsored recovery program that Thompson supported, prompting Pennsylvania officials to push Harrisburg into receivership.

“You can’t stress it enough, the importance of elected officials working together,” Spiotto said.

Paul Burton

The Bond Buyer

SEC Charges City of Harrisburg for Fraudulent Public Statements.

The Securities and Exchange Commission has charged the City of Harrisburg, Pa., with securities fraud for its misleading public statements when its financial condition was deteriorating and financial information available to municipal bond investors was either incomplete or outdated.

An SEC investigation found that the misleading statements were made in the city’s budget report, annual and mid-year financial statements, and a State of the City address. This marks the first time that the SEC has charged a municipality for misleading statements made outside of its securities disclosure documents. Harrisburg has agreed to settle the charges.

The SEC found that Harrisburg failed to comply with requirements to provide certain ongoing financial information and audited financial statements for the benefit of investors holding hundreds of millions of dollars in bonds issued or guaranteed by the city. As a result of Harrisburg’s non-compliance from 2009 to 2011, investors had to seek out Harrisburg’s other public statements in order to obtain current information about the city’s finances. However, very little information about the city’s fiscal situation was publicly available elsewhere. Information that was accessible on the city’s website such as its 2009 budget, 2009 State of the City address, and 2009 mid-year fiscal report either misstated or failed to disclose critical information about Harrisburg’s financial condition and credit ratings.

The SEC separately issued a report today addressing the disclosure obligations of public officials and their potential liability under the federal securities laws for public statements made in the secondary market for municipal securities.

“In an information vacuum caused by Harrisburg’s failure to provide accurate information about its deteriorating financial condition, municipal investors had to rely on other public statements misrepresenting city finances,” said George S. Canellos, Co-Director of the SEC’s Division of Enforcement. “Statements that are reasonably expected to reach the securities markets, even if not prepared for that purpose, cannot be materially misleading.”

Elaine C. Greenberg, Chief of the SEC’s Enforcement Division’s Municipal Securities and Public Pensions Unit, said, “A municipal issuer’s obligation to provide accurate and timely material information to investors is an ongoing one. Because of Harrisburg's misrepresentations, secondary market investors made trading decisions based on inaccurate and stale information."

According to the SEC's order instituting settled administrative proceedings, Harrisburg is a near-bankrupt city under state receivership largely due to approximately $260 million in debt the city had guaranteed for upgrades and repairs to a municipal resource recovery facility owned by The Harrisburg Authority. As of March 15, 2013, Harrisburg has missed approximately $13.9 million in general obligation debt service payments.

According to the SEC's order, Harrisburg had not submitted annual financial information or audited financial statements since submitting its 2007 Comprehensive Annual Financial Report (CAFR) to a Nationally Recognized Municipal Securities Information Repository (NRMSIR) in January 2009.

Beginning in July 2009, Harrisburg was obligated to submit financial information and notices such as principal and interest payment delinquencies and changes in bond ratings to a central repository known as the Electronic Municipal Market Access (EMMA) system maintained by the Municipal Securities Rulemaking Board (MSRB). Harrisburg did not submit its 2008 CAFR to EMMA, instead erroneously submitting it to a former NRMSIR on March 2, 2010. Harrisburg did not submit its 2009 CAFR to EMMA until Aug. 6, 2012, and did not submit its 2010 CAFR to EMMA until Dec. 20, 2012. The city did not submit material event notices about its failure to submit annual financial information or its credit rating downgrades until March 29, 2011, after the SEC had commenced its investigation.

Therefore, the SEC's order finds that at a time of increased interest in the Harrisburg's financial health due to the deteriorating financial condition of The Harrisburg Authority, the city created a risk that investors could purchase or sell securities in the secondary market on the basis of incomplete and outdated information. For current information, investors had to review other public statements from the city about its fiscal situation. For example, Harrisburg's 2009 budget and its accompanying transmittal letter were accessible on Harrisburg's website. By the time the 2009 budget was passed, Harrisburg was aware of the Authority's projected budget deficits and that Dauphin County was challenging a rate increase. As a result, the Authority was unlikely to have sufficient revenues to pay its 2009 debt service obligations. However, Harrisburg's 2009 budget as adopted did not include funds for debt guarantee payments. The 2009 budget also misstated Harrisburg's credit as being rated "Aaa" by Moody's when in fact Moody's had downgraded Harrisburg's general obligation credit rating to Baa1 by December 2008.

According to the SEC's order, another public statement available to investors on the city's website was the annual State of the City address delivered on April 9, 2009. The address only discussed the municipal resource recovery facility as a situation that was an "additional challenge" and an "issue that can be resolved." The address was misleading because it failed to mention that by this time, Harrisburg had already made $1.8 million in guarantee payments on the resource recovery facility bond debt. It also omitted the total amount of the debt that the city would likely have to repay from its general fund. By this time, Harrisburg knew that the Authority had failed to secure the requested rate increase, making it likely that Harrisburg would have to repay $260 million of the debt as guarantor.

According to the SEC's order, Harrisburg's 2009 mid-year fiscal report available on its website was designed to provide a snapshot of budget-to-actual figures at the middle of the year. However, the report did not reference any of the guarantee payments the city had made on the municipal resource recovery facility debt, which at this mid-year point totaled $2.3 million (7 percent of its general fund expenditures).

The SEC's order requires Harrisburg to cease and desist from committing or causing violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The city neither admits nor denies the findings in the order. In the settlement, the SEC considered Harrisburg's cooperation in the investigation and the various remedial measures implemented by the city to prevent further securities laws violations.

The SEC's investigation was conducted by members of the Enforcement Division's Municipal Securities and Public Pensions Unit including Senior Enforcement Counsel Yolanda Gonzalez and Assistant Director Ivonia K. Slade with assistance from Municipal Securities Specialist Jonathan D. Wilcox. The investigation was supervised by Unit Chief Elaine C. Greenberg and Deputy Chief Mark R. Zehner.

In its Report of Investigation to address the secondary market disclosure responsibilities of public officials when they make public statements about a municipal issuer, the SEC notes that public officials should be mindful that their written or oral public statements may affect the total mix of information available to investors. This could result in anti-fraud liability under the federal securities laws for the public officials making such statements if they are materially misleading or omit material information.

The report further states that public officials should consider taking steps to reduce the risk of misleading investors. At a minimum, they should consider adopting policies and procedures that are reasonably designed to result in accurate, timely, and complete public disclosures; identifying those persons involved in the disclosure process; evaluating other public disclosures including financial information made by the municipal issuer; and assuring that responsible individuals receive adequate training about their obligations under the federal securities laws.

The SEC order is available at:

http://www.sec.gov/litigation/admin/2013/34-69515.pdf

The investigation of the report is available at:

http://www.sec.gov/litigation/investreport/34-69516.htm

CNBC: Fiduciary Standard Soon May Regulate Brokers-Dealers Deals.

