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

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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

The Bond Buyer

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SEC Panel Focuses on Price Transparency for Retail Investors.

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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

Bond Buyer

MSRB To Consider POS', Trade Reporting and More At Meeting Next Week.

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 unrestricted 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 providing 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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