
Municipal Enforcement, What Direction Under SEC Chairman Clayton?

Enforcement Forecast

Each September brings a flood of Securities and Exchange Commission announcements of enforcement actions as it approaches the September 30 end of its fiscal year. The announcements include Orders Instituting Administrative Proceedings (including Cease and Desist Proceedings and Notice of Hearing), settled Administrative Proceedings and accompanying Orders, and complaints filed in federal court, some announcing settlements, others initiating litigation in federal court. Looking back at such announcements over the past year, it is fair to say that the days of the "broken windows enforcement" policy of former Chair Mary Jo White are past. For the municipal securities market, this policy played out in the form of the Municipalities Continuing Disclosure Cooperation Initiative, or MCDC, in which the SEC filed and settled actions against 72 municipal underwriting firms and an equal number of issuers and obligated persons of municipal securities. So what can issuers, obligated persons, municipal advisors, underwriters and other municipal market participants expect from the SEC?

SEC Chairs set Commission priorities and under SEC Chairman Jay Clayton, SEC enforcement resources now have turned to "bad actors," protection of retail investors (including the elderly and "Mr. and Mrs. 401K"), and cybersecurity as stated in his Senate nomination hearing and in a later speech by his appointed Co-Directors of the SEC's Enforcement Division. In the new paradigm, the SEC continues to focus on individual officials as well as the municipalities, corporations, or firms releasing materially misleading disclosure. Likewise the Department of Justice continues the policy of holding individuals responsible for corporate wrongdoing. However, the focus appears to be less on putting numbers of enforcement actions up on the board and more upon the significance of cases brought with regard to Commission priorities. Along with policy direction, the SEC requires staff to carry out its mission, particularly in enforcement. Staff resources available to address Commission priorities have been limited by a hiring freeze in effect in place since mid-2016 and the SEC's Division of Enforcement has replaced only of its 37 departures since 2017.5 In such a context, quality matters more than quantity, and efficient use of all available resources is necessary. For the SEC, this means increased coordination with FINRA, the Financial Industry Regulatory Authority, and its own Office of Compliance Inspections and Examinations, or OCIE. So how is this playing out?

What we are seeing in our Municipal Securities Regulatory Investigations and Enforcement Defense practice reflects these adjustments. For example, we are familiar with non-public ongoing enforcement matters in areas relating to issuer disclosure and potential corruption affecting financial reporting, interest in pricing and allocation matters by underwriters in offerings as well as interest in sales involving potential "flipping," and municipal advisor conflict of interest and fiduciary duty breach, as well as basic record-keeping concerns. OCIE and FINRA are more active and aggressive on municipal securities related matters, resulting in some instances with referrals for enforcement to either the SEC's Enforcement Division or FINRA Enforcement, with subsequent opening of an enforcement investigation. Municipal advisors, brokers, dealers, and municipal securities dealers are registered and subject to inspection and examination by OCIE, FINRA and certain banking regulators, while municipal issuers are only subject to investigation in the context of an antifraud investigation by the SEC's Enforcement Division. As a result, investigations with a focus on municipal advisors or brokers, dealers and municipal securities dealers may likely exceed those focused on issuers. However, once an investigation begins, all parties involved in a transaction may be required to produce emails and other documents and may be required to provide testimony. What remains to be seen as a factor generating enforcement inquiries is whether the combination of extensive municipal advisor record keeping requirements and the periodic inspection of those records leads to inquiries of the conduct of a municipal advisor's client as well as the municipal advisor.

Recently, we successfully concluded representation of a city in the Southwest in a post MCDC enforcement investigation of its offering disclosures and compliance with its continuing disclosure agreements, or CDAs, including purported amendment of its CDAs. While MCDC is now in the past, potentially misleading offering disclosure about continuing disclosure compliance may still attract the interest of the SEC and potentially lead to allegations of securities law violations by parties other than the issuer or underwriter.

Overall, under the new paradigm, we anticipate an increase in municipal market investigations and enforcement actions emanating from OCIE and FINRA examinations of municipal advisors and brokers, dealers, and municipal securities dealers, while investigations of municipal securities issuers and their officials arising from instances of alleged issuer official misconduct or corruption affecting issuer financial reporting and disclosure will continue. In some instances, such as described below, the investigations may be joint or parallel efforts by the SEC and the Department of Justice and FBI.

Recent Noteworthy Enforcement Activity

Issuers

The SEC and Department of Justice worked in tandem in a recent investigation, with the SEC bringing securities fraud charges against the Town of Oyster Bay, N.Y. and several of its officials while the DOJ brought charges including multiple counts of wire fraud related to securities offerings against the town supervisor. We previously published advisories on these actions.6 Likewise working in tandem with DOJ, the SEC recently brought antifraud charges against the former mayor of Markham, Illinois relating to an undisclosed pay-to-play scheme in which he allegedly solicited bribes from a construction contractor. Simultaneously, the mayor pleaded guilty to criminal charges for the pay-to-play scheme. We previously published an advisory on this matter as well.

In April, 2016, the DOJ unsealed an indictment of the Town Supervisor of Ramapo, N.Y. and the former Executive Director of the Ramapo Local Development Corporation (RLDC) with criminal charges alleging the officials had "lied about the Town's and RLDC's financial conditions in order to ensure successful sales of municipal bonds issued by the Town and the RLDC and to get better ratings on those bonds so that the Town and the RLDC would have to pay less interest on the bonds."8 Prior to trial, the former Executive Director pleaded guilty to one count of conspiracy and one count of securities fraud. At trial, the jury found the former Town Supervisor guilty of 20 counts of conspiracy, securities fraud, and wire fraud. The SEC charged the Town, the RLDC, the Town Supervisor, the former RLDC Executive Director, the Town Attorney, and the town's Deputy Finance Director with fraud charges involving the use of inflated general fund balances were used in offering materials for 16 municipal bond offerings by Ramapo or the RLDC to investors. All parties other than the Town Supervisor settled with the SEC. The SEC's litigation against the Town Supervisor continues. The federal trial judge issued lifetime bars prohibiting the former RLDC Executive Director, the Town Attorney, and the Town's Deputy Finance Director from participating in municipal bond offerings, permanent injunctions from violating the antifraud provisions of federal securities law, fined the Deputy Finance Director $10,000 and the Town Attorney $25,000 and required their resignations from the Town and barred future employment by the Town for five and seven years respectively.9 The accounting firm and a senior partner at the firm agreed to settle charges that they issued fraudulent audit reports in connection with the municipal bond offerings by the Town and the RLDC. Without admitting or denying the findings, under an SEC Order, the firm agreed to forfeit approximately $380,000 in audit fees and interest and, pay a $100,000 penalty and engage an independent consultant. The order finds the partner violated the scienter based antifraud provisions and the negligence based prohibitions of federal securities law. The partner agreed to pay a $75,000 penalty and suspension from practicing public company accounting, and is prohibited from acting as the engagement partner or engagement quality control reviewer on any municipal audit for five years.10 The Town and the RLDC were permanently enjoined from violating the antifraud provisions of federal securities law and required to retain an independent consultant, independent auditor, and independent disclosure counsel not unacceptable to the SEC staff and unaffiliated with bond counsel.

Municipal Advisors

Whatever grace period municipal advisors enjoyed has ended, particularly for unregistered advisors contacted by the SEC regarding their failure to register. That would be the clear message from In the Matter of Eric Hall & Associates, LLC and Eric Hall,12 a Cease and Desist Order issued in a settled administrative proceeding in which the respondents, without admitting or denying the findings, consented to the order finding the firm willfully violated Securities Exchange Act Section 15B(a)(1))(B) by failing to register as a municipal advisor and that Hall was a cause of that violation, and by failing to disclose unregistered status to a client school district, each willfully violated their fiduciary duty under Exchange Act Section 15B(c)(1) as well as that same section by not dealing fairly with their school district client in violation of Municipal Securities Rulemaking Board Rule G-17. As a consequence, the firm was ordered to cease and desist from committing or causing any violations and any future violations of Sections 15B(a)(1)(B), 15B(c)(1) of the Exchange Act, and MSRB Rule G-17; censured; ordered to pay jointly and severally with Hall, disgorgement of $35,520 together with interest of $4,241.38; and ordered to pay, jointly and severally, a civil monetary penalty of $15,000. Hall was ordered to cease and desist from committing or causing any violations and any future violations of Sections 15B(a)(1)(B), 15B(c)(1) of the Exchange Act, and MSRB Rule G-17; barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and ordered to pay, jointly with the firm, the amounts described above.

On June 13, 2016, the SEC accepted the settlement offers made by two firms and three executives charged with using deceptive business practices in dealing with five school districts. As part of their settlements, School Business Consulting, Inc. (SBCI), SBCI's principal Terrance Bradley, Keygent LLC, and Keygent's associated individuals Anthony Hsieh and Chet Wang agreed to cease and desist from any further commission or facilitation of violations of certain provisions of the Securities Exchange Act and MSRB Rule G-17, censure, issue notices of the order to all existing clients and prospective clients, and pay monetary penalties. Further, Bradley was barred from association with any SEC-regulated entity. All respondents settled without admitting or denying the SEC's allegations.

SBCI is a consulting group for school districts on financial and budget matters, often providing them with guidance when they seek to hire municipal advisors. Keygent is a registered municipal advisor that focuses on advising school districts and community colleges that issue bonds. Keygent analyzes outstanding bond and debt information to identify prospective school district clients and traditionally submitted unsolicited proposals aiming to refinance school district debt in order to attract new business. At issue in the case were five contracts for municipal advisor services between Keygent and California school districts, which SBCI assisted Keygent in obtaining.

After investigation, the SEC accepted offers of settlement from the entities and associated individuals under the municipal advisor antifraud provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Section 15B(a)(5) of the Exchange Act. This action marks the first time the SEC has enforced that provision. The SEC also alleged violations of Section 15B(c)(1) of the Exchange Act and MSRB Rule G-17. Further, the SEC alleged that SBCI violated Section 15B(a)(1)(B) by failing to register as a municipal advisor, and that Bradley caused SBCI's violation.13

On June 29, 2018, judgments were entered in federal district court against Malachi Financial Products, Inc., and its president and sole shareholder, Porter B. Bingham, for alleged violations of the Exchange Act and MSRB Rule G-17. The judgments were entered in accordance with a consent agreement signed by the SEC, Bingham, and Malachi. Without confirming or denying the allegations, Bingham and Malachi agreed to being permanently enjoined from further violations of Sections 15B(a)(5) and 15B(c)(1) of the Exchange Act and MSRB Rule G-17; pay a joint and several disgorgement of $33,000 plus $2,858 of prejudgment interest; and pay civil penalties of $50,000 for Malachi and $25,000 for Bingham. On July 9, 2018 the SEC cited the final judgments in revoking Malachi's registration as a municipal advisor and barring Bingham from association with any "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," effectively prohibiting Malachi from engaging in municipal advisory activities and barring Bingham from engaging in activities that are regulated by the SEC.

On May 9, 2018, the SEC announced it charged a registered municipal advisor (the "MA Firm") and its owner (the "MA Owner") with defrauding their client, a Texas school district, in connection with multiple municipal bond offerings. This enforcement action brings attention to the obligations and duties that municipal advisors have to their clients.

The SEC's Order states that in connection with three municipal bond offerings the MA Owner and his wholly-owned MA Firm misrepresented their municipal advisory experience and failed to disclose to the school district that the MA Owner was employed by the attorneys who served as bond counsel for all three bond offerings. Specifically, the SEC stated that, in an attempt to gain municipal advisory clients, the MA Owner drafted and circulated a brochure to the school district and municipalities to market the MA Firm's municipal advisor experience. The SEC order states that the brochure created the misleading impression that the MA Owner and MA Firm had served as a municipal advisor on numerous municipal bond issuances and failed to disclose that the MA Owner had a financial interest in the school district's offerings.

By misrepresenting their municipal finance experience and failing to disclose the conflict of interest, the SEC concluded that:

- The MA Firm violated and the MA Owner willfully violated Section 15B(a)(5) of the Securities Exchange Act of 1934, which prohibits any fraudulent, deceptive, or manipulative act or practice while providing advice to a municipal entity with respect to municipal financial products [or] the issuance of municipal securities;
- The MA Firm breached and the MA Owner willfully breached their respective fiduciary duty to the

school district, as set forth in Section 15B(c)(1) of the Exchange Act; and
- The MA Firm and the MA Owner failed to deal fairly with the school district in violation of Municipal Securities Rulemaking Board Rule G-17.

The MA Firm and the MA Owner consented to the order and are jointly and severally liable for paying $362,606 in disgorgement and $19,514 in prejudgment interest. The MA Firm was also assessed a civil penalty of $160,000 while the MA Owner was assessed a civil penalty of $20,000. The MA Owner was also barred from association with various regulated entities, including municipal advisors.