Three years after Congress passed financial reform, the Securities and Exchange Commission may finally be taking concrete steps toward establishing a fiduciary standard for brokers, a change that consumer advocates say would provide real protection in an industry currently governed by a hodgepodge of rules.

"Brokers-dealers are not just order-takers," said Arthur Levitt, former SEC chairman. "This is extremely important, otherwise the industry wouldn't be fighting it."

Because the standard would be so sweeping, "fiduciary standard" may be the most important financial phrase you've never heard.

Under such a standard, hundreds of thousands of brokers would be legally obligated to act in their clients' best interests when recommending investment products. The most important change for consumers is that they would have greater legal standing to sue in cases where they had evidence they had been wronged.

At the moment, brokers (including people working for big Wall Street firms), small locally owned brokerages and insurers are obliged only to recommend “suitable” products. The 10,500 firms licensed as registered investment advisors with the SEC already operate under a fiduciary standard. (To further confuse the matter, many brokers call themselves advisors.)

The current regulatory system means that brokers are legally permitted to recommend a higher-priced mutual fund to investors even if they know a low-cost one with better returns exists. Many brokers are compensated partly by commissions from mutual funds.

Dodd-Frank authorized the SEC to impose a fiduciary standard on brokers. But the agency, swamped with other rule-making related to the act, has so far done little.

That may be about to change. In her testimony, new SEC Chairwoman Mary Jo White, a former federal prosecutor, identified “appropriate standards” for broker-dealers and investment advisors as an item on a short list of policy matters of particular importance. Last month, the commission asked for input a potential regulation by July 5.

Various interest groups are hardening their stands. The most powerful player is the Securities Industry and Financial Markets Association (SIFMA), which represents broker-dealers, including the big financial firms, such as Bank of America, Merrill Lynch and Charles Schwab. The stakes in an industry upheaval are big: According to Boston-based Aite Group, about 450,000 people give consumers financial advice; 45,000 to 50,000 of them work as registered investment advisors (RIAs) , and the rest operate under the aegis of broker-dealers.

Ira Hammerman, general counsel of SIFMA, said it wants rules that outline “how a multifaceted institution can comply with a fiduciary standard.”

Consumer advocates are worried that a new set of rules won’t be strong enough to protect the public. RIAs are concerned that complex set of new rules will give big firms an advantage. According to the Investment Adviser Association, the typical SEC-registered firm is a small business with an average of eight employees, though a handful are much larger.

“Nothing has been done to add protections, and there are concrete signs that we are worse off,” said Knut Rostad, president of The Institute for the Fiduciary Standard, who said his worry is that the SEC’s request for input suggests that it will adopt rules that will water down the broad fiduciary standard under which RIAs function.

Everyone describes the pace of change as slow.

David Tittsworth, executive director of the Investment Adviser Association, said that when he sent out a notice to his members of the SEC’s recent actions on the issue, one member wrote back asking, “Wasn’t this settled two or three years ago?”

No. And even the latest moves don’t necessarily signal rapid rule-making—just some progress toward a decision.

Levitt, the former SEC chairman, said, “These issues tend to stay with the commission for a long time.”

[MSRB Requests Comment on Proposal to Consolidate Guidance for Dealers on Obligations to Experienced Investors.]

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on a proposal to consolidate guidance for municipal securities dealers who deal with experienced investors called sophisticated municipal market professionals (SMMPs).

Currently, the definition and dealer standards applicable to SMMPs are incorporated in interpretive guidance to MSRB Rule G-17 on fair dealing. The MSRB is proposing to establish a stand-alone definition for SMMPs and a single, comprehensive rule addressing dealers' obligations to SMMPs.

"Consolidating the MSRB's SMMP-related guidance into two stand-alone rules is another step in the MSRB's effort to streamline the many interpretations attached to Rule G-17," said MSRB Executive Director Lynnette Kelly. "We aim to help dealers more easily identify and comply with their obligations to all customers, including the more sophisticated professionals in the market."

In connection with the MSRB's review of Rule G-17's interpretive guidance, the MSRB has also proposed stand-alone rules on time of trade disclosure and suitability. The outcome of these efforts will be a comprehensive package of rules that clarifies Rule G-17 obligations and that is expected to be filed with the Securities and Exchange Commission (SEC) later this year.

Comments on the proposed SMMP rules should be submitted no later than June 12, 2013.

The request for comments, as well as the text of the proposed rules, can be found here:

http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2013/2013-10.aspx

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[SEC Charges City of Victorville, Underwriter, and Others with Defrauding Municipal Bond Investors.]

Washington, D.C., April 29, 2013 — The Securities and Exchange Commission today charged that the City of Victorville, Calif., a city official, the Southern California Logistics Airport Authority, and Kinsell, Newcomb & DeDios (KND), the underwriter of the Airport Authority's bonds, defrauded investors by inflating valuations of property securing an April 2008 municipal bond offering.

Victorville Assistant City Manager and former Director of Economic Development Keith C. Metzler, KND owner J. Jeffrey Kinsell, and KND Vice President Janees L. Williams were responsible for false and misleading statements made in the Airport Authority's 2008 bond offering, the SEC alleged. It also charged that KND, working through a related party, misused more than $2.7 million of bond proceeds to keep itself afloat.

"Financing redevelopment projects by selling municipal bonds based on inflated valuations violates the public trust as well as the antifraud provisions of the federal securities laws," said George S. Canellos, Co-Director of the SEC's Division of Enforcement. "Public officials have the same obligation as corporate officials to tell the truth to their investors."

Elaine C. Greenberg, Chief of the SEC's Municipal Securities and Public Pensions Unit, said, "Investors are entitled to full disclosure of material financial arrangements entered into by related parties. Underwriters who secretly line their own pockets by taking unauthorized fees will be held accountable."

The SEC alleges the Airport Authority, which is controlled by the City of Victorville, undertook a variety of redevelopment projects, including the construction of four airplane hangars on a former Air Force base. It financed the projects by issuing tax increment bonds, which are solely secured by and repaid from property-tax increases attributable to increases in the assessed value of property in the redevelopment project area.

According to the SEC's complaint filed in U.S. District Court for the Central District of California, by April 2008, the Airport Authority was forced to refinance part of the debt incurred to construct the hangars, and other projects, by issuing additional bonds. The principal amount of the new bond issue was partly based on Metzler, Williams, and Kinsell using a $65 million valuation for the airplane hangars even though they knew the county assessor valued the hangars at less than half that amount. The inflated figure allowed the Airport Authority to issue substantially more bonds and raise more money than it otherwise would have. It also meant that investors were given false information about the value of the security available to repay them.

In addition, the SEC's investigation found that Kinsell, KND, and another of his companies misappropriated more than $2.7 million in bond proceeds that were supposed to be used to build airplane hangars for the Airport Authority. According to the SEC's complaint, the scheme began when Kinsell learned of allegations that the contractor building the hangars had likely diverted bond proceeds for his own personal use. When the contractor was removed, Kinsell stepped in to oversee the hangar project through another company he owned, KND Affiliates, LLC, even though Kinsell had no construction experience.

The SEC alleges that the Airport Authority loaned KND Affiliates more than $60 million in bond proceeds for the hangar project and agreed that as compensation for the project, KND Affiliates would receive a construction management fee of two percent of the remaining cost of construction. However, Kinsell and KND Affiliates took an additional $450,000 in unauthorized fees to oversee the construction and took $2.3 million in fees that the Airport Authority was unaware of and never agreed to, purportedly as compensation to "manage" the hangars. The SEC alleges that Kinsell and KND Affiliates hid these fees from the Airport Authority representatives and from the auditors who reviewed KND Affiliates' books and records.

The SEC's complaint alleges that the Airport Authority, Kinsell, KND, and KND Affiliates violated the antifraud provisions of U.S. securities laws and that KND violated 15B(c)(1) of the Exchange Act and Municipal Securities Rulemaking Board Rules G-17, G-27 and G-32(a)(iii)(A)(2). The complaint also alleges that Victorville, Metzler, KND, Kinsell, and Williams aided and abetted various violations. The SEC is seeking the return of ill-gotten gains with prejudgment interest, financial penalties, and permanent injunctions against all of the defendants, as well as the return of ill-gotten gains from relief defendant KND Holdings, the parent company of KND.

The SEC's investigation was conducted by Robert H. Conrrad and Theresa M. Melson in the Municipal Securities and Public Pensions Unit, and Lorraine B. Echavarria, Todd S. Brilliant, and Dora M. Zaldivar of the Los Angeles Regional Office. Sam S. Puathasnanon will lead the SEC's litigation.

The full complaint can be found at:

http://www.sec.gov/litigation/complaints/2013/comp-pr2013-75.pdf

MSRB Discusses Questionable Dealer Contracts, Plans for New Rules.

Some Municipal Securities Rulemaking Board members are concerned about dealer financial advisory contracts with issuers that appear to disclaim away the dealers' legal and regulatory obligations, MSRB chair Jay Goldstone said Friday after the board's meeting at its headquarters in Alexandria. Va.

"There was discussion," Goldstone said in a press call with reporters. "There were certain levels of consternation about this," he said when asked about the contracts.

Goldstone said he knows the issue is on the radar of both the Securities and Exchange Commission and the Financial Industry Regulatory Authority, but that it is "unclear at this point" whether the MSRB needs to tighten its rules.

In some contracts, dealers appear to contract to provide municipal advisory services to issuers, but state they are not financial advisors and have no fiduciary duty to put the issuer's best interest first. The dealers also state they may underwrite any resulting muni bond offering.

The contracts seem to violate Dodd-Frank, which imposes a fiduciary duty on MAs, as well as the MSRB's Rules G-17 on fair dealing and G-23, which bars dealers from serving as both FA and underwriter on the same transaction.

SEC muni chief John Cross recently said at a conference that such language is "a bit too cute."

Enforcement is the SEC's and FINRA's turf, and largely a matter of individual facts and circumstances. The MSRB writes rules. "We are not the enforcement agency," Goldstone said.

But the board decided to streamline its fair-dealing rule by consolidating some of the 32 pages of guidance into two new rules – one on dealers' disclosure obligations to customers at the time of trade and another on sophisticated municipal market professionals – as well as into proposed changes to an existing third rule on suitability, said Goldstone and MSRB executive director Lynnette Kelly.

The board's G-19 on suitability, which requires brokers and dealers to obtain certain customer information prior to completing a muni transaction in a customer's account. The proposed changes to the rule would require additional information, including age, investment time horizon, liquidity needs, investment experience and risk tolerance and bring the rule more in line with FINRA's suitability rule.

Kelly said all these changes are so closely related that it only makes sense to submit them for SEC approval as one package Goldstone said the MSRB will probably file the package with the SEC in the fall.

The board discussed also discussed comments it received on two concept releases, one proposing to shorten the current 15 minute window for trade reporting and the other proposing underwriters post preliminary official statements on the MSRB's EMMA disclosure website. Goldstone said the MSRB will continue to consider these and that neither is being tabled.

He said many questions remain about whether shortening the 15 minute time window would be productive. "There was discussion about whether there was real value," he said. "Will there be greater transparency?"

He added that some firms already report trades much earlier than required.

Kelly said questions also linger about the POS proposal, including whether issuers are in favor of having their documents posted by their underwriters. “There are lots and lots of questions, which is why we came out with a concept release,” she said.

The MSRB also continues to prepare for rules and rule changes for municipal advisors, but is currently waiting for the SEC’s final definition of municipal advisor. “We have spent the last few months focusing on the activities of municipal advisors and are prepared to review our draft rules, make changes if necessary and move forward with the rulemaking process,” Goldstone said.

Goldstone said the SEC definition has been drafted and circulated to commissioners, but not scheduled for commission consideration. He added it remains a high priority for the commission.

MSRB officials plan to meet with new SEC chair Mary Jo White, Goldstone said, but has not yet had a chance to discuss muni-specific issues with her in person.

Kyle Glazier

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SEC Panel Focuses on Price Transparency for Retail Investors.

Securities and Exchange Commission commissioners and market participants at an SEC fixed-income roundtable Tuesday wrestled with how to improve the transparency of municipal bond trading and prices, particularly for retail investors.

Speaking on the first panel, which focused on the current structure of the municipal market, market participants said price transparency for retail trades remains a daunting challenge. Panelists included dealers, financial advisors, alternative-trading system executives and academics. Many noted that the relative lack of transparency makes dealing with smaller retail customers frustrating and more-costly.

Carnegie Mellon professor Burton Hollifield, who studies the muni market, said the market remains opaque but clear trends emerge when looking at retail vs. institutional trading. “There is much more price dispersion in retail-sized trades than in institutional-sized trades,” he told fellow panelists.

SEC Commissioner Elisse Walter stressed the SEC doesn’t want to impose an equity structure on the muni market, but rather wants to make it more efficient and fairer to retail investors. She said there is “somewhat of an evolution” with more investors not just buying and holding, but selling munis for various reasons.

“The more I look at it, the more concerns I have about fairness in this market,” Walter said. “Do we need to take another look at how valuation appears on a statement?”

Ric Edelman, chairman and chief executive officer at advisory firm, Edelman Financial Services, said retail investors are being lied to by brokers because they do not realize yields are negotiable and their monthly statements don’t accurately reflect the actual price of their munis. Often a statement will value a muni at a premium, but an investor will only be able to sell it at a discount.

“We have huge education and disclosure problems within the industry,” Edelman said, adding that typical retail investors like retirees are not familiar with the nuances of the market. “They have no idea what they’re doing and how the game works.”

But other panelists took umbrage with Edelman’s remarks, pointing to the huge challenge of pricing such a diverse market and arguing that brokers make their best efforts to supply accurate statements.