On August 24, 2017, a municipal advisor, its president, and its vice-president were charged by the SEC with breach of their fiduciary duty to a client. According to the SEC's administrative summary,16 Municipal Finance Services Inc. ("MFSOK") served as municipal advisor to the client on a municipal bond offering in 2013, and as part of its advisory services, agreed to review legal documents related to the issuance of the bonds and to assist the client in complying with its continuing disclosure agreement requirements. According to the order, the continuing disclosure agreement for the 2013 offering contained an improper amendment to the client's prior continuing disclosure agreements for bond offerings in 2005, 2008 and 2012, unilaterally extending the deadline by which the client was to provide annual reports to investors for those prior offerings. The order states that MFSOK president Rick A. Smith and vice-president Jon G. Wolff each had concerns about the amendment, which was drafted by a now-retired bond counsel, but took no action. According to the order, Smith and Wolff did not advise the client of their concerns, did not comment on the draft amendment provisions, did not conduct further investigation, and did not seek further information from bond counsel or otherwise attempt to determine whether the amendment complied with the terms of the client's prior continuing disclosure agreements. The order found that Smith and Wolff also failed to advise the client of its obligation to notify prior bondholders of the amendment in a timely manner, as required by the client's prior continuing disclosure agreements. As a result, some investors in the earlier bonds engaged in transactions without the benefit of the updated financial information contained in the annual reports that had been promised in the continuing disclosure agreements for those bonds.

The SEC's order instituting settled cease-and-desist and administrative proceedings found that MFSOK willfully violated Section 15B(c)(1) of the Securities Exchange Act of 1934 and that Smith and Wolff caused MFSOK's violation. Without admitting or denying the SEC's findings, MFSOK agreed to a censure, to cease and desist from committing or causing further violations of Section 15B(c)(1) of the Exchange Act, and to pay a $50,000 penalty. Smith and Wolff agreed to cease and desist from committing or causing further violations of Section 15B(c)(1) of the Exchange Act and each agreed to pay an $8,000 penalty. Under the order, MFSOK is required to establish appropriate written policies and procedures and periodic training regarding the fiduciary duty owed by municipal advisors under the federal securities laws, including the provision of advice concerning an issuer's continuing disclosure obligations.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Bracewell LLP

by Britt Cass Steckman, Paul S. Maco, Laura Prebeck Hang and Edward Fierro

October 16, 2018

SEC Office Of Municipal Securities Director Discusses Importance Of Investor Disclosures.

SEC Office of Municipal Securities Director Rebecca Olsen discussed the importance of adequate disclosures in the municipal securities market for retail investors.

In a speech at the Municipal Finance Leadership Conference, Ms. Olsen stated that it is "essential" for regulators and market participants to ensure that investors are provided with "clear and understandable" information about the issuers of municipal securities in a timely manner. Ms. Olsen outlined, among other things:

- the role of the SEC Office of Municipal Securities;
- the importance of the municipal securities market for retail investors;
- the regulatory framework governing disclosure requirements in the municipal securities market;
- the responsibility of market participants to adopt best practices for municipal securities disclosures; and
- the importance of accessibility and clarity of information for retail investors.

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

Cadwalader, Wickersham & Taft LLP

October 17 2018

Commentary: States Must Do More to Address Other Post-Employment Benefit Liabilities.

A recent report by Truth in Accounting (TIA), a nonprofit organization that monitors municipal finances, serves as a sober reminder that state governments need to take action now to address the rising cost of healthcare promises made to retirees — or risk credit downgrades.

While the U.S. economy and stock market have recovered dramatically since the Great Recession, the costs of paying for other post-employment benefits (OPEB) – primarily state obligations to pay for retiree healthcare coverage – have outstripped those gains and put pressure on state balance sheets. In its ninth annual "Financial State of the States" report, TIA says state unfunded OPEB obligations increased 7.8% to $663.1 billion for fiscal year 2017. (The most recent year data was available.) In comparison, unfunded pension costs were essentially flat (up a scant 0.6%) at $837.5 billion.

The main culprit for the continuing rise in OPEB obligations is that most states pay for retiree healthcare benefits on a pay-as-you-go basis, meaning they're paying the minimum amount owed each year and not whittling down the balance. In other words, they're kicking the can down the road.

Public reporting of those liabilities is about to become more transparent. Under Governmental Accounting Standards Board (GASB) Statement 75, state and local governments must report their entire unfunded OPEB liability on their financial statements for reporting periods beginning after

June 15, 2017. While most state and local governments have been reporting OPEB liabilities on their financial statements, some haven't and, per older GASB standards, reported the liability in the footnotes to the financials.

The credit ratings agencies will be watching closely when the fiscal year 2018 financial statements are released. "Our analysis of these OPEB liabilities is fundamentally unchanged solely due to accounting changes; however, we anticipate that the increased transparency the new statements provide could inform our evaluation of a government's relative burden and management of these long-term liabilities," said S&P Global in a March 14 report about the effect of GASB 74 and 75 on financial reporting.

For now, rising OPEB costs haven't led to an increase in credit downgrades, although in April S&P Global Ratings did drop Connecticut's general obligation debt rating to 'A' from 'A-plus'. Nonetheless, ratings agencies are paying close attention to OPEB liabilities. In its annual survey of the country's largest 15 cities, published on Sept. 5, S&P Global noted, "With retirees living longer and pay-as-you-go OPEB spending in many places ramping up in tandem with rapidly rising healthcare costs, fixed costs for pension and OPEB obligations appear poised to remain a front-an--center credit issue across the municipal sector for the foreseeable future."

A growing number of state and local government finance officials say it's time to take action. In a May 2 opinion editorial in the Houston Chronicle, Houston Controller Chris Brown summed up the feeling of many government finance officers, saying the city's pay-as-you-go "approach to funding its OPEB obligation is unsustainable" and that "it's clear something must be done." Brown wrote that the city, based on a five-year average, "is adding more than $160 million per year to the unfunded OPEB liability." In California, controller Betty Yee said the state has made "significant progress" in addressing OPEB liabilities, but that it "will be unpredictable and will remain a paramount fiscal challenge over the next three decades."

To combat the OPEB challenge, many municipalities have turned to creating OPEB trusts to fund the liabilities. One of the primary benefits of an OPEB trust is that it provides greater flexibility in how the fund's assets are managed. Funds in an OPEB trust can be invested more like a state pension plan, which allows for a more aggressive asset allocation strategy and a longer investment time horizon. Conversely, pay-as-you-go payments typically are made from government general funds, which usually have strict limits on investment options (such as only being able to purchase risk-free securities like U.S. Treasuries) and which generate minimal returns.

A second benefit of an OPEB trust is that states and local governments can use a higher discount rate when computing future OPEB payments. Higher discount rates, as everyone knows, can result in lower liabilities on the balance sheet.

Lastly, creating a trust to pay for OPEB costs will reassure the credit rating agencies that state and local governments are working to manage rising liabilities. Plus, OPEB trust assets are legally protected from outside creditors.

Creating a pre-funded OPEB trust isn't without challenges. Government budgets are under pressure to fund everything from building new schools and hiring more police officers to fixing potholes and giving raises to employees. It will take a certain amount of political courage for legislators to approve a budget that reallocates funds from other projects to fund a trust. But government officials need to tackle the issue now — and an OPEB trust is the best option to help ensure funds will always be available to pay for the benefits promised to retirees.

The Bond Buyer

By Lucius McGeHee

October 18 2018, 11:19am EDT

FINRA Board Approves Revisions to 4210 Amendments.

During FINRA's September Board Meeting, the FINRA Board of Governors approved revisions to the Covered Agency Transaction margin requirements that would:

(1) Eliminate the 2-percent maintenance margin requirement;

(2) Allow firms to take a capital charge in lieu of collecting margin for mark to market losses, subject to specified limitations and conditions; and

(3) Streamline the rule language

As noted in this memo from FINRA President and CEO Robert Cook, these revisions are due to competitive impact concerns raised by BDA member firms.

BDA is appreciative of the feedback and analytical data many of our member firms provided to FINRA in regard to these amendments. Additionally, BDA is appreciative of the outreach from our allies in Congress, who contacted FINRA, the Federal Reserve and the SEC on behalf of BDA's membership.

BDA expects the SEC to review FINRA's recommendations shortly. BDA will provide more information as it becomes available.

Bond Dealers of America

October 10, 2018

GASB Forms Working Group to Address Tribal Government Accounting and Financial Reporting Alternatives.

Norwalk, CT, October 9, 2018 — The Governmental Accounting Standards Board (GASB) has convened a working group to identify viable alternatives for addressing accounting and reporting issues for tribal governments.

Members of the working group are:

- Heather Acker, Partner, Baker Tilly Virchow Krause, LLP
- Lacey Horn, Treasurer, Cherokee Nation
- Christopher Lee, Vice President—Head of Government Credit, Key Bank
- J. Paul Mansour, Managing Director and Head of Municipal Research, Conning
- Hattie Mitchell, Director of Finance, AMERIND Risk (member of the Prairie Band of Potawatomi Nation)
- Clark Partridge, State Comptroller, Arizona General Accounting Office
- Jacqueline Reck, Professor and Associate Dean, University of South Florida

- Tasha Repp, National Practice Leader Tribal and Gaming, Moss Adams (member of the Samish Indian Nation)
- Alan Skelton, State Accounting Officer, Georgia State Accounting Office

Ex-Officio Members:

- Morgan Aronson
- Mary Foelster, Director of Governmental Auditing and Accounting, AICPA
- Russ Golden, Chairman, Financial Accounting Standards Board
- Scott Showalter, Chairman, Federal Accounting Standards Advisory Board.

About GASB Working Groups

The GASB assembles working groups at the discretion of the GASB chairman for issues that would benefit from being addressed by a broad and diverse range of GASB stakeholders with particular expertise in the matter at hand.

Working groups are officially appointed by the GASB chairman. Their members typically have expertise or experience with the issue and can articulate the views of other, similar stakeholders. The GASB attempts to maintain an appropriate balance of financial statement preparers, auditors, and users on each working group.

Timetable

Initial TGAWG meeting – October 29, 2018 (educational session – closed to public)

Additional in-person meetings (open to public) scheduled for:

- April 15, 2019
- October 21, 2019
- April 13, 2020
- June 22, 2020 (teleconference).

NFMA Summary of SEC Rule 15c2-12 Amendments.

The NFMA Summary of the SEC Rule 15c2-12 Amendments issued on August 20, 2018 is available online.

To read/download the summary, click here.

Liquidity Coverage Ratio – Treatment of Certain Municipal Obligations as High-Quality Liquid Assets.

SIFMA provided comments to the Federal Reserve, the OCC and the FDIC on their interim final rule providing Level 2B HQLA treatment for certain municipal securities.

Read the SIFMA comment letter.

Great Act Passes Out of Committee, Awaits Senate Vote.

NASACT has been monitoring the Grant Reporting Efficiency and Agreements Transparency Act (GREAT Act, or H.R. 4887) for potential impacts on state and local governments as it makes its way through the legislative process. The GREAT Act is a continuation of the vision enmeshed in the Digital Accountability and Transparency Act (DATA Act), which required the federal government to utilize data standards for spending information. The GREAT Act essentially directs the executive branch to adopt a standardized data structure for the information grantees must report to agencies.

The companion measure (S. 3484) was introduced in the Senate on September 24 by Senators James Lankford (R-OK) and Michael Enzi (R-WY). On September 26, the bill moved out of the Homeland and Governmental Affairs Committee and now awaits a vote by the full Senate.

The bill's requirements align nicely with the efforts already underway to streamline grant reporting under the President's Management Agenda. The eventual impact on state and local governments is unclear as the legislation directs the Office of Management and Budget to implement the requirements in consultation with stakeholders including state and local governments.

SUMMARY

The GREAT Act directs the executive branch to adopt a standardized data structure for the information grantees must report to agencies by:

- Requiring the creation of a comprehensive and standardized data structure, or "taxonomy," covering all data elements reported by recipients of federal awards, including both grant and cooperative agreements.
- Tasking the director of the U.S. Office of Management and Budget to designate a standard setting agency with implementation.

    1. Within one year: Establish government-wide data standards for information related to federal awards reported by recipients of federal awards.
    2. Within two years: Issue guidance to grantmaking agencies on how to leverage new technologies and implement the new data standards into existing reporting practices with minimum disruption.

- Requiring the adoption of unique and non-proprietary identifiers for federal awards and entities receiving federal awards.
- Amending the Single Audit Act to provide for grantee audits to be reported in an electronic format consistent with the data standards.
- Requiring the data standards to:

    1. Render grant reports fully searchable, machine readable and non-proprietary.
    2. Align with standards maintained by voluntary consensus bodies.
    3. Be consistent with applicable accounting principles.
    4. Incorporate the data standards already established for federal spending information under the Digital Accountability and Transparency Act (P.L. 101-133).

- Publish grant reporting information, once transformed into open data, on a government-wide

website, such as the existing grants.gov portal.
- Providing exceptions and restrictions:

  1. No personally-identifiable or otherwise sensitive information will be published.
  2. Information not subject to disclosure under the Freedom of Information Act (Title 5, Section 552) will not be publicly disclosed.
  3. The OMB director to permit exceptions on a case-by-case basis.

- Requiring each grantmaking agency to begin collecting grant reports using the new data standards within three years."

Should you have any questions or comments on this legislation, please feel free to contact NASACT's Washington office at (202) 624-5351 or email Cornelia Chebinou.

How the SEC Views MCDC's Effects.

PROVIDENCE, R.I. – "Over-disclosure" of apparently minor violations of issuers' continuing disclosure obligations — a legacy of the Municipalities Continuing Disclosure Cooperation Initiative — isn't a problem in the eyes of the Securities and Exchange Commission, two SEC officials said Thursday.