“It’s not totally accurate that that exists at every firm,” said Larry Bowden, executive vice president and director of fixed income sales and trading at Stephens Inc. Bowden said brokers at his firm do a lot of research on pricing, especially when they get varying prices from pricing services. He said brokers at his firm “are in there fighting for their customers.”

“We do go to a lot of effort to try and get the statements as accurate as we can,” he added.

“It’s not the bond’s price that’s the problem, it’s the yield,” said Robert Auwaerter, principal and head of the fixed income group at The Vanguard Group Inc. “Pricing bonds in the municipal market is definitely an art not a science,” primarily because most muni bonds, unlike corporate bonds, have call features that allows issuers to call them before maturity.

Some panelists had suggestions for improving price transparency.

Joseph Hemphill 3d, chief executive officer at Regional Brokers Inc., said he sees about 27% of bid-wanteds — bids solicited for bonds when it is not clear what the bonds are worth — actually trading. That means more than 70% of bid information from those bonds winds up unavailable.

Tom Vales, chairman and CEO at TMC Bonds LLC, said his ATS sees about 3,000 bid-wanteds on a daily basis, only about 20% of which trade.

“What if we could aggregate?” Hemphill asked. For bid-wanted bonds, investors typically seek bids through their brokers who in turn seek bids through ATS’ and broker’s brokers.

Hemphill said ATS' and brokers' brokers have been talking about pulling the data on bid-wanteds together and making it available, both to the Municipal Securities Rulemaking Board and to trading desks. That could change the game and relieve some of the frustration around third-party evaluations of a security, he said.

A later panel addressing improvements to the market covered much of the same ground, but some participants worried that additional information would be useless to many retail investors.

"An individual investor without some guide along the way won't be able to process that," said Brad Winges, head of Piper Jaffray fixed income sales, trading and underwriting.

John Bonow, chief executive officer at The PFM Group suggested finding a way to tie CUSIP numbers to similar credits, since many small issuers come to market so rarely. He also said retail investors should have access, possibly through the MSRB's EMMA website, to a forward-looking calendar where they can see a particular bond issue coming to market and tell their brokers, "I want a piece of it."

SEC officials and the panelists agreed that EMMA system is a great resource, but said that a greater effort is needed to make retail investors, not just municipal market professionals, aware of it. Walter suggested "a public-private partnership" approach and asked, "How can we put the most effective educational campaign together?"

The MSRB has said it will focus on enhancing and promoting EMMA in the coming year.

On the second panel, MSRB executive director Lynnette Kelly added that the MSRB's work on a possible best execution rule is difficult because it poses conundrums such as how to mandate determine the best interdealer market for a given security.

"It's a multi-year process," she said.

Meanwhile, Gallagher and several other panelists worried that if interest rates begin to rise again, there will be "Armageddon" for investors who will see the value of the low-coupon bonds the hold drop. Gallagher said bondholders' concerns may be compounded since they've learned they may not have priority rights in bankruptcy proceedings such as those in California.

Bowden said investors should be careful not to hold all 30-year bonds, and should ladder the maturities of their bonds so that as some are redeemed they can purchase bonds with higher interest rates.

Besides Walter, commissioners David Gallagher and Luis Aguilar also sat in for the SEC. New SEC chair Mary Jo White appeared at the beginning of the discussion, but departed after opening statements. Aguilar expressed disappointment in the composition of the two muni panels, noting that the participants contained few retail investors, only two women and nobody of color.

Kyle Glazier

Bond Buyer

Bill Would Exempt Banks From MA Registration, Oversight, Fiduciary Duty.

Sen. Mark Warner, D-Va., has introduced legislation that would give commercial banks a blanket exemption from municipal advisor registration and oversight under the Dodd-Frank Act.

Warner's bill, introduced last week, is identical to a bill sponsored by Sen. Pat Toomey, R-Pa., that failed to advance beyond the committee level last year. The Warner bill would allow banks to avoid having to register as MAs with the Securities and Exchange Commission and become subject to Municipal Securities Rulemaking Board rules and Dodd-Frank's federal fiduciary standard to put clients' best interest first. Toomey is a cosponsor of Warner's legislation.

The bill represents a different approach to tackling the MA definition than the path presented in a bill introduced in the House in February by Rep. Steve Stivers, R.-Ohio. The Stivers bill offers an exemption for a wider range of market participants like appointed members of governmental boards and swap dealers in addition to bankers and underwriters, but would not subject those entities to a fiduciary duty to the issuer if they are "exclusively engaged" as a financial advisor. It is a copy of a bill sponsored by then-Rep. Robert Dold, R-Ill., that died in the Senate after winning house approval last year.

Michael Decker, co-head of municipal securities at the Securities Industry and Financial Markets Association, supports the Stivers bill but said the Warner bill is an important statement.

"It demonstrates the extent of opposition to the SEC's proposed rule," he said.

Susan Collett, Bond Dealers of America's senior vice president of government relations, agreed that the introduction of Warner's bill is an indication of anxiety over the SEC's taking time to finalize the MA definition. Collett said her group views Stivers' bill as a more comprehensive solution, while the Warner bill is more of an overlay to the bigger issue.

"The Stivers bill tries to tackle the big picture," she said.

American Bankers Association president and chief executive officer Frank Keating wrote to Warner and Toomey April 12 to express the ABA's support for the bill.

"ABA believes that Congress did not intend for banks and savings institutions that are already supervised and examined to be regulated as municipal advisors," Keating wrote. "ABA strongly believes a complete exemption is required because these institutions provide such a broad array of traditional banking products and services to municipalities that any limited exemption will necessarily cover activities that should not be captured."

Steve Apfelbacher, a financial advisor and president at Ehlers Financial Advisors, said the legislation is an attempt by bankers to "soften up" Dodd-Frank. "I understand from their perspective why they want to do that, but I don't think that meets the intent of Dodd-Frank," Apfelbacher said.

Larry Kidwell, president at Kidwell and Company. Inc., said financial institutions should not be allowed to avoid the fiduciary duty if they are providing advice about loans or securities.

"That firm is providing municipal advisory services, period," Kidwell said.

Marcus Stanley, policy director at Americans for Financial Reform, said giving banks a blanket exemption is "totally inappropriate." Stanley said the purpose of the Dodd-Frank regulations is to impose a fiduciary duty on financial advisors, forcing them to put the interests of the issuer before their own. While banks might be regulated for systemic risk, there is nothing duplicative about the

Dodd-Frank MA regulation and the ABA argument does not fly, Stanley said.

“It’s a non-sequitur,” he added.

Both Stanley’s group, and independent advisors, have criticized the Stivers bill for potentially allowing big banks and swap dealers to avoid regulation.

Warner’s bill is currently awaiting action by the Senate Committee on Banking, Housing, and Urban Affairs.

Kyle Glazier

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MSRB To Consider POS', Trade Reporting and More At Meeting Next Week.