The remarks came from LeeAnn Gaunt, chief of the Enforcement Division's Public Finance Abuse Unit and Rebecca Olsen, director of the Office of Municipal Securities.

The two officials provided updates on their work as part of a panel at the National Association of Municipal Advisors' annual conference here. During the course of that discussion, Gaunt was pressed on whether the legacy of the MCDC has been excessive disclosure.

The MCDC, launched in March 2014 and wrapped up in late 2016, promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the previous five years of issuers falsely saying in official statements that they were in compliance with their continuing disclosure agreements.

The initiative led to SEC settlements with 72 underwriters representing 96% of the underwriting market as well as 72 issuers. It also led to hand-wringing over whether so-called "foot fault" violations, such as filing an annual financial statement a day or two late, needed to be disclosed in an official statement.

Gaunt said that her unit's experience with the MCDC has given SEC attorneys expertise in looking for these kinds of violations. While Gaunt agreed that voluminous disclosure has the potential to decrease the usefulness of disclosure, she was skeptical that it has been a problem so far.

"It's part of our DNA now, to look for it," Gaunt said of that kind of conduct. "I'm not that concerned with over-disclosure."

"Disclosure is your friend," Gaunt told the audience of primarily municipal advisors, who are sometimes involved in helping issuers make decisions about disclosure.

Gaunt said she has not personally encountered instances of disclosures about issuers missing filing deadlines by mere hours. Olsen said that over-disclosure concerns her far less than the state of the market prior to the MCDC.

"MCDC shined a big spotlight on that topic," Olsen said.

Gaunt also provided an overview of recent SEC enforcement actions against municipal advisors, which have made up a large chunk of her unit's cases lately. She said she viewed this as a natural evolution of the relatively new MA regulatory regime, which was mandated by the Dodd-Frank Act and continues to be worked on by the Municipal Securities Rulemaking Board.

Gaunt highlighted the case against an Oklahoma-based MA Municipal Finance Services and two of its principals. The SEC brought charges against the firm late last year alleging that it breached its fiduciary duty to its issuer client when it became concerned, but stayed silent about, the legality of unilaterally amending existing continuing disclosure agreements.

Gaunt was hesitant to say how heavily the circumstances weighed on the decision to bring charges, but said the SEC was informed by the fact that the firm had agreed to assist in disclosure compliance as part of its engagement as MA.

Gaunt warned, however, that MAs can't simply "scope out" their obligations under the law or under MSRB rules by writing an agreement with the issuer. She added that she has not been aware of this being a problem to date.

MSRB President and chief Executive Officer Lynnette Kelly also addressed the conference, providing an update on MSRB activity. She said the MSRB had "redoubled its efforts" to provide an "environment of no surprises" in its ongoing dialogue with industry stakeholders, a stated priority of the board for its new fiscal year, which began on Oct. 1.

The NAMA conference continues Friday.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 10/04/18 07:07 PM EDT

What Experts Are Warning About Change From Libor.

WASHINGTON – Financial institutions are getting a jump on moving away from a longtime key benchmark index and into a new one, a move that could cause problems for some municipal interest rate swaps and other derivatives.

Bank officials, investors, and other experts weighed in Tuesday on the need to move quickly away from using the London Interbank Offered Rate, or Libor as a benchmark and migrating to the SOFR, the Secured Overnight Financing Rate. Speaking on a panel at the Securities Industry and Financial Markets Association's annual meeting, these experts stressed the increasing inevitability of the loss of Libor and the need to begin moving away from it before it is actually retired in about three years.

Libor is the average rate at which major banks can obtain unsecured funding from each other. It has been used in trillions of dollars of derivatives transactions globally and was at the center of a series of scandals in which banks and bankers were charged with manipulating it for financial gain. The Financial Conduct Authority in London, announced last year that it will abandon Libor by the end of

2021.

Libor has been widely used in the tax-exempt bond market. Examples include bank loans involving floating rate notes or bonds that have rate resets based on Libor and interest rate swaps tied to muni bonds that have been publicly offered.

SOFR is published by the Federal Reserve Bank of New York, which describes it as “a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities.”

New York’s Metropolitan Transportation Authority issued the municipal market’s first tax-exempt transaction linked to SOFR last month.

Libor “is no longer a viable reference,” said Christian Rasmussen, global head of liability creation structuring & flow management and global co-head of repo trading at UBS.

Jason Manske, senior managing director and head of global derivatives and liquid markets at MetLife (MET), stressed superiority of SOFR as a transaction-based rate rather than one like Libor which is set artificially.

“Do you want a rate that’s based on actual transactions, or do you want a made-up rate?” Manske asked. “You can’t put this off. You have to start the baby steps now.”

The panel particularly discussed the need to include “fallback language” in the contracts governing transactions tied to a reference rate, so that there will be clarity about what happens to those deals in a post-Libor world.

Ann Battle, assistant general counsel at the International Swaps and Derivatives Association, said ISDA is working to help its member institutions move toward SOFR.

“We’re doing a lot to facilitate adoption of SOFR going forward,” she said.

Absent regulatory relief, a switch from Libor to SOFR could create tax issues for municipal debt, such as reissuance. If floating rate bonds based on Libor switch to another benchmark rate, the switch may be considered a material change to the bonds that causes them to be considered newly reissued. A reissuance would make the bonds subject to the latest tax laws and rules and could even make them taxable. A Treasury Department official announced last month that Treasury and the Internal Revenue Service will try to provide some relief with regard to this issue, but could not say when that project will be done.

By Kyle Glazier

BY SOURCEMEDIA | ECONOMIC | 10/02/18 07:08 PM EDT

SEC Charges Broker-Dealer/Investment Adviser with Deficient Cybersecurity Procedures.

The Securities and Exchange Commission (“SEC”) recently charged a firm registered with the SEC as both a broker-dealer and an investment adviser in connection with a cyber-intrusion that compromised the personal information of thousands of customers. This case is significant both because cyber security is an area of heightened concern for the SEC and because this is one of the first cases to bring charges against a registered broker-dealer or investment adviser in connection with a cyber-intrusion.

The current chairman of the SEC has identified cybersecurity as a significant concern and stated that the "Commission is focused on identifying and managing cybersecurity risks and ensuring that market participants—including issuers, intermediaries, investors and government authorities—are actively and effectively engaged in this effort and are appropriately informing investors and other market participants of these risks." See Statement on Cybersecurity, Chairman Jay Clayton (Sept. 20, 2017) available here. Moreover, the Commission's Office of Compliance Inspections and Examinations ("OCIE") has identified cybersecurity as a priority and has stated that "[e]ach of OCIE's examination programs will prioritize cybersecurity with an emphasis on, among other things, governance and risk assessment, access rights and controls, data loss prevention, vendor management, training, and incident response." See SEC Office of Compliance Inspections and Examinations Announces 2018 Examination Priorities (SEC Press Release 2018-12) (Feb. 7, 2018) available here.

The SEC charged the firm with violating Rule 30(a) of Regulation S-P (17 C.F.R. §248.30(a); the "Safeguards Rule") and Rule 201 of Regulation S-ID (17 C.F.R. §248.201; the "Identity Theft Red Flags Rule").These rules, respectively, require broker-dealers and investment advisers registered with the SEC to adopt written policies and procedures that are reasonably designed to safeguard customer records and information and require broker-dealers and investment advisers that offer or maintain covered accounts to develop and implement a written Identify Theft Prevention Program that is designed to detect, prevent, and mitigate identify theft in connection with the opening of a covered account or any existing covered account.

This case is the first SEC enforcement action charging violation of the Identity Theft Red Flags Rule and appears to be just the second case, and the first since 2015, charging a registered broker-dealer or investment adviser in connection with a cyber-intrusion. For the earlier case, see SEC Charges Investment Adviser with Failing to Adopt Proper Cybersecurity Policies and Procedures Prior to Breach (SEC Press Release 2015-202)(Sept. 22, 2015) available here.

In its press release announcing this action, available here, the SEC referenced both weaknesses in the firm's cybersecurity procedures and the firm's failure to apply its procedures to systems used by the greater part of its workforce. The firm agreed to pay a $1 million fine. The firm also agreed to retain a compliance consultant to conduct a comprehensive review of the firm's policies and procedures and to implement the recommendations resulting from such review. A copy of the underlying order is available here.

The firm offered investment and brokerage services to its customers through a national network of registered representatives. A significant majority of these representatives worked out of their own offices with a majority of these representatives consisting of independent contractors. These independent-contractor representatives typically used their own IT equipment and their own networks to access customer information, including personally identifiable information ("PII") through a web portal that was proprietary to the firm. This is in contrast to employee representatives who used IT equipment and IT systems provided by the firm.

The firm's procedures allowed independent-contractor representatives who could not remember their passwords to reset their passwords by calling firm support centers, which were authorized to provide temporary passwords by phone after the requesting representative provided at least two pieces of his or her own PII. Significantly, these procedures were left unchanged after the firm was aware of prior fraudulent attempts to impersonate contractor representatives using their PII. While the firm did keep a "monitoring list" of phone numbers that were previously used in connection with fraudulent activity, there was no written policy or procedure that required the support centers to consult the monitoring list when responding to password-reset calls.

The firm's procedures also provided for the personal computers of the independent-contractor representatives to be scanned for antivirus software, encryption, and certain software updates, but as stated in the SEC's order, these scans were scheduled to occur "only" three times a year. Often the scan, which required action by the contractor representative before it could occur, did not occur at all, and even though approximately 30% of the scans that did occur revealed critical failures such as a lack of encryption and antivirus software, the firm conducted no review or follow up of such scans to ensure these failures were remedied. The order also stated that the firm's policies and procedures with respect to customers' profiles were not reasonably designed as no notice was provided to a customer when an initial profile was created or when contact information and document-delivery preferences were changed.

The order also highlighted weaknesses in the firm's incident-response policies and procedures. While these procedures generally required that potentially compromised user accounts be disabled and relevant applications shut down to prevent additional compromises, the incident-response team did not receive adequate training regarding the system used by the independent-contractor representatives and mistakenly believed that resetting a password for a user would terminate the user's existing session. As a result, cyber-intruders were able to continue to access firm systems even after the incident-response team had taken steps to deny such access. Moreover, the firm's procedures did not require informing the support centers about an ongoing intrusion. In addition, the firm's procedures for designating compromised representatives' and customers' accounts as requiring additional security measures, which were meant to alert the support centers to the need to take additional measures, were ineffective, as the flags placed to identify such representatives and accounts were erased periodically in connection with unrelated automated system activities. The order also states that the firm had not updated its Identity Theft Prevention Program after 2009, notwithstanding significant changes in external cybersecurity risks since then.

This case should serve as a warning that the SEC is prepared to use its enforcement powers where it believes broker-dealers or advisers have put their customers at an unreasonable risk of cyber-intrusion. Accordingly, broker-dealers, investment advisers, and municipal advisors should take steps to protect themselves from possible enforcement actions by ensuring that they have reasonable and comprehensive cybersecurity policies and procedures in place. Firms that allow multiple-access systems must ensure that their policies and procedures are appropriate for each system used by the firm. Firms must also keep their policies and procedures up to date by responding not only to changes in their own systems and technologies but also by keeping current with respect to best practices in the rapidly advancing world of cybersecurity. At a minimum, firms should review their cybersecurity programs on an annual basis as well as whenever changes to the firm's systems or technology warrant. Firms should also ensure, and document, that cybersecurity-related red flags and other concerns receive prompt attention and, as necessary, that policies and procedures are revised to respond to such concerns. Firms should also ensure that persons charged with critical aspects of cybersecurity, including those who respond to cyber intrusions, receive the training they need to successfully perform their functions and that such training covers all relevant systems.

by Glen P. Barrentine

USA October 3 2018

Winston & Strawn LLP

GASB Wants Uniformity in Reporting Conduit Debt.

WASHINGTON — Three organizations are commending the Governmental Accounting Standards Board's proposal to establish a single method for issuers to report conduit debt obligations.

GASB is accepting comments through Nov. 2 on its proposal to clarify the definition of a conduit debt obligation and eliminate the option for government issuers rather than borrowers to recognize conduit debt obligations, thereby providing a single method of reporting. It has only received comments from four organizations so far.

The proposal also will clarify accounting and financial reporting guidance for additional commitments extended by government issuers and arrangements, which are often characterized as leases associated with conduit debt obligations.

Another goal is to enhance note disclosures.

"The reason the board wanted to address this area was to bring about more consistency," said GASB spokesman Kip Betz. "Some governments that were involved in conduit debt arrangements with third parties would record the assets and the liabilities. And then other governments would just make disclosures. So different governments were doing different things and we really wanted to get everybody on the same page."

Betz said the board has concluded that in the vast majority of cases disclosure is the way to go. Under the exceptions outlined in the proposal, governments should follow GASB Statement 70 covering Accounting and Financial Reporting for Nonexchange Financial Guarantees.

The four public comments filed through Oct. 3 either complimented GASB for the proposal, discussed technical issues, or raised a question about reporting requirements.

Tim Fisher, manager of government affairs for the Council of Development Finance Agencies, said in an email Thursday that his organization is "largely supportive of regulatory actions that would improve both the clarity and uniformity of conduit issuance reporting."

"On the surface the GASB proposal seems like a step in the right direction, and we're interested to see how this process plays out," Fisher wrote.

Emily Brock, director of the federal liaison office of the Government Finance Officers Association said in an interview that her organization is "pleased that the proposed standards attempt to provide direction to preparers in order to organize and convey a complex transaction."

"And we will be commenting once we have more fully vetted all of the aspects of the exposure draft," Brock said.

GASB announced the proposed revised guidance on Aug. 2. It would take effect for reporting periods after Dec. 15, 2020.

"Third parties sometimes seek this kind of financing for projects such as not-for-profit hospitals and universities and qualifying private businesses," GASB said in its announcement.

The proposal defines a conduit debt obligation as having six characteristics:

- There are at least three parties involved who include an issuer, a third-party obligator, and a debt

holder or debt trustee.
- The issuer and third-party obligator are not within the same financial reporting entity.
- The debt obligation is not a parity bond of the issuer, not is it cross-collateralized with other debt of the issuer.
- The third party obligor or its agent, not the issuer, ultimately receives the proceeds from the debt issuance.
- The third-party obligor, not the issuer, is primarily obligated for the payment of all amounts associated with debt service payments.
- The issuer's commitment related to the debt service payments if limited.

In addition, an issuer would not recognize a conduit debt obligation as a liability.

"We concur with the proposed statement and guidance," Cynthia Bergvall, chair of the GASB subcommittee of the Pennsylvania Institute of Certified Public Accountants wrote in an Oct. 2 letter.

Tamar A. Lewis, board president of the Michigan Government Finance Officers Association, wrote that her organization in general "supports the concept that conduit debt obligations should be disclosed rather than recognized in the issuer's financial statements."

"We similarly support following the basic approach introduced in GASB 70 to recognize a liability and expense when the issuer government determines it is more likely than not that it will support debt payments for a conduit debt obligation," Lewis wrote.

The Michigan GFOA suggested six improvements to the GASB proposal.

Bill Spivey, executive director of the Florida Development Finance Corporation, offered seven suggestions for changes in the wording of the GASB guidance.

"All-in-all the revisions are well done!" Spivey concluded in his letter.

Anne Pruneda, chief fiscal officer of the Kansas Development Finance Authority, asked in her letter if the current reporting practice of her agency is appropriate in GASB's opinion.

"Currently, the debt is recognized on the financial statements of the state of Kansas," Pruneda wrote. "KDFA does not recognize the debt on its own separate financial statements as a component unit. However, KDFA does disclose all its outstanding conduit debt obligations in the notes section to the financial statements."

Pruneda's letter also said that "principal and interest on the bonds are special limited obligations of KDFA payable solely and secured by a trust estate. The third-party obligor pledges a revenue stream as security for the debt service requirements. KDFA does not guarantee the debt."

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 10/04/18 07:07 PM EDT

MSRB Releases Fiscal Year 2019 Strategic Initiatives and Budget Summary.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced strategic initiatives and published an associated budget summary for its 2019 fiscal year, beginning October

1, 2018. The strategic initiatives, which are approved by the MSRB Board of Directors, are the organization's highest priorities and support its role protecting investors and municipal entities in the $3.8 trillion municipal securities market.

This year, the Board is focused on enhancing the ways the MSRB receives industry feedback. In addition, the MSRB will prioritize exploring "big data" and cloud computing with a strategic $5 million investment to position the organization's information technology (IT) infrastructure for the future. The organization plans to conduct a feasibility assessment of the benefit of transitioning to the cloud and explore ways to leverage the power of cloud computing to analyze unstructured market data.

"Our investment will fund the exploration and potential transition to cloud computing, if we determine doing so would serve our long-term interest in operating resilient and secure IT infrastructure and data systems," said Board Chair Gary Hall. "It also will help determine whether we can gain additional insight from the vast amount of data that the MSRB collects on behalf of the market."

Stakeholder feedback will continue to feature prominently this year in many of the MSRB's activities. New advisory groups will add greater insight to policy questions for the MRSB and its Board, and other activities will expand the MSRB's access to balanced, expert market knowledge from a variety of professionals in the municipal securities market. This year, MSRB Board members, not just staff, will have multiple touchpoints with stakeholders through formal meetings, Town Halls and firm visits.

In FY 2019, market regulation resources will support an initiative focused on ensuring MSRB rules are up-to-date, effective and reflective of current market practices, and, that they are consistently interpreted. An ongoing retrospective rule review will continue, and staff will work to ensure that MSRB rules and interpretive guidance are streamlined, appropriately tailored, function efficiently and are consistent with those of other regulators, when possible.

As part of its focus on data, the MSRB will make improvements for municipal entities that submit bond disclosure information to the MSRB's Electronic Municipal Market Access (EMMA®) website, which has been a repository for all data and disclosure documents on more than a million outstanding municipal securities for over the past decade. The submission improvements are responsive to stakeholder feedback gathered through focus groups and other engagement and will improve the quality of indexing data for disclosure documents and integrate relevant tools and resources for issuers throughout the submission process.

The budget summary aligns with the MSRB's commitment to transparent and responsible financial management. This year, the Board of Directors, which develops the budget with senior management, is communicating steps to reduce the organization's reserve funds. The Board recently approved a temporary three-month reduction in the organization's underwriting, transaction and technology fees to take place at the start of the 2019 fiscal year. "This temporary fee relief is estimated to reduce our excess reserves by $2.6 million, advancing our goal of fair and equitable fees across regulated entities," said Hall.

Given the transition the industry is experiencing following the recent federal tax reform, the Board kept the MSRB's FY 2019 expense budget flat with last year. The planned revenue reduction, together with a flat expense budget, resulted in an operating deficit of $1.7 million, and a total FY 2019 budget deficit of $4.3 million.

Date: October 1, 2018

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New Post in the Bond Buyer: BDA Group Wants to Play Key Role in Fixed Income Market Structure

WASHINGTON — The Bond Dealers of America has formed a Fixed Income Market Structure Working Group to advise regulators, lawmakers and market participants on structural changes in the fixed income industry and marketplace.

The regulators will include the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, and the Financial Industry Regulatory Authority.

The working group will consist of representatives of 20 BDA-member firms in the retail, taxable and municipal bond markets and will be led by Brad Winges, managing director and head of fixed-income services of Piper Jaffray Firm Investments and Trading, and Kevin Giddis, head of fixed income at Raymond James Investment Services.

Its first meeting will take place via conference call on Monday, Oct. 15, and working group members plan to hold discussions at least once every quarter, according to BDA Chief Executive Officer Mike Nicholas.

Nicholas said the reasons for creating the group were two-fold.

First, in the aftermath of the financial/credit crisis firms have faced tremendous challenges that include tightening spreads and increased regulatory and technology costs. This has led some firms to shut down, drop out of the muni market or realign their business, presenting some opportunities.

And separately, the SEC has “a deep-dive focus on fixed income market structure and what it should look like,” Nicholas said.

There are a handful of major Wall Street firms in New York City and about 4,000 other firms located around the country, he said.

“The BDA is being very proactive,” Nicholas said. “We want to ensure that those 4,000 firms have a voice during this discussion of market structure. We think of ourselves as a thought-leader on this issue, just as we’ve been on infrastructure and how munis will be impacted and play a role in infrastructure next year.”

Nicholas pointed to Chicago-based William Blair as an example of the challenges faced by firms.

Viewed primarily as a municipal securities firm for more than five decades, William Blair announced in July that it was exiting the municipal securities business, after making an effort four years earlier to expand its public finance practice to new regions.

During the past few years, the firm saw steady revenue growth approaching $1 billion and client assets at $90 billion. But its municipal business contributed less than 3% to overall revenue in 2016, the firm’s President and Chief Executive Officer John Ettelson said in a release.

Meanwhile, the SEC late last year created a 23-member Fixed Income Market Structure Advisory Committee (FIMSAC), on which Winges sits, that held meetings in January, April, and July of this year.

The July meeting focused in part on the current state of pre-trade transparency in the muni market and on recommendations for electronic trading.

In his remarks at the inaugural meeting of FIMSAC, SEC Chairman Jay Clayton said the fixed income markets are massive, growing, and play a significant role for the American economy and the investing public.

The municipal bond market, by the end of 2016, had a total of 31,000 different issuers with roughly $3.8 trillion of munis outstanding, up 17% since the end of 2006, he said.

The fixed income markets directly and indirectly significantly impact other markets such as the derivatives market. They are particularly important to retail investors and they are critical to the nation's infrastructure and companies, he said.

The SEC plans to work with "to ensure that our regulatory approach to these markets is sound and continues to meet the needs of retail investors as well as American companies and state and local governments," Clayton told the group.

Bond Dealers of America

By Lynn Hume

October 3, 2018

[MBFA Increases Its Advocacy Efforts: Spearheads Two Capitol Hill Sessions on the Muni Bond Market and Hosts Fundraiser for Ranking Democrat on House Ways & Means Committee]

Earlier this week, the BDA-led Municipal Bonds for America (MBFA) Coalition increased its advocacy efforts for the support of municipal finance and the tax exemption through multiple events on Capitol Hill over two days. Below is a recap of the events.

Educational Seminar and Lobby Day

On Monday, September 24th, the MBFA Coalition held two educational seminars on Capitol Hill for House and Senate staff, and other interested parties on the importance of preserving the tax-exemption for municipal bonds. MBFA Executive Chair Steve Benjamin, Mayor of Columbia, S.C., and current president of the U.S. Conference of Mayors presided over the events to highlight the benefits of the municipal bond market, the tax-exemption, and the importance to restore advance refundings.

The seminar featured a panel of executives and practitioners that the BDA recruited, including:

- **Alex Wallace**, Head of Public Finance – U.S. Bank
- **Steve Winterstein**, Managing Director & Chief Municipal Fixed Income Strategist – Wilmington Trust

- **Pat Luby**, Senior Municipal Strategist – CreditSites
- **Matt Posner**, CEO – Impact Coalition

The panelists focused on the impact that municipal bonds play in our daily lives, the economic efficiency of the municipal exemption, and the important role that private activity bonds (PABs) and advance refundings play in America's infrastructure investment.

In addition to holding the educational seminars, the MBFA coalition held over 40 meetings on Tuesday, September 25th, with key members of Congress and their staffs that have influential voices on tax and infrastructure issues.

Meeting with the National Economic Council

The BDA organized a meeting with Andrew Olmem, the Deputy Assistant to the President for Financial Policy at the National Economic Council (NEC). In the meeting, members of the MBFA's Executive Committee and legislative task force advocated to maintain the current law status of the municipal bond tax-exemption and to restore advance refundings.

Fundraiser for Richard Neal (D-MA) – Ranking Member of the House Ways & Means Committee

The BDA also organized and attended the MBFA fundraiser for Congressman Richard Neal who is projected to become the next Chairman of the Ways & Means Committee (the body that has authority and jurisdiction over tax issues) if his party recaptures majority control of the House this fall. A strong advocate for municipal bonds, the former mayor of Springfield, MA, reaffirmed his support of MBFA priorities for protecting the tax-exempt status of municipal bonds and the reinstatement of advance refundings.

Additional Information

Handouts from the seminar and Hill day featured the BDA's recent release of the primer on municipal bond finance: The Municipal Bond Market: Building America's Infrastructure.

You can view a copy of it online here.

Bond Dealers of America

rcrodriguez

October 2, 2018

MSRB FAQs Regarding Permissible and Impermissible Uses of Municipal Advisory Client Lists and Case Studies by Municipal Advisors.

Read the FAQs.

GASB Issues Proposals Designed to Improve Government Financial Reports

and Establish Recognition Concepts.

Norwalk, CT, September 28, 2018 — The Governmental Accounting Standards Board (GASB) today issued a Preliminary Views proposing improvements to key components of the financial reporting model. In a separate, related document, the Board also proposed new concepts intended to guide the Board in developing standards on recognition in financial statements.

GASB Chairman David A. Vaudt said: “What the Board ultimately is trying to do through these companion projects is provide better information to financial statement users. These proposals are designed to enhance both the value and clarity of the information reported in financial statements,” he added.

Stakeholders are asked to review and provide input on the proposals contained in the two Preliminary Views by February 15, 2019.

Financial Reporting Model Improvements

The Preliminary Views, *Financial Reporting Model Improvements*, presents the Board’s current thinking on targeted improvements to the financial reporting model—the blueprint for the annual audited financial report. The proposals are designed to improve the model’s effectiveness in providing information essential to decision making and assessing a government’s accountability.

The proposed improvements include:

- A short-term financial resources measurement focus for governmental funds that recognizes short-term transactions and other events when incurred and long-term transactions and other events when due
- A format for governmental fund financial statements that distinguishes between current and long-term resource flows
- Clarified explanations of operating and nonoperating revenues and expenses
- An additional subtotal in proprietary fund financial statements for operating income (loss) and noncapital subsidies
- Presentation of all budgetary comparison information as required supplementary information and required presentation of two variance columns
- Communication of major component unit information either in the government-wide statements or in combining financial statements
- A new schedule of government-wide expenses by natural classification as supplementary information in comprehensive annual financial reports.

The Preliminary Views considers improvements in selected areas of the existing financial reporting model. The Board plans to address enhancement of other areas of the model in a subsequent proposal.