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The Municipal Securities Rulemaking Board, at its quarterly meeting next week, will consider market participants’ concerns about proposals to require underwriters to disclose preliminary official statements on EMMA and to more toward a more real-time trade reporting regime.

The board also will consider a proposal to create a new rule consolidating interpretative guidance for sophisticated municipal market professionals. The three-day meeting, to be held April 24-26 at the MSRB’s Alexandria, Va. headquarters, will allow the board to also consider comments it’s received from market participants on its overall rules and interpretive guidance as well as a proposal to create a new Rule G-47 that would codify current guidance on dealers’ obligations to disclosure material information about munis to customers at or before the purchase or sale.

Several of these proposals are part of an effort undertaken by the MSRB to simplify and organize what has become an increasingly long and complicated string of interpretive guidance for its Rule G-17 on fair dealing rule. “The rule was one sentence, but the guidance is 50 pages,” MSRB executive director Lynnette Kelly said Wednesday. “We started an initiative to clean up the guidance.”

The new Rule G-47, proposed in February, would replace current guidance on the information dealers are required to disclose to customers before a trade, but would not alter the obligations of the dealers under the current guidance, the board has said.

But dealers have warned the proposed rule is overly broad, lacks clarity and does not address important issues. They have raised questions about the scope of the information covered by the rule and which means of notifying a customer would be acceptable.

The initiative on sophisticated muni market professionals, proposed last July, would consolidate the provisions of several rules that apply to SMMPs, including G-17, G-18 on execution of transactions, G-19 on the application of suitability requirements, and G-13 on quotations relating to municipal securities.

The proposal to move toward more real-time trade reporting has drawn concern from banks and securities firms, which have urged the MSRB not to shorten its current trade reporting deadline or make changes to trade reporting procedures because of the burdens and costs it would impose.

Currently dealers must report most muni trades to the MSRB within 15 minutes of execution.

The MSRB's proposal for underwriters to post POS' to EMMA has drawn mixed reviews. The National Federation of Municipal Analysts and Investment Company Institute have praised the proposal, but the National Association of Independent Public Finance Advisors has said it might not benefit the market and the Government Finance Officers wants issuers to retain authority to make filing decisions. Dealers said they favor improved transparency but worry about final OS' making POS' moot.

"A preliminary official statement plays a unique role in the marketing of municipal bond securities and is often supplemented and then ultimately replaced by the final official statement, at which time access to the preliminary official statement is no longer permitted," Bond Dealers of America president and chief executive officer Mike Nicholas wrote in a comment letter.

National Association of Independent Public Finance Advisors president Jeanine Rodgers Caruso said posting POS documents on issuer and broker web sites might be sufficient. "It seems counterintuitive to suggest that investors who are not already accessing their broker's website for POS documents would utilize EMMA for such information," she wrote.

The board could take varying actions on the proposals, such as tabling them, sending them back to staff for further work, or agreeing to submit them to the Securities and Exchange Commission for approval, Kelly said.

Kyle Glazier

Bond Buyer

Some Dealer Contracts with Issuers Raise Legal, Compliance Questions.

A number of dealer contracts with issuer officials for municipal bond business seem to violate or come close to violating federal standards and a Municipal Securities Rulemaking Board rule that bars the firms from serving as both underwriter and financial advisor in the same transaction.

In these contracts, the firms appear to be engaging in wordplay in an attempt to leave the door open to performing both financial advisory and underwriting services on the same transaction, a practice prohibited by MSRB Rule G-23.

The contracts also appear to muddle the nature of the relationship between the parties. Some state the dealer is providing financial advisory services, but the dealer denies in the contract that it has a financial advisory relationship with the issuer and a fiduciary duty to put the issuer's interests first, possibly violating the Dodd-Frank Wall Street Reform and Consumer Protection Act.

A number of dealers are increasingly saying they are merely providing consulting services or are independent contractors, instead of financial advisory services, even if the contracts say they are being hired as financial advisors.

Earlier this year, the St. Louis Regional Convention and Sports Complex Authority signed a contract with Goldman Sachs & Co. stating the firm was "exclusively engaged … as financial advisor" to help the RSA consider its "various financial alternatives" for renovating or replacing the Edward Jones Dome, home to the National Football League's St. Louis Rams.

Goldman said its analysis of alternatives “may include investments, divestitures, financial restructurings, liability management transactions, loan financings, public or private financings (including, but not limited to, the offering of securities), debt repurchases, joint ventures, or other operations involving the RSA.”

Under the Dodd-Frank Act, municipal advisors are “deemed to have a fiduciary duty” to an issuer client, requiring them to put the issuer’s best interest first, before their own. The act says muni advisors include financial advisors.

But Goldman said in the contract that it is serving as “an independent contractor with duties solely to the RSA” and that it does not have a fiduciary duty to the RSA.

Dealers and some market participants contend that if a dealer is not providing financial advice with regard to a specific muni bond issue, then it is not serving as a financial advisor and does not have a fiduciary duty to the issuer.

Goldman said in its letter, for example, that it was not providing “advice” as defined by Section 15B of the Securities Exchange Act of 1934, which says advisors provide advice “with respect to municipal financial products or the issuance of municipal securities.”

Goldman Sachs declined to address the specifics of the contract.

But a source familiar with the firm’s thinking said that no work has been done for the St. Louis Regional Convention and Sports Complex Authority. The source said that although the contract uses the term “financial advisor” Goldman Sachs would be acting in a broad role and that the advice would not cover the issuance of municipal securities.

“That is wrong. That is flat-out wrong,” said an attorney familiar with muni securities laws and rules, adding he views this as a possible violation of Dodd-Frank.

Asked if this might be a Dodd-Frank violation, Malcolm Northam, the former head of fixed income regulation at the Financial Industry Regulatory Authority who now has his own consulting firm, said, “That’s an interesting question. You say you’re doing one thing but in reality you seem to be doing another thing. I think these are fair questions to ask.”

“I think they may be trying to disclaim away what they can’t disclaim away,” he added.

The contract also said Goldman “may to act as an underwriter for an offering of securities in connection with the financing of the renovation or replacement of the stadium,” raising the question of whether the firm would have a G-23 problem.

Brian McMurtry, RSA’s executive director, said Goldman Sachs’ work has not covered the issuance of bonds, and is mostly concerned with “how to protect the taxpayer investment” in the facility as it exists now.

“It’s not about new money at this point,” McMurtry said.

Mike Nicholas, the chief executive officer of the Bond Dealers of America, said contracts like this one are in compliance with G-23 because they spell out the role of the dealer firm quite clearly and do not relate to any specific bond transactions.

“The contracts are explicit in explaining the services being contracted are not for underwriting services or to provide financial advice on a specific bond issue, Nicholas said. “Rule G-23 is issue-specific, meaning a firm can provide general financial advice and later act as an underwriter on a bond issue for that issuer without it being in violation of G-23."

A muni advisor, who did not want to be identified, said a case like this requires interpretation by the MSRB.