Recognition of Elements of Financial Statements

The Preliminary Views, *Recognition of Elements of Financial Statements*, presents the Board’s current views on concepts related to recognition of elements of financial statements, such as assets and liabilities.

Recognition concepts encompass two aspects of state and local government financial statements:

- The *measurement focus* of a specific financial statement determines *what* items should be

reported.
- The related *basis of accounting* determines *when* those items should be reported.

The Preliminary Views proposes that an item being considered for recognition in financial statements would be evaluated using a hierarchy for recognition of elements. The hierarchy would require the Board follow a specific order of elements when considering if an item should be recognized and as what element (for example, as an asset, deferred outflows of resources, or expense).

The Preliminary Views also proposes a recognition framework for both the short-term financial resources measurement focus (proposed for use in governmental fund financial statements in the companion Preliminary Views) and the economic resources measurement focus (used in government-wide, proprietary fund, and fiduciary fund financial statements).

Issuing the two documents concurrently is intended to provide stakeholders with a conceptual context for how elements of financial statements would be recognized and then to see how those elements would be presented within the financial reporting model.

Alternative Views

The documents also contain alternative views to some of the proposals.

Share Your Comments

Written comments should be addressed to the Director of Research and Technical Activities, Project No. 3-25 (*Financial Reporting Model Improvements*) or Project No. 3-20 (*Recognition of Elements of Financial Statements*), and emailed to director@gasb.org.

A series of public hearings and user forums on the Preliminary Views documents are scheduled as follows:

Public Hearings
March 5, 2019, Rosemont, IL
March 12, 2019, Atlanta, GA
March 14, 2019, Flushing, NY

User Forums
March 6, 2019, Rosemont, IL
March 14, 2019, Flushing, NY.

The deadline for written notice of intent to participate is February 15, 2019. Additional information is available in each of the Preliminary Views.

BDA Submits Comment Letter: MSRB Draft Amendments to Primary Offering Rules

The BDA submitted a comment letter in response to the MSRB Request for Comment on Draft Amendments to Primary Offering Rules. The notice can be viewed here.

The final comment letter can be viewed here.

The comment letter focuses on the following topics:

G-11 Primary Offering Practies

- Free-to-Trade Wire; and
- Alignment of the time frame for the payment of group net sales credits with the payment of net designation sales credits.

G-32 Disclosures in Connection with Primary Offerings

- Equal access to the disclosure of the CUSIP numbers refunded and the percentages thereto; and
- Whether non-dealer Municipal Advisors should make the official statement available to the managing or sole underwriter after the issuer approves it for distribution.

Bond Dealers of America

September 17, 2018

Conflict of Interest Issues are Pivotal for Municipal Advisors.

Municipal advisors are required to manage carefully, as pivotal issues, conflicts of interest and their disclosure to municipal entity and obligated person clients.

The fiduciary duty of loyalty and MSRB Rule G-17's fair dealing mandate require that conflicts be disclosed and that advisors obtain clients' fully-informed consents to significant conflicts.

The fiduciary duties of municipal advisors arise under both federal and state common law. Dodd-Frank does not override state law. Numerous historical actions have applied state law against non-disclosing advisors.

The MSRB states regarding Rule G-42: "Municipal advisors may be subject to fiduciary … duties under state … laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state … laws applicable to municipal advisory activities."

Under state law, municipal advisors must act solely in their clients' best interests. Tamar Frankel states in *Legal Duties of Fiduciaries*: "The legal duty of loyalty takes two forms. One form is a requirement that fiduciaries act for the sole benefit of the entrustors. The other form is a prohibition on fiduciaries from acting in conflict of interests with the interests of the entrustors." Comment to *Restatement of Agency* §8.01 states: "the general fiduciary principle requires that the agent subordinate the agent's interests to those of the principal and place the principal's interests first as to matters connected with the agency relationship."

Under federal law, the MSRB stated, contrasting municipal advisors with underwriters: "unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests …" MSRB Notice 2012-25.

Some advisors may not be sensitive, however, to certain conflicts. This Commentary identifies multiple simultaneous potential conflicts, especially in, but not limited to, certain voted bond issues.

In voted bond issues, it is possible to identify three periods—the pre-election period (when issuers' governing bodies make important decisions), the election period (when voters decide), and the post-election period (when issuers, with professionals, make more detailed decisions and close transactions).

This Commentary, drawn from experience, describes a hypothetical advisor's work.

Contingent Closing Fees

Our hypothetical highly-active advisor has charged contingent closing fees in all of its bond issues for many hundreds of projects.

Contingent closing fees are recognized by many market participants as detrimental to issuers. This fee structure has tended to dominate the discussion of conflicts, although there are other significant advisory conflicts. Some issuers, especially smaller, less sophisticated ones, may be served only by professional teams who will not be paid without a closing. Those issuers may not receive input from a single professional without an eye on closing compensation.

Most bond issues require months of hard work. Risky or difficult issues commonly require additional time. Professionals paid contingent fees place those months of hard work at risk, if they provide advice delaying or discouraging closings. Professionals working directly on bond issues may experience pressures to complete transactions from supervisors or partners. Nevertheless, it may be in issuers' best interests not to close. I have seen numerous examples of imprudent bond issues.

The National Federation of Municipal Analysts' *White Paper on the Disclosure of Potential Conflicts of Interest in Municipal Finance Transactions* states: "Historically, compensation arrangements in municipal finance transactions that hinged on transactional completion have been associated with poorly structured bond issues …, to the detriment of municipal investors, as well as issuers and obligors."

While some may argue that other fee structures also involve conflicts — professionals paid hourly fees may charge additional time — the relative risks to issuers are not identical. The risk to issuers from additional time charged as hourly fees is dwarfed in contrast to potential seven figure costs to issuer from unwise closings.

In my 40-plus years in the municipal market, I found that non-contingent fees tended to be lower than contingent fees. Indeed, the "contingency" often is cited as a risk by professionals in justifying higher fees. Our advisor does not disclose this information.

Further, additional time charged as hourly fees may be exactly what is necessary for extra care that protects issuers—time that advisors paid contingent fees may avoid to minimize their own costs and delays.

The Government Finance Officers Association's *Best Practice—Selecting and Managing Municipal Advisors* discourages the payment of contingent fees, stating a preference for non-contingent fees "to remove the potential incentive for the municipal advisor to provide advice that might unnecessarily lead to the issuance of bonds."

GFOA opines that "this may be difficult given the financial constraints of many issuers." GFOA adds, however, that issuers paying contingent fees should "undertake ongoing due diligence to ensure that the financing plan remains appropriate for the issuer's needs." GFOA does not indicate how tens of thousands of small, unsophisticated issuers heavily dependent upon their municipal advisors are able to discharge additional oversight responsibility effectively.

Non-contingent fees are rarely burdensome. Even financially-limited issuers routinely pay non-contingent fees to a wide variety of professionals. In completed transactions, non-contingent fees are recoverable from bond proceeds. Moreover, if financially-limited issuers pay non-contingent fees in uncompleted transactions, it may be for the best advice issuers possibly could have received.

In practice, some advisors act directly counter to GFOA's expressed opposition to contingent fees. What GFOA presents as an exception to the general rule of avoiding contingent fees instead is applied by some advisors on a vastly broader basis, destroying issuer choice. Those municipal advisors charge contingent closing fees in every bond issue and never offer issuers fee alternatives.

Our hypothetical advisor always proposes contingent fees to issuers without disclosing risks, without offering alternative fees, without informing issuers of the pros and cons of alternative fees, without informing issuers that non-contingent fees are recoverable from bond proceeds, and without obtaining issuer consents. Yet, our advisor advertises itself misleadingly as "independent." NFMA states: "Contingent compensation is especially undesirable for … for municipal advisors … who are expected to be independent in the provision of advice …"

Consequently, some issuers have never been offered non-contingent fees and have never received disclosure identifying fee alternatives or relative merits.

Unfortunately, the additional burden the conflicts place upon issuers severely weakens the issuers' important intended Dodd-Frank Act protections.

Notably, Tamar Frankel states: "When fiduciaries wish to engage in conflict of interest transactions and seek their entrustors' consent, the entrustors must fend for themselves. Their right to rely on their fiduciaries must be eliminated. In fact, during the bargaining, the entire fiduciary relationship must be terminated and replaced by the relationship of contract." Our advisor does not disclose this information.

Multiple Contingent Closing Fees

A related conflict is that, during the pre-election period, our hypothetical advisor encourages an issuer's board to propose to voters a tax-supported bond plan that cannot be executed completely on the basis of existing property values and estimated tax rates. The advisor encourages the issuer to add projects extending beyond the issuer's immediate intentions. The recommended plan relies in part upon a second future issuance assuming property values inflate.

Our hypothetical advisor anticipates multiple closings and multiple contingent fees pursuant to its recommended bond plan. Work on a future issue will duplicate much of the disclosure and bond documentation. Hourly fees would be based only on actual time.

Fees Contingent on Board Action and Election Results

Our hypothetical advisor describes the pre-election period as the "marketing phase."

The advisor charges, in the pre-election period, a fee contingent upon approval by the issuer's board of the advisor's recommended bond plan and upon voter bond authorization. This contingent fee motivates the advisor to promote bond issuance.

Our advisor assures the issuer's board that the advisor's recommended bond plan for multiple bond issues refunding outstanding obligations and funding additional projects is based upon "conservative" modeling. Actually, the advisor does not (and lacks skills to) prepare financial analysis supporting the recommendation. Ultimately, the advisor's recommended tax rate and bond principal prove inadequate even to refund the issuer’s outstanding obligations.

Election Consulting Conflicts

Our advisor anticipates that favorable bond election results will lead to the hypothetical advisor’s collection of its pre-election contingent fee and of multiple post-election contingent fees.

The advisor works on the bond election pursuant to an election committee contract for a fee drastically below the advisor’s typical compensation. The advisor sends multiple officers to a distant community for several days to work in the bond election for a hypothetical fee and reimbursement of $1,500, while anticipating receipt of aggregate contingent compensation of $160,000.

In effect, our hypothetical advisor works on the bond election as an undisclosed “loss leader.”

To recover its losses, the advisor must convince voters to authorize the bonds. In our hypothetical, taxpayer advocates supporting bond issuance object to assertions in campaign literature prepared by the advisor and threaten to withdraw support until retraction.

Dependence on Underwriters

Our hypothetical advisor not only cannot prepare bond structuring analyses, but depends on underwriters to do so—a serious conflict. This is why our advisor recommends negotiated bond issues even for highly-rated commoditized bonds with a common security structure.

Assistance by the advisor in the underwriters’ retention enhances the conflict’s severity, as does the advisor’s negotiations on behalf of the issuer with the underwriters of compensation, bond terms, and yields—an agency role.

Disclosure and Consents

Requirements for disclosure of conflicts and for obtaining client consents arise under MSRB Rules G-42 and G-17, as well as the Dodd-Frank Act’s statutory fiduciary duty and state common law.

MSRB Rule G-42(b) requires disclosure of municipal advisor conflicts arising from certain relationships, stating: “A municipal advisor must… provide to the municipal entity or obligated person client full and fair disclosure in writing of: … “(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction …; and (F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor’s ability to provide advice .. .”

In Supplementary Material, Rule G-42 provides that “Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict.”

Describing state law, Tamar Frankel states: “Fiduciaries must provide … material information necessary for the entrustors to make an informed decision. … In reality, entrustors can seldom perform [a cost-benefit] analysis because they lack accurate information … ,” adding “the burden of proving” fairness and reasonableness “is usually on the fiduciaries.”

Tax regulations

The Restatement of Agency §8.06, speaks to how agents, such as municipal advisors, are able to obtain effective state law consents. Agents must “act[] in good faith,” “disclose[] all material facts that the agent knows, has reason to know, or should know would reasonably affect the principal’s judgment,” and “otherwise deal[] fairly.” The Restatement adds that the agent has the burden of proving informed consent.

Conclusion

Municipal advisors to municipal entities and obligated persons may be subject simultaneously to multiple conflicts of interest that should be fully disclosed, with client consents, under both federal and state law. It is essential for advisors to be sensitive to these significant issues.

The Bond Buyer

By Robert Doty

Published September 25 2018

SEC Announces Muni Conference, as Regulators Face Backlash.

CHICAGO – A Securities and Exchange Commission official announced the commission will host a muni disclosure conference at its headquarters on Dec. 6 during a bond lawyers’ meeting here where regulatory officials got some backlash on recent rules and advisories.

Rebecca Olsen, director of the SEC’s Office of Municipal Securities, announced the commission conference during a Thursday panel at the National Association of Bond Lawyers’ Bond Attorneys’ Workshop.

The conference will be a one-day affair and will feature opening remarks from SEC Chairman Jay Clayton, Olsen said. The conference stems from a recommendation in the SEC’s 2012 Report on the Municipal Securities Market that the SEC hold such an event.

Olsen noted that the SEC has not provided formal written interpretive guidance on both primary and continuing disclosure since a 1994 interpretive release which explored those obligations with respect to the antifraud provisions in the federal securities laws. She said the commission hopes the conference will provide it with market perspectives to inform its decisions, including on whether to issue new guidance.

“We’re very much focused on disclosure,” Olsen said.

The panel, titled “Hot Topics in Securities Law,” was held twice Thursday with the same participants. Besides Olsen’s announcement, the discussion also included the SEC’s recent amendments to its Rule 15c2-12, the Municipal Securities Rulemaking Board’s controversial 2017 market advisory on selective disclosure, and an overview of the SEC’s recent enforcement efforts.

The commission’s amendments to 15c2-12, effective Feb. 27 of next year after their August approval, adds two new events to the list issuers must agree to disclose through the MSRB’s EMMA system. One of those new events is the incurrence by the issuer of a new material financial obligation, as well as details about that obligation. The other new requirement is that issuers file an event notice for certain actions or events related to their financial obligations that “reflect financial difficulties” such as a default, event of acceleration, termination event, or modification of terms.

Though the new requirements are narrower than those originally proposed, they still have met with some backlash from the market. Panelist Ernesto Lanza, senior counsel at Clark Hill in Washington, said that he believes there are many issuers who have not been fully advised of what their new responsibilities will be.

Specifically, Lanza said, issuers need to be prepared to report any indications of “financial difficulty” related to their debts and obligations as soon as the rule is effective.

Rebecca Lawrence, chief counsel for public finance and fixed income sales and trading at broker-dealer Piper Jaffray (PJC), said underwriters and issuers are already butting heads over what is material and therefore needs to be disclosed.

Courts have said that materiality means information a reasonable investor would consider important in making an investment decision.

Underwriters generally want a lot of issuer disclosure due to the legacy SEC’s Municipalities Continuing Disclosure Cooperation initiative, which in 2016 resulted in 72 underwriters being fined by the SEC.

But issuers are already saying they don’t feel they should have to disclose certain obligations and covenants, Lawrence said.

“I doubt there’s going to be a lot of agreement on these concepts,” Lawrence said.

Olsen and Mark Zehner, deputy chief at the SEC enforcement division’s public finance abuse unit, pushed back against criticism of the amendments and complaints about a lack of guidance on the concept of materiality.

“These amendments very strategically focused on an information gap,” Olsen said.
Zehner suggested recording or otherwise documenting the materiality discussion so that enforcement officials who might investigate would be able to see a good faith effort to comply.

MSRB Chief Regulatory Officer Lanny Schwartz responded to criticism of the MSRB’s 2017 advisory warning against the “selective disclosure” by issuers of information to only a few potential investors. The “market advisory” triggered criticism because the topic is outside the scope of the MSRB’s regulatory authority.

“We have heard that criticism and we are very mindful of that criticism,” Schwartz said.

Schwartz, who joined the MSRB four months ago, said the MSRB will make an even greater effort to be clear that such market commentaries do not have regulatory implications. They are meant as educational, Schwartz explained, and the MSRB is confident in its legal right to make such commentary when it sees fit.

Dave Sanchez, a senior counsel at Norton rose Fulbright in San Francisco who moderated the panel, told Schwartz that nobody has a problem with education but that market participants are unsure what to make of “extraneous statements.” Zehner said that enforcement lawyers would not be guided by such commentary and that he had not read the selective disclosure advisory until recently.

The NABL conference concluded Friday. The group will convene again March 19-20, 2019, at its Tax & Securities Law Institute conference in San Diego.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/28/18 07:06 PM EDT

Increased Transparency to Continuing Disclosure Requirements.

Increased Transparency to Continuing Disclosure Requirements

In an effort to increase transparency and protect holders of municipal securities, on August 20, 2018, the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") added two new requirements to the continuing disclosure requirements of Rule 15c2-12 of the Securities Exchange Act (the "Rule").

The Rule requires underwriters in certain offerings of municipal securities to reasonably determine that the issuer or obligated person, such as a borrower of the proceeds from the sale of such securities, has agreed pursuant to a written agreement to provide to the Municipal Securities Rulemaking Board annual financial information, certain operating data and timely notice of certain listed events.

The following two requirements were added to the Rule (the "Amendment"):

– Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

– Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

The term "financial obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term "financial obligation" shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

Debt, Debt-Like and Debt-Related Obligations of Issuers and Obligated Persons

The Commission stated that the additional requirements to the Rule focus on "material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights." In particular, the focus of the Amendment is on "debt, debt-like and debt-related obligations," such as private placements and bank loans.

In addition, the Commission stated that "a financial obligation generally should be considered to be incurred when it is enforceable against an issuer or obligated person." For example, if an issuer enters into an agreement regarding a draw-down bond, the issuer or the obligated person should, according to the Commission, "provide notice at the time the terms of the obligation are legally enforceable against the issuer or obligated person, instead of each time a draw is made."

Form of Notice

The Commission did not prescribe a form of event notice for the Amendment. Instead, the Commission believes that market participants should consider developing best practices regarding the form of notice. However, the Commission stated that the event notices should generally include a description of the material terms of the financial obligation, including the date of the agreement, principal amounts, maturity dates, interest rates, default rates, method of computation for variable rates and acceleration provisions. Under the Rule, issuers and obligated persons will be required to file the new notices no later than ten business days following the occurrence of the event.

Compliance Date

The Amendment is effective as of February 27, 2019. This Amendment will only affect those continuing disclosure agreements entered into on or after February 27, 2019.

The new requirements added to the Rule are complex, and whether an event notice will need to be filed in connection with a financial obligation in accordance with a continuing disclosure obligation will depend on the specific facts and circumstances at hand. We recommend that you stay in touch with your counsel to discuss how the new requirements may affect your continuing disclosure obligations. It will be important to review and revise your continuing disclosure policies and procedures to incorporate the Amendment for any new bonds issued on or after February 27, 2019.

by Sarah C. Smith

September 18, 2018

McCarter & English LLP

MSRB Proposes Professional Qualification Requirements for Municipal Advisor Principals.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is charged by Congress with establishing competency standards for municipal advisor professionals. Today, the MSRB filed with the Securities and Exchange Commission (SEC) a proposed rule change to amend MSRB Rule G-3, on professional qualification requirements, to enhance the professional qualification standards for municipal advisor professionals who act in a principal capacity at their firms.

The proposed amendments to Rule G-3, in part, will require municipal advisor principals to pass both the existing MSRB Municipal Advisor Representative Qualification Examination (Series 50) and a new Municipal Advisor Principal Qualification Examination (Series 54) to be appropriately qualified as a municipal advisor principal. Read the notice.

The establishment of a principal-level examination for municipal advisor professionals by the MSRB ensures that individuals who engage in the management, direction or supervision of the municipal advisory activities of a municipal advisor firm and its associated persons demonstrate a specified level of competence in order to promote compliance with the rules and regulations governing such activities.

The MSRB anticipates offering a pilot version of the Series 54 examination from February 2019 through June 2019. Any municipal advisor principal will be able to take the pilot exam during the pilot period. Thereafter, when the permanent version of the Series 54 examination becomes available, all municipal advisor principals will have one year to become appropriately qualified by taking and passing the exam.

Date: September 19, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

Requesting Interpretive Guidance from the MSRB.

The MSRB is committed to facilitating industry understanding of, and compliance with, MSRB rules. The MSRB welcomes inquiries by regulated entities, including brokers, dealers and municipal securities dealers and municipal advisors, as well as issuers, attorneys, investors and other market participants relating to MSRB rules. To help ensure that requesters receive meaningful, effective and responsive assistance, the information below is provided to assist requesters in understanding the process and guidelines for asking for assistance from the MSRB.

Oral Interpretive Requests
A requester may contact the MSRB by telephone at 202-838-1330 to seek assistance in understanding an MSRB rule. MSRB Staff often can resolve many inquiries over the telephone by referring the caller to the specific rule language, any associated interpretive guidance, along with compliance resources and educational material that can be found on the MSRB's website at msrb.org.

In addition, the MSRB may receive inquiries from regulated entities on existing MSRB rules and interpretations that relate to a pending regulatory examination. To promote regulatory certainty essential to an effective regulatory framework, the MSRB staff may address, as appropriate to safeguard the integrity of the examining and disciplinary processes, an inquiry directly with the regulated entity or directly or jointly with the applicable examining authority (U.S. Securities and Exchange Commission, Financial Industry Regulatory Authority, Federal Reserve Board of Governors, Federal Deposit Insurance Corporation or Office of the Comptroller of the Currency).

As telephone inquiries are often, by their nature, informal and lack supporting documentation, responses will not necessarily contain a discussion of all material considerations, address the applicability of all MSRB rules or interpretations or all the possible regulatory and legal issues that may be involved. Information provided by MSRB staff in response to a telephone inquiry is intended as general information based on the facts as described by the requester, does not express any legal conclusion on the questions presented and should not be relied on as a definitive legal position of the MSRB.

Written Interpretive Requests
If a requester is seeking a more formal response to an inquiry, they may submit a written request for interpretive guidance to the MSRB at: MSRB Market Regulation, 1300 I Street NW, Suite 1000, Washington, DC 20005 or via email at: legalmail@msrb.org.

The written request should reflect any prior communications with MSRB staff relating to the issues presented; it is generally beneficial to speak with MSRB staff in advance of submitting a written interpretive request to discuss the request and allow staff to raise any additional questions that may help facilitate the interpretive guidance. The written request should include a description of the facts relating to the interpretive question, the MSRB rule(s) to which the facts relate and a description of the scenario under which those facts could arise. Upon receipt of a written interpretive request, MSRB staff will send an acknowledgement letter to the requester. The amount of time to provide a response to a written request for interpretive guidance varies depending on the facts and circumstances raised.

Depending on the specific facts and circumstances raised, MSRB staff may respond to the request orally or in writing or conclude that it is not appropriate to respond to the request. Additionally, in some circumstances, a written response to a request for interpretive guidance may necessitate formal Board action and could require SEC approval. MSRB staff will inform the requester of the internal process and provide opportunities throughout the process to supplement or withdraw the initial request.

The Role of the MSRB in Providing Interpretive Assistance
MSRB staff can only provide guidance on matters that raise questions of interpretation under the MSRB's rules and such guidance does not provide an exemption, safe harbor or no-action relief from compliance with MSRB rules. In responding to requests, the MSRB is not acting as the requester's attorney and communications are not subject to an attorney-client privilege.

Liquidity Coverage Ratio – Treatment of Certain Municipal Obligations as High-Quality Liquid Assets.

SIFMA provided comments to the Federal Reserve, the OCC and the FDIC on their interim final rule providing Level 2B HQLA treatment for certain municipal securities.

Read the comment letter.

Can EMMA Be Used as a Defense by Banks in VRDO Lawsuit?

WASHINGTON – The disclosure of some variable-rate demand obligation information on EMMA shouldn't be used to dismiss a lawsuit alleging fraud in VRDO remarketing because the whistleblower involved is providing non-public information gleaned from an independent investigation, lawyers for the plaintiff told an Illinois court.

Attorney Michael Behn of the Chicago law firm of Behn and Wyetzner made that argument along with others late last week, in urging a Cook County, Ill., Circuit Court judge to allow the suit to go forward.

The defendants, banks who provided remarketing services for Illinois VRDOs, had previously argued that the law requires the suit be dismissed in part because it is based on information that is available to the public through the Municipal Securities Rulemaking Board's EMMA website.

The outcome of the suit has wide-ranging implications because a victory for the plaintiff (relator) could set the table for more actions in other states.

The suit, filed as a False Claims Act action, charges that the remarketing firms set VRDO rates artificially high in order to be paid for remarketing services without having to remarket the securities, in violation of remarketing circulars and agreements that generally commit remarketing agents to try their best to set the rates at the level necessary to market the bonds at par.

A major point of contention is whether the claims of the relator, Edelweiss Fund LLC, which filed the suit on behalf of Illinois, are subject to a "public disclosure bar" under the law. That bar is intended to prevent whistleblower lawsuits brought on the basis of information available to the wider public.

The banks vigorously denied the fraud and other charges. In July, lawyers for the banks told the court that the suit is based entirely on publicly available VRDO reset information, including information posted on the MSRB's EMMA website. EMMA and other publicly-available websites are effectively news media, the defendants argued.

But in a Sept. 14 filing in response to the defendants' request to dismiss the suit, Behn told the court that the information disclosed on EMMA and elsewhere does not meet the threshold for dismissal under the disclosure bar.

"The EMMA website, which is the primary outlet through which the banks say Edelweiss' allegations were disclosed, does not qualify as 'news media' or an 'administrative' report," Behn said. "Any claimed disclosures on the EMMA website are inapplicable to the public disclosure bar."

Even if EMMA and the other websites the banks cite qualify as "news media," they do not disclose the alleged fraud, Behn added. The interest rates and information laid out in official statements reveal nothing of the alleged robo-resetting scheme, or of the collusion, of which Edelweiss claims to have direct knowledge.

"If the EMMA data constitutes disclosure of the misrepresented state of facts, where was the true state of facts publicly disclosed?" asked Behn.

Edelweiss brought the suit on the basis of non-public knowledge and data gleaned from Edelweiss' own investigation, Behn said, meaning that the banks' efforts to dismiss the suit on the basis of the public disclosure bar must fail.

Edelweiss is a Delaware-registered limited liability company formed specifically to pursue the litigation but is not identified beyond that in the suit. An expert consulting witness for Edelweiss is Michael Lissack, the former Smith Barney banker who helped the government win hundreds of millions of dollars — and reaped tens of millions of dollars himself in the process — from filing whistleblower lawsuits against Wall Street and other firms in 1995 over charges they engaged in yield-burning.