The rule says a financial advisory relationship exists if a firm gives advice "with respect to" an issuance of securities. That can lead some firms to interpret that clause in its broadest possible sense and argue they are not FAs because they are not providing advice on a specific transaction.

"In a theoretical sense, it might be possible to be pure, but it's not very likely," he said.

If a firm is going to give a public entity comprehensive advice about a project, it is hard to see how municipal bonds would not be a part of that and in such a case it would be difficult to claim the advice was not "with respect to" a bond issuance, he added.

"People are attempting to walk a very, very fine line," he said.

SIFMA declined to comment.

A June 26, 2012 contract between Milwaukee-based Robert W. Baird and Co. and the Monroe County Board of Supervisors of Monroe County, Wis., says the county is retaining Baird for "general consulting services" that do "not cover any financial advisory … services that are directly related to any specific financings or offerings."

Despite that disclaimer, Baird agrees to provide, "a possible review of borrowing costs, advice and information on the state of the market for municipal financings, education about possible financing structures and terms [and] information about the offering process."

The contract states that if the issuer decides to issue bonds it "may engage Baird as financial advisor, underwriter, or placement agent with respect to such issuance."

James Kuhn, chair of the Monroe County Finance Committee, said the county has spent more than a decade trying to put together a deal for construction of new facilities to relieve jail overcrowding.

Baird had been contractually involved in a planned 2009 bond deal that fell apart after a newly-elected county board scuttled the agreement, Kuhn said, so when the county sought to put the deal together a second time Baird was first in line.

"They wanted the contract, and I don't blame them," Kuhn said, noting that Baird previously put in a lot of work for no compensation.

Kuhn said that the county tentatively plans to come to market with about $20 million of bonds near the end of the year, and is in discussions with Baird to underwrite the bonds.

Baird declined to comment on the specifics of the contract with Monroe County.

Critics of these arrangements say the whole point of the G-23 prohibition is to do away with an actual conflict of interest.

The concern is that a dealer-FA could recommend a bond deal, structure the deal to its advantage, and then turn around and underwrite the bonds. An FA is supposed to have a fiduciary duty to an issuer client to the put the client's interest first, whereas an underwriter has an arm's length transaction with the issuer, putting its own interests first, ahead of the issuer's.

Rule G-23 initially permitted dealers to serve as FAs and then underwrite bonds in the same deal, if they resigned as FA first and informed the issuer of possible conflicts of interest from the role switch.

Non-dealer FAs tried for years to get the board to prohibit the role-switching, claiming it was a real conflict of interest not a potential one. The National Association of Independent Public Finance Advisors in late 2005 supplied the MSRB with transaction data that it claimed showed dealers in Texas were circumventing Rule G-23. But dealer groups, as well as the Municipal Advisory Council of Texas, claimed the data was misinterpreted.

The MSRB reconsidered G-23 in 2006, but decided there was not enough evidence to justify a prohibition, and stayed the course.

In May 2010, Mary Schapiro, the SEC chairman at the time, urged the MSRB to prohibit dealers from serving as both FA and underwriter on the same deal.

"This is a classic example of conflict of interest … The board should change G-23 and forbid this practice," she said in a speech and added the commission was launching a nationwide inquiry into the municipal market.

The MSRB rewrote the rule to prohibit such role switching and the SEC approved it.

Northam said often such contracts boil down to "facts and circumstances," which involve interpretations and can be very hard to enforce. Only MSRB and Securities and Exchange Commission can interpret MSRB rules he and other market participants said.

MSRB officials said last week that they do not comment on specific cases and declined to comment on these contracts.

But executive director Lynnette Kelly said the board would have concerns if dealers are obscuring their role in dealings with public officials. "Based on MSRB Rule G-23 prohibitions, we would be concerned if a dealer says it is not acting in a financial advisory capacity, but in fact is doing just that," Kelly said. "Furthermore, the Dodd-Frank Act makes clear that financial advisors have a fiduciary duty to their issuer clients and we would be concerned if a dealer is acting as a financial advisor but not honoring its fiduciary duty."

SEC Examining Non-Dealer Muni Advisors.

The Securities and Exchange Commission is examining non-dealer municipal advisors' compliance with registration requirements, a federal fiduciary duty standard, and the Municipal Securities Rulemaking Board's fair-dealing rule, people familiar with the matter said Thursday.

The SEC's office of compliance inspections and examinations, which is conducting the examinations, may be looking at the involvement of some muni advisors in bond ballot campaigns that could violate the fiduciary duty standard and fair-dealing rule, the sources said.

SEC officials have turned up and examined a wide range of the documents and business activities of some firms, said a source familiar with the examinations.

One financial advisor who did not want to be identified said he would not be surprised by the exams.

"We've had some questionable practices out here in California," he said. "It wouldn't surprise me if the commission came calling."

In a story published last year, The Bond Buyer reported some advisors were helping California school districts by serving as consultants to bond ballot campaigns, and then as financial advisors on the bond deals approved by voters. These firms were often paid by not only the school district, but also by the political action committee formed to pass the bond measure, which received contributions from underwriters.

The practice was viewed as a form of play-to-play because the financial advisor received money that came partly from the underwriter and then helped the issuer select the underwriter to do a negotiated deal. It also created a conflict of interest for the financial advisor.

"It's a very fine line when an advisor either contributes money or in-kind services to a bond ballot campaign if in fact the advisor is going to benefit as a result of the bonds approved by that campaign," said Tim Schaefer, the principal owner of Magis Advisors, a financial advisory firm in California. Schaefer said he told the MSRB the same thing in a comment letter.

In March, Treasurer Bill Lockyer sent letters to Attorney General Kamala Harris asking her to give an opinion on the roles of underwriters, financial advisers and bond counsels in school bond elections.

Nathan Howard, an attorney at Kodner, Watkins & Kloecker LC, who works with municipal advisors, also said he's not surprised by the exams. Howard pointed out that, since the Dodd-Frank Act was enacted in July 2010, muni advisors have been required to register with the SEC, an agency that has not historically had oversight over non-dealer firms. The firms must register with the MSRB as well.

"The Dodd-Frank Act gave the SEC regulatory oversight authority over non-dealer FA firms and therefore it is not surprising that these reviews are occurring," Howard said. "Although this is purely speculative, it is likely that a collateral purpose of these reviews is to provide the SEC with insight into how non-dealer FA firms operate and conduct business within the municipal securities market since these firms were unregulated at the federal level prior to the passage of Dodd-Frank."

Although the SEC has not finalized its definition of municipal advisor and the MSRB, as a result, has not yet written rules regulating them, muni advisors still have a federal fiduciary duty to put their clients' interests ahead of their own under Dodd-Frank. Also they must also comply with the board's Rule G-17 on fair dealing, which says dealers and municipal advisors "shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice."