Behn's filing also attacked the several other points on which the banks sought to have the suit dismissed, including claims that Edelweiss has not properly alleged false claims or a conspiracy. The complaint lays out specific false statements, Behn wrote, namely the language in the remarketing agreements that pledges to remarket the bonds at the lowest rate permitting them to be sold at par.

The banks also attempted to have the court throw out the claims pertaining to conduit issuances, since Illinois is not on the hook for the conduit bonds and could not have paid the allegedly inflated remarketing fees. But the law does not require financial damage to Illinois for those claims to be upheld, Behn said, and courts have previously imposed False Claims Act liability when government interests were harmed regardless of direct financial loss to that government.

Scrutiny of the VRDO market appears to have grown in the months since the Edelweiss suit was unsealed in April. Sources told The Bond Buyer earlier this month that the Securities and Exchange Commission is conducting a sweep of the 12 top banks and broker-dealers that remarket VRDOs and has sent them letters seeking information and documents on their remarketing and rate resetting practices.

Other VRDO whistleblower and class action suits have been filed in courts in other states and the Justice Department's antitrust division is conducting a criminal investigation of VRDO remarketing practices of a number of banks and broker-dealers, some of the sources said.

But even if the court sides with Edelweiss and allows the suit to continue, it may be many months before it is decided.

"Cook County courts like to try cases before juries and so do we," Behn said. "We hope to get discovery done and this case to a jury within a year or two after we win this motion."

By Kyle Glazier

SOURCEMEDIA | MUNICIPAL | 09/17/18 07:10 PM EDT

MSRB Seeks Comment on Application of Content Standards to Advertisements by Municipal Advisors.

Read the Request for Comment.

Interview with David Vaudt, Chairman of the GASB.

An Interview with David Vaudt, Chairman of the GASB

Article from the October 2018 Risk Management Association Journal

Read the interview.

[09/05/18]

GASB Clarifies Guidance on Majority Equity Interests.

Norwalk, CT, September 4, 2018 — The Governmental Accounting Standards Board (GASB) has issued guidance clarifying the accounting and financial reporting requirements for a state or local government's majority equity interest in an organization that remains legally separate after acquisition.

A public hospital's acquisition of a rehabilitation center that remains legally separate after acquisition is an example of the type of transaction the new guidance addresses.

Under Statement No. 90, *Majority Equity Interests*, a government's majority equity interest in a legally separate organization should be reported as an investment if that equity interest meets the GASB's definition of an investment. In many instances, a majority equity interest that meets the definition of an investment should be measured using the equity method.

Statement No. 72, *Fair Value Measurement and Application*, defines an investment as "a security or other asset that (a) a government holds primarily for the purpose of income or profit and (b) has a present service capacity based solely on its ability to generate cash or to be sold to generate cash."

For a majority equity interest in a legally separate entity that does not meet the definition of an investment, Statement 90 requires a government to report the legally separate entity as a component unit.

Statement 90 also establishes guidance for remeasuring assets and liabilities of wholly acquired governmental organizations that remain legally separate. That guidance brings the reporting of those acquisitions in line now with existing standards that apply to acquisitions that do not remain legally separate.

Statement 90 is available on the GASB website, www.gasb.org.

What 'Adult Entertainment,' Puerto Rico And Chapter 9 Bankruptcy Have In Common.

To keep a sense of perspective during the ongoing contentious priority-of-liens fight in the Puerto Rico bankruptcy proceedings, consider the case of *Eric Joelner, Fish, Inc. d/b/a XXXtreme Entertainment v. Village of Washington Park, Illinois*. In the annals of municipal bankruptcy, this is a very small footnote, for sure, but still relevant.

Back in 2003, Washington Park was having a hard time paying its bills. The usual economic suspects were making it tough on this 2.5 square mile town of 5,300 residents with a 42% poverty rate—manufacturing jobs were gone, there were cuts to state aid, and people were leaving. By its own admission, it was "in the red" on its $3.8 million budget.

To make ends-meet, the town raised licensing fees on its highest revenue generating businesses: "adult entertainment" establishments. Those businesses within the city limits saw their licensing fees jump ten-fold, from $3,000 to $30,000.

Mr. Joelner, a long-time proprietor of such a "public service" business (the court's words, not mine) took exception on First Amendment grounds, sued and prevailed. Washington Park didn't get the revenues. The Village ultimately filed for bankruptcy protection, in part due to, among other things, yes, monies owed to the owner of a certain topless bar—Mr. Joelner, to be exact.

Priorities

That put the judge in the case in the rather thankless role of determining the priority of unsecured liens that, in addition to the bar's claim, included fees to lawyers, the police pension and one Johnny "Chico" Matt, the town's former public safety director. While the jokes write themselves about how to weigh the priority of lawyers against adult entertainment owners in the Washington Park case, the judge handling Puerto Rico's case faces the same issue of prioritization, just without any of the humor.

For example, look at the recent intricate proposal by the bondholders of Puerto Rico's sales-tax backed COFINA (Puerto Rico Urgent Interest Fund Corporation) debt seeking court approval in an upcoming hearing. It includes, in addition to a bond swap, a provision to pay themselves the $1.2 billion in Trustee-held funds. In justifying the plan, COFINA bondholders point to Act 91-2006 as the statutory security for their senior priority of lien claim.

The general obligation bondholders disagree vehemently. In their view, the plan gives COFINA investors, senior and subordinate, priority over what they see as their constitutionally protected priority lien. They point to Article VI, Section 8 of the Puerto Rico's Constitution.

Let the legal fisticuffs ensue.

Practitioner's Perspective

This problem of prioritizing and resolving conflicting claims falls to the job of the U.S. District Court magistrate. When it comes to municipal bankruptcies, one former judge on that court has given this a great deal of thought. Drawing from his considerable experience on the bench, most notably overseeing the $3 billion bankruptcy filing by Jefferson County, Alabama, the Honorable Thomas B. Bennett (Ret.) (now of Counsel with Bailey & Glasser) reflected on the problem of unsecured or conflicting liens when a municipality files under Chapter 9.

A Quick History Of The General Obligation Pledge

Since the general obligation (GO) security pledge backs the vast majority of debt issued by municipalities, the Counselor offered some key legal history as to how it came to pass. A democratic government is by and of the people; government entities cannot offer a lien on those things owned by the people. Hence the "general obligation" pledge: a promise to pay but not a lien on any specific public assets.

That left governments seeking to borrow with a problem. They lacked traditional hard assets to offer as a lien to secure payment. A promise to pay is not a lien. To make up for that, some states established a statutory mandate to back the GO pledge. Often local governments added unlimited taxes to the pledge as further, tangible security.

An Unsecured Security

But as the Detroit bankruptcy demonstrated, even the "unlimited tax" pledge has limitations. Bondholders found themselves fighting not only other unsecured creditors but also pensioners who claimed, well, a superior claim. Bondholders discovered, to their chagrin, that court can only rule on the GO pledge's priority in the pantheon of liens and claims; it cannot impose nor raise "unlimited taxes" by judicial decree. The "unlimited tax" bondholders took a cut that left them with 74 cents on the dollar.

James E Spiotto, retired partner of Chapman and Cutler LLP and now Managing Director Chapman Strategic Advisors LLC framed the problem succinctly: a paper right might not exist in reality. He too comes from a practitioner's perspective. A published author in the field of Chapter 9 bankruptcies, Spiotto not only practiced bankruptcy law but also provided testimony and written statements to the U.S. House of Representatives and Senate on the 1988 Amendments to Chapter 9 legislation.

A More Secured Security

Unsecured creditors are but one lien issue the court has to vet through. As government and its services expanded, politicians got "cutesy"— Bennett's words exactly. To avoid taking on more municipal debt on their balance sheet and having to go to the voters to raise taxes to support it, they created new financing authorities and agencies to fill the need. This begat types of security other than the GO pledge to back those bonds. Correspondingly, a cascade of varying liens and carve-outs developed as revenues from fees, sales taxes, taxes on incremental property values, tolls, fuel taxes and structured settlements—to list a few—were codified in bond documents as secured liens to repay debt holders.

Liening On The Law

As these liens developed, the law did not keep pace. This created a problem for the U.S. District Court judge adjudicating a Chapter 9 proceeding. Bennett observed that in a municipal bankruptcy, the law hasn't been fully fleshed out and the issues haven't been worked. Because municipal bankruptcy is rare and the causes unique, the Bench has limited guidance from which to draw when looking to apply legal criterion to determine priority among unsecured creditors. To misapply the words from Tolstoy's Anna Karenina, happy bondholders are all alike; every unhappy bankruptcy participant is unhappy in their own way. Stockton, Vallejo, Harrisburg and Central Falls make for good headlines; they leave little in terms of precedent in the case law for the courts to cite. The plethora of other liens, as the Puerto Rico example highlights, only complicates matters.

Statutory Direction

Bennet offered that, in the courtroom, the judge can only rely on the facts presented and make a determination based on the law. Here is where turning to the actual statute should offer direction. The Chapter 9 legislation establishing the municipal bankruptcy framework was drafted to offer guidance but also to be flexible. Since experience and case law didn't offer much, legislators had limited experience from which to draw. Additionally, there was the tacit acknowledgement of the varying circumstances in each bankruptcy. No law can be so comprehensive as to cover every situation, nor should it be. The courts need some leeway to find direction in working the law. Additionally, the drafters had to consider the varied state statutes governing bankruptcy; there are state by state laws as to whether or not a municipality can file and under what terms they can file if so permitted. Consequently, to take all these factors into account, the statute was crafted to offer guideposts as to process and procedure, but not dictate outcomes.

Spiotto contends that there is one aspect of the law that is clear. The U.S. Bankruptcy Court is bound to adhere to the Tenth Amendment of the U.S. Constitution and co-sovereignty the states. State laws and mandates cannot be rewritten from the bench. Equally, his view was that a municipality not only must pay any revenues dedicated to creditors but also those dedicated revenues cannot be used for other purposes until creditors are paid. Moreover, the municipality cannot be compelled by the court to not pay that which the state, by statute or otherwise, has mandated to be paid—which was the rationale behind the 1988 amendments to the federal statute.

Ultimately, that is the legal root of the dispute that continues to this day in Puerto Rico.

Academic Thinking

Discerning and prioritizing claims in municipal bankruptcies is on the minds of legal scholars as well. David Schleicher, professor of law, Yale Law School and fellow authors Adam J. Levitin, professor of law Georgetown University Law Center and Yale Law School graduate Aurelia Chaudhury, in their upcoming article *Junk Cities: Resolving Insolvency Crises in Overlapping Municipalities* (California Law Journal) take up the central question of conflicting security interests in Chapter 9 bankruptcy.

In this thoroughly researched and well-written piece, the authors contend that conflicts between bondholders as seen in Puerto Rico are just the tip of the iceberg and are likely to get more intractable. For example, one count had residents of Chicago paying taxes to 21 different districts, entities and authorities with separate levies on essentially the same underlying taxable boundary. It is not difficult to imagine the troubles one or more bankruptcy filings could create.

Seeing the emerging problem and noting that "Chapter 9 does not currently address the problems of overlapping local debt crises" and that the "statutory language is sufficiently capacious and indeterminate," Schleicher, et alia view that as an opportunity. They advocate that the vagueness leaves room for "both courts and state legislatures [to] develop tools to stop local governments from acting in ways that are collectively harmful, even if individually rational, during insolvency crises." Given the events in Puerto Rico, the authors may be both current and prescient.

What Guides The Final Plan

If plan approval were solely a matter of clean-cut law, the dispute would be over and done with in Puerto Rico, as some contend it should be.

But the fact that it *hasn't* been clean cut summons the issue that the law is conjoined by another factor the court must weigh—public policy. Municipal bonds fund essential public purposes. It is the core of their strength as an asset class. Businesses may come and go as public tastes change and technologies evolve. Municipal services—good schools, paved roads, clean water, green parks, lit streetlights and such—are necessary regardless. The law can say whatever it says but, if at the end of the day, a plan leaving a municipality bereft of resources to provide its citizens basic services yet still pays bondholders in full is dead before the ink dries on the brief.

This critical factor weighs on the mind of every justice overseeing a Chapter 9 proceeding and likely, in particular, the judge overseeing the case in cash-strapped and economically destitute Puerto Rico.

So what guides the court through the fog of litigation to address both the law and public policy so a plan can be approved? Spiotto presented three simple and to the point questions:

1. Is the plan feasible both economically and by implementation?
2. Is it in the best interest of the creditors?
3. Is it fair and just?

For a plan to be approved, the answer to each of these questions must be an unequivocal "yes."

There is a lesson for the municipal bond investor. When sorting through the seemingly overwhelming number of debt issues, their jumble of security liens and unduly complex documents, keep in mind that good economics and an essential public purpose will do more than any carefully drafted legal protections. Otherwise, be ready to face the risk of joining the unhappy bankruptcy family.

Forbes

by Barnet Sherman

Sept 6, 2018

Barnet Sherman has over 30 years of investment experience in the fixed income markets in credit analysis and portfolio management.

Barnet Sherman. Portfolio Manager, Credit Analyst, Published Author, and Speaker has over 30 years of investment experience in the fixed income markets.

[MSRB Request for Comment on Draft Interpretive Guidance on Pennying and Draft Amendments to Existing Guidance on Best Execution.]