SEC officials could not be reached for comment. Several members of the National Association of Independent Public Finance Advisors said they were unaware of the SEC exams. Officials at Emeryville, Calif.-based Caldwell, Flores Winters Inc., a financial advisor and bond-ballot campaign consultant featured in The Bond Buyer story, could not be reached for comment.

GASB Responds to Financial Accounting Foundation's Post-Implementation Review of Deposit and Investment Risk Disclosure Standards.

The Governmental Accounting Standards Board (GASB) has issued a response to the Financial

Accounting Foundation's (FAF) Post-Implementation Review (PIR) report on GASB Statements No. 3, Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements, and No. 40, Deposit and Investment Risk Disclosures. The Statements require note disclosures regarding deposit and investment risks. Statement 3 also provides accounting guidance for repurchase and reverse repurchase agreements.

"The GASB welcomes the overall conclusion in the PIR report that Statements 3 and 40 continue to provide reliable and decision-useful information about deposit and investment risks to creditors and other financial statement users," said GASB Chairman Robert H. Attmore. "The report's findings indicate that the requirements can be understood, applied as intended, do not have any significant economic consequences, and that costs are in line with the Board's and stakeholders' expectations."

The GASB also noted that the Financial Accounting Standards Board (FASB) issued a proposal to improve nongovernmental financial reporting on repurchase agreements in January 2013. The GASB will continue to monitor this project as it progresses to determine whether any proposed changes should be considered for the governmental environment.

The GASB's full response to the Statements 3 and 40 PIR report is available on the GASB website:

http://www.gasb.org/cs/BlobServer?blobkey=id&blobwhere=1175826604061&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs

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MSRB to Require Dealers to Disclose More Information Regarding Contributions to Bond Ballot Campaigns.

The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission to expand disclosures related to contributions made by municipal securities dealers to bond ballot measure campaigns.The new requirements seek to provide more transparency to address the perception that dealers' contributions to bond ballot campaigns, which secure voter approval for taxpayer-funded public projects, could influence the award of municipal securities underwriting business to dealers.

"Even the appearance of pay-to-play in the municipal bond market can undermine public confidence," said MSRB Executive Director Lynnette Kelly. "Requiring more disclosure about dealers' bond ballot contributions will shine light on potential connections between dealers' financial contributions and the awarding of bond business."

The new disclosure requirements, which include information on the timing of dealer contributions, the identity of the municipal entity issuing the voter-approved bonds and the related underwriting by the dealer, take effect July 1, 2013. The information will be published on the MSRB's EMMA® website.

MSRB Announces Upcoming Webinar on MyEMMA.

The Municipal Securities Rulemaking Board (MSRB) announced today that it will host an educational webinar on May 7, 2013 about using MyEMMA, a free tool that provides customized access to municipal securities information available on the Electronic Municipal Market Access

(EMMA®) website.

MyEMMA helps users of the EMMA website manage the volume of information and data added to EMMA each day through customized alerts when new information becomes available for a particular security or group of securities. MyEMMA also enables users to save frequently used sets of advanced search criteria.

The webinar will take place on Tuesday, May 7, 2013 at 1:00 p.m. ET and will include a presentation followed by a question-and-answer session. The webinar will outline how investors, state and local governments, and other EMMA users can take advantage of MyEMMA features.

The MSRB's EMMA website is a centralized online database that provides free public access to more than 800,000 official disclosure documents and trade data associated with municipal bonds issued in the United States. The EMMA website makes available real-time trade prices, primary market and continuing disclosure documents, and current credit ratings for more than one million outstanding securities, as well as current interest rate information, liquidity documents and other information for most variable rate municipal securities.

http://www.msrb.org/News-and-Events/Press-Releases/2013/MSRB-Announces-Upcoming-Webinar-on-MyEMMA.aspx

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CUSIP CICI Webinar for Underwriters & CUSIP Requesters.

CUSIP Global Services (CGS) has entered into a new collaboration with the Depository Trust and Clearing Corporation on the assignment of Legal Entity Identifiers (LEI's), which are currently being issued under the operational name of CICI's, or CFTC Interim Compliant Identifiers. This collaboration will bring immediate benefits and efficiency, in the form of "one-stop shopping," to all in the CUSIP requester community.

https://www.cusip.com/cusip/index.htm

SEC Says Social Media OK for Company Announcements if Investors Are Alerted.

The Securities and Exchange Commission today issued a report that makes clear that companies can use social media outlets like Facebook and Twitter to announce key information in compliance with Regulation Fair Disclosure (Regulation FD) so long as investors have been alerted about which social media will be used to disseminate such information.

http://www.sec.gov/news/digest/2013/dig040213.htm

Highlights of FASB's Not-for-Profit Advisory Committee Meeting.

On February 28 and March 1, 2013, the FASB's Not-for-Profit Advisory Committee (NAC) held its semi-annual meeting. The discussions focused on the development of an intermediate operating measure for not-for-profit entities (NFPs), accounting for government assistance, accounting for financial instruments, and EITF Issue 12-B, "Services Received from Personnel of an Affiliate for Which the Affiliate Does Not Seek Compensation." In addition, the NAC received updates from FASB staff on other current and potential projects. The NAC also discussed re- cent trends in the sector.

Operating Measure

The NAC discussed defining, presenting, and disclosing an intermediate operating measure applicable to a broad range of NFPs. In a breakout session, NAC members explored the potential underlying bases for an intermediate operating measure. They also explored what might be included in or excluded from such a measure with respect to:

- Endowment management; and
- Capital campaigns, bequests, and other planned giving programs.

The NAC considered factors that might serve as bases for distinguishing between transactions and other events and circumstances that are and are not operating items, including:

- The NFP's core mission; that is, their ongoing, day-to-day major and/or central activities directed at achieving the NFP's purpose(s);
- The time period in which the day-to-day activities are carried out;
- The time period for which the activities/resources are expected to benefit—e.g., expenses for activities directed at generating support for future periods and/or resource inflows to support future periods; and
- The nature of the transaction or event, such as nonrecurring or unusual rather than on-going day-to-day activities.

In general, NAC members expressed support for using core mission as a factor for helping distinguish an intermediate operating measure but not as the sole basis. NAC members ex- pressed concern that core mission might be too broad, that almost anything could be seen as part of an NFP's mission, that an NFP's mission can change, and that an NFP with nefarious intent could change its mission to justify other activities that may not be in the best interest of stakeholders. NAC members suggested that the emphasis of an operating measure should be on current period activities and the sources of support for those activities. The sources of support for those current activities would include prior period resources that became available during the current period. NAC members also expressed a desire to distinguish the following as nonoperating items: (a) current revenues that are restricted by donors (or by law) for uses other than current period activities and (b) items that for-profit entities report as part of other comprehensive income rather than within net income. In addition, some NAC members suggested that bequests and certain other current period inflows (for example, returns on quasi-endowment funds) be presented as nonoperating items if designated by the NFPs governing board for use in future periods. Those members would reflect a current period operating addition to the extent that the governing board appropriates amounts from bequests and quasi-endowment returns to support current period operations.

NAC members also discussed alternative ways of sequencing operating items within the inter- mediate operating measures. One alternative would begin by presenting all legally available revenues (earned revenues and contributions, including support received for the current period and reclassifications of restricted support received in a prior period for which the restrictions are met in the current period) as gross operating revenues. Expenses would then be deducted to arrive at gross operating results. Board-designations, including, for example, bequests designated for future periods, would be shown as deductions and adjustments would be made for transfers to arrive at net operating results. In effect, two measures of operations would be created (gross operating results and net operating results). Some NAC members preferred that alternative, while others expressed concern that the amounts reported as gross operating results would appear to inflate the extent of the current resources that were made available for use by the NFP, would not reflect the NFP's budget process and the way its governing body is managing the use of entity resources, or both.

Some NAC members preferred a second alternative that would first present as net revenue available for operations: all legally available revenues and support received for the current period, reclassifications of restricted support received in a prior period for which the restrictions are met, and transfers in/out of Board-designated funds. Expenses would then be deducted to arrive at results from operations. Some NAC members expressed concern that the second alter- native was not as transparent since it included the impact of board designations in the current revenue available for operations.

Some NAC members preferred a third alternative—that all current period revenues that are un-restricted but designated by the NFP's governing board for use in future periods be reported as nonoperating revenues. That is, they would not report board-designated funds as part of gross operating revenues.

NAC members expressed different preferences on whether to use a single- or a two-statement approach. A single-statement approach would present all changes in net assets for the period. A two-statement approach would present current period operating revenues and support, expenses, and other operating activities separately from all other changes in net assets. NAC members noted that under any approach, the financial statements should provide sufficient transparency to enable users to understand how the entity is distinguishing between operating and nonoperating revenues and support, including distinguishing items for board-appropriations and other transfers among the current period operating and nonoperating subdivisions.

Government Assistance

NAC members discussed a potential FASB agenda project on Accounting for Government Assistance—federal, state, and local. Some NAC members expressed support for the Board pro-viding guidance that clarifies which types of government assistance should be accounted for as contributions rather than as exchange transactions. NAC members observed that current U.S. GAAP requires judgment, that some diversity exists in practice, and that guidance would be helpful for government assistance involving cost-sharing, partnering, and certain other forms of collaborative agreements. Most recently, diversity has arisen in both the for-profit and not-for- profit healthcare industry regarding the recognition of Federal assistance for the implementation of electronic health records. Some NAC members cautioned that the potential project scope be clearly defined. They questioned whether the benefits of recognizing the value of broad-based tax exemptions, such as property taxes, would exceed the costs to quantify such exemptions.

Accounting for Financial Instruments

NAC members discussed the FASB's projects on Accounting for Financial Instruments, both Classification and Measurement, and Impairment (or Credit Loss). During the discussion on impairment, some NAC members compared the current practices regarding reserving for uncollectible loans receivable and pledges receivable to the proposed Current Expected Credit Loss (CECL) model and suggested that the CECL model could result in a similar accounting out- come. However, several NAC members expressed concerns about the usefulness of disclosures under the CECL model as well as current U.S. GAAP, which requires credit quality disclosures for student loans and program-related loans.

EITF 12B

NAC members discussed EITF Issue 12-B. NAC members supported the recognition of all un-compensated services received from personnel of an affiliate that directly benefit the recipient NFP.

Those services would include services received from personnel of a for-profit affiliate or personnel hired by an individual who meets the definition of an affiliate. NAC members generally supported measuring the value of those services at cost; however, they also generally sup- ported a fair value measurement alternative when the cost information is not readily available or reflective of fair value.

Additional information about these topics and other areas discussed during the meeting can be found in the meeting handouts and in the meeting minutes.

http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175826398445&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs

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SEC Roundtable on Fixed Income Markets — Agenda.

The SEC Roundtable on Fixed Income Markets will take place on April 16 in Washington D.C.

The roundtable will be divided into four panels.

The first panel will address current market structure for municipal securities, and the second panel will discuss current market structure for corporate bonds and asset-backed securities.

The third panel will focus on whether potential steps can be taken to improve the transparency, liquidity, or efficiency of the market structure for municipal securities.

The fourth panel will focus on whether potential steps can be taken to improve the transparency, liquidity, or efficiency of the market structure for corporate bonds and asset-backed securities.

http://www.sec.gov/spotlight/fixed-income-markets/fixed-income-markets-agenda.htm

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SEC Issues Risk Alert and Investor Bulletin on Investment Adviser Custody Rule.

The Securities and Exchange Commission has issued a Risk Alert on compliance with its custody rule for investment advisers and it also issued an Investor Bulletin about the rule, which is designed to protect advisory clients from theft or misuse of their funds and securities.

The alert by the SEC's Office of Compliance Inspections and Examinations (OCIE) comes after a review of recent examinations where significant deficiencies were identified showed custody-related issues in about one-third of the firms examined. The advisers' deficiencies included:

- Failure to recognize that they have custody, such as situations where the adviser serves as trustee, is authorized to write or sign checks for clients, or is authorized to make withdrawals from a client's account as part of bill-paying services.
- Failure to meet the custody rule's surprise examination requirements.
- Failure to satisfy the custody rule's qualified custodian requirements, for instance, by commingling client, proprietary, and employee assets in a single account, or by lacking a reasonable basis to believe that a qualified custodian is sending quarterly account statements to the client.

In addition, for advisers to audited pooled investment vehicles, the examinations found some failed to meet requirements to engage an independent accountant and demonstrate that financial statements were distributed to all fund investors.

http://www.sec.gov/news/digest/2013/dig030413.htm

SEC Proposes Rules to Improve Systems Compliance and Integrity.

The Securities and Exchange Commission has unanimously proposed new rules to require certain key market participants to have comprehensive policies and procedures in place surrounding their technological systems. The SEC's proposal, called Regulation SCI, would replace the current voluntary compliance program with enforceable rules designed to better insulate the markets from vulnerabilities posed by systems technology issues.

Self-regulatory organizations, certain alternative trading systems, plan processors, and certain exempt clearing agencies would be required to carefully design, develop, test, maintain, and surveil systems that are integral to their operations. The proposed rules would require them to ensure their core technology meets certain standards, conduct business continuity testing, and provide certain notifications in the event of systems disruptions and other events.

http://www.sec.gov/rules/proposed/2013/34-69077.pdf

MSRB Requests Comment on Revisions to Suitability Rule.

The Municipal Securities Rulemaking Board (MSRB) is seeking comment on proposed revisions to a rule requiring municipal securities dealers to ensure that recommended municipal securities transactions are suitable for their customers. The changes would add additional considerations for analyzing the suitability of a recommendation and make explicit the requirement that recommendations of investment strategies must also be suitable for the customer.

http://www.msrb.org/News-and-Events/Press-Releases/2013/MSRB-Requests-Comment-on-Revisions-to-Suitability-Rule.aspx

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