[Read the Request for Comment.]

[Why MSRB is Concerned About `Pennying']

WASHINGTON – The Municipal Securities Rulemaking Board is requesting comment on draft guidance regarding "pennying" and best execution, giving the market the chance to weigh in before publishing information that could be influential in industry practices.

The MSRB released the request Friday, about five months after suggesting earlier this year that it would seek comment on the subject of pennying.

The request for comments on both sets of guidance is part of a formal process that could lead up to the formal adoption of that guidance.

The best execution rule guidance would actually be amendments to existing guidance on the relatively new rule, which took effect in March 2016.

The MSRB is seeking comments by Nov. 6.

Pennying, which is sometimes called "last look," occurs when a dealer places a retail client's bid-wanted out to the market and determines the winning bid, but then rather than executing the trade with the winning bidder marginally outbids the high bid and buys the bonds for its own account. The MSRB raised concerns about pennying in a letter to the Securities and Exchange Commission in October, and said following its April board meeting this year that it would request comment on the issue.

While the practice can appear beneficial in isolation because the dealer technically provides the customer a price equal to or better than the best bid, the MSRB is concerned that widespread pennying disincentivizes participation in the bid-wanted process, discourages bidders from giving their best price in a bid-wanted and "may impact the efficiency of the market."

A recent study of similar behavior in the equity market demonstrated an impaired market quality, the MSRB said.

The draft interpretive guidance states that using the bid-wanted process, whether via a brokers' broker or an alternative trading system solely for the purposes of price discovery could be a violation of the board's Rule G-17 on fair dealing.

The MSRB wants to know about the prevalence of pennying, whether dealers would bid more aggressively if they were confident pennying was not widespread, and how often dealers post the same bid-wanted simultaneously on multiple trading platforms.

The draft amendments to Rule G-18 on best execution provided a clarification that dealers need not necessarily put a bid-wanted out on multiple ATSs to fulfill their obligations to use "reasonable diligence" in seeking the best deal for their customer.

The amended language states that use of ATSs and brokers' brokers can create exposure to multiple dealers, each of which can constitute a separate market. However, the amendments state, if a dealer uses only one ATS or brokers' broker then its policies and procedures should be clear about the facts and circumstances that make that one venue sufficient to comply with the firm's obligations under the rule.

Securities Industry and Financial Markets Managing Director, Associate General Counsel, and Co-head of Municipals Leslie Norwood said SIFMA would be responding to the requests and appreciates the amendments on best execution.

"SIFMA and its members believe it is important for all market participants to be able to rely on fair and efficient markets," Norwood said. "With that in mind, SIFMA is reviewing the request for comment in anticipation of submitting a comment letter. Further, SIFMA believes that an unintended consequence of the best execution rule was an increase in firms believing it was necessary to put the same bond offering out to multiple ATSs and broker's brokers to comply with that rule. We appreciate the clarification that a single ATS or broker's broker captures offers/bids from multiple dealers, each of which can constitute a separate market."

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/07/18 07:07 PM EDT

['Flipping' Cases Raise Systemic Muni Market Questions.]

WASHINGTON – Activities like the flipping and kickback scheme regulators brought to light in California last month could undermine the integrity of municipal offerings, though one market participant suggests such conduct may be an unintended consequence of efforts to police priority order periods.

The Securities and Exchange Commission took administrative actions earlier this week to bar or suspend several more employees of RMR Asset Management, a California-based firm that allegedly participated in a years-long scheme that the SEC is continuing to investigate.

It is unclear how pervasive such conduct is in the muni market, but the Municipal Securities Rulemaking Board is concerned enough with what it calls "pre-arranged" trading that it plans to issue a request for comment regarding the practice.

The actions announced late Tuesday included orders against RMR and seven individuals charged with posing as retail investors in order to gain priority access to new-issue munis that were then "flipped" for profit to their own customers as well as the customers of other broker-dealers. In addition to sanctioning the firm, the SEC barred or suspended RMR owner Ralph Riccardi as well as "independent contractors" David Luttbeg, Philip Weiner, David Frost, Timothy McAloon, Douglas Derryberry, and Dewey Tran.

Taken together with previous actions, nearly the entirety of RMR has now settled with the Commission following separate judgments levied against them in federal court, while neither admitting nor denying the SEC's findings. Others continue to face litigation.

According to the SEC's complaint, the men operated as unregistered brokers from 2009-2016 when they used fake business names linked to local zip codes in order to fool issuers of muni bonds into thinking they were local retail investors. This alleged ruse gave them priority to purchase bonds, which they then sold to customers who had indicated interest in them. This was usually “at a price of one dollar above the initial offering price, without negotiation and irrespective of market value,” the SEC said in its complaint.

The case also involved another firm allegedly operating as an unlicensed broker-dealer, Core Performance Management, and the former head of municipal underwriting, sales and trading at registered New Jersey-based broker-dealer NW Capital Markets Inc.

LeeAnn Gaunt, chief of the SEC Enforcement Division’s Public Finance Abuse Unit said last month that the conduct alleged in the complaints “prevented true retail investors from receiving priority in municipal bond offerings.”

The SEC is not alone in its concerns, according to MSRB Chief Regulatory Officer Lanny Schwartz and MSRB General Counsel Michael Post. The two men noted that the MSRB amended its Rule G-11 on primary offering practices in 2013 to require dealers to report to underwriters whether orders they received in a retail order period met the issuer’s requirements for that order period.

MSRB rulemaking over the years has aimed to give the issuer considerable power to make determinations about retail order periods and other preferences, Schwartz and Post said, and conduct undermining those efforts troubles the board.

“Yes, we are concerned,” Schwartz said Wednesday.

The MSRB had been planning to ask the market to weigh in on whether it should issue new guidance under Rule G-17 on fair dealing that would address so-called “pre-arranged trading” that in some cases can look like the conduct alleged in the SEC’s complaints against RMR and Core Performance Management. But because the SEC has brought this enforcement action and is continuing to investigate, Schwartz said, the MSRB is now “waiting for the dust to settle” before returning to the idea in the future.

According to a document circulated by the MSRB, the board is concerned about situations in which a dealer contractually agrees to buy bonds from an investor at a markup in order to have a better chance of getting those bonds into its inventory. The dealer compensates the investor with that mark-up because it believes it will be able to sell those bonds at an even higher price in the secondary market. The MSRB said in that document it has concerns about customer orders being given less priority because orders appearing to be for an investor but which in reality are dealer stock orders get priority.

Such arrangements are often made through institutional investors, rather than retail investors, although some sources said retail investors can also figure into such arrangements.

The MSRB wanted to know, according to the document, whether such conduct was fair and whether or not the MSRB’s concerns were valid. A lawyer who asked not to be identified said there appears to be a roughly equal split on those questions.

Dee Wisor, an attorney at Butler Snow in Denver, said he was not aware of any pervasive problem with “flipping” or pre-arranged trading. But he said issuers would probably care if retail order periods were being flouted.

“That’s where they’d be concerned,” Wisor said. “If somehow bonds weren’t ending up with people in their local communities, if that’s what they want.”

Another lawyer said that pre-arranged trading and flipping are incentivized by the MSRB’s efforts to crack down on the historically more loosely-regulated area of retail and other priority order periods. While the lawyer agreed that colluding to subvert the issuer's stated criteria for orders was wrong, he said he thought an investor could legitimately purchase bonds to sell to an interested dealer at a profit so long as such activity was not frequent enough to become his or her "business," as they might then become an unregistered broker dealer because the law defines a dealer as one "engaged in the business" of buying and selling securities.

"How tightly one should define and enforce retail order periods is a question in itself," the lawyer said. "Are we just going to be chasing our tails for years?"

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/06/18 07:05 PM EDT

Task Force on Climate-Related Financial Disclosures Releases Three Key Documents that Serve as Building Blocks to Describe and Support Implementation of the Task Force's Recommendations.

On June 29, 2017 the Task Force released three key documents that serve as building blocks to describe and support implementation of the Task Force's recommendations.

Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures
Provides context, background, and the general framework for climate-related financial disclosures and is intended for broad audiences.

Annex: Implementing the Recommendations of the TCFD
Provides the next level of detail to help companies implement the recommendations and is a "living" document that will likely be refined as companies gain more experience preparing climate-related financial disclosures. Includes information on applying the recommendations, guidance for all sectors, and supplemental guidance for select financial sectors and non-financial groups.

Technical Supplement: The Use of Scenario Analysis in Disclosure of Climate-Related Risks and Opportunities
Provides a further level of detail that can be helpful for companies in considering scenario analysis. It describes key publicly available scenarios and resources on scenario analysis.

Task Force on Climate-Related Financial Disclosures

The California Heat Assessment Tool.

As California's climate warms, residents increasingly endure extreme heat events that adversely impact public health. This exacerbates existing risks and will bring new challenges for different regions in the state, threatening the efficacy of traditional intervention strategies. Current thresholds for heat alerts are based on temperatures that exceed historical statistical thresholds, rather than temperatures that cause public health impacts. These 'health-neutral' thresholds may underestimate the health risks for the most sensitive populations. The new California Heat Assessment Tool (CHAT) is based on research that establishes local, health-based thresholds for extreme heat that help public officials, health professionals and residents understand what changing conditions mean for them. CHAT is part of California's Fourth Climate Change Assessment, a state-mandated research program to assess climate change impacts in California, and was developed by Four Twenty Seven, Argos Analytics, the Public Health Institute and Habitat 7 with technical support from the California Department of Public Health.

FourTwentySeven

by Nik Steinberg
Director of Analytics

August 27, 2018

MSRB Requests Information on Municipal Market Indicators.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a request for information on the accessibility, methodology and utility of the yield curves and other benchmarks currently available in the municipal market.

Market indicators can provide sector-specific or broad market information about the general level of municipal interest rates. The MSRB is seeking information to help support its long-term vision to enhance the Electronic Municipal Market Access (EMMA®) website and provide increased access to information and tools that help municipal bond investors, issuers and others make more informed decisions. The MSRB is not seeking information as a precursor to any rulemaking proposal.

"This request for information is designed to help the MSRB better understand the current landscape of municipal market indicators," said MSRB Executive Director Lynnette Kelly. "We hope to learn more about how these important benchmarking tools are developed and used by the diverse participants in our market, including issuers, retail investors, institutional investors and market professionals."

Answers to questions posed in the request for information and any supporting data should be submitted to the MSRB no later than November 27, 2018. Read the request for information.

Since 2012, the MSRB has worked to enhance understanding of the methodologies, mechanics and functions of municipal market indices, yield curves and other benchmarks by providing educational resources for investors and state and local governments. It has also made benchmarks more widely available by incorporating several third-party yield curves and indices into the MSRB's Electronic Municipal Market Access (EMMA®) website.

Date: August 27, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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S&P: SEC Disclosure Rule Changes Will Improve Transparency, But Municipal Bank Loan Structures Can Still Carry Hidden Risks.

The SEC's amendments to the municipal securities disclosure rule 15c2-12, announced Aug. 20, will improve disclosure of risks associated with many bank loan structures.

Continue reading.

Aug. 28, 2018

SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure: Orrick

On August 20, 2018, the Securities and Exchange Commission adopted amendments to Rule 15c2-12 of the Securities Exchange Act in order to enhance transparency in the municipal securities market. The adopted changes focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness or an existing security holder's rights. The amendments add two new events to Rule 15c2-12 of the Securities Exchange Act, which requires brokers, dealers and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities to reasonably determine that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board timely notice of certain events.

Press Release.

Final Rule.

August 30, 2018

US Federal Reserve Board, OCC and FDIC Issue Interim Final Rule with Respect to the Treatment of Certain Municipal Obligations as High-Quality Liquid Assets: Sherman & Sterling

The U.S. Board of Governors of the Federal Reserve System, U.S. Office of the Comptroller of the Currency and U.S. Federal Deposit Insurance Corporation jointly issued an interim final rule and request for comment to treat "liquid and readily-marketable," investment grade municipal obligations as level 2B high-quality liquid assets (HQLAs) for purposes of the liquidity coverage ratio rule. The interim final rule implements Section 403 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends Section 18 of the Federal Deposit Insurance Act and requires the Federal Reserve Board, OCC and FDIC to treat qualifying municipal obligations as high-quality liquid assets (i.e., level 2B liquid assets) for purposes of the LCR rule and any other regulation that incorporates the definition of "high-quality liquid asset" or similar term. For purposes of the LCR rule, the term "municipal obligation" is defined to mean "an obligation of a state or any political subdivision thereof or any agency or instrumentality of a state or any political subdivision thereof. In order for a municipal obligation to qualify as a HQLA, it must be liquid and readily-marketable and investment grade at the time of calculation. With respect to the definition of liquid and readily-marketable, the interim final rule harmonizes the definition across the three agencies and adopts the Federal Reserve Board's definition, which defines the term as a security that is traded in an active secondary market with: (i) more than two committed market makers; (ii) a large number of non-market maker participants on both the buying and selling sides of transactions; (iii) timely and observable market prices; and (iv) a high trading volume. Section 403 also provides that the term "investment grade" has the meaning given in 12 C.F.R. Part 1, which requires that the issuer of a security has adequate capacity to meet financial commitments (meaning that the risk of default is low and full and timely repayment is likely) under the security for the projected life of the asset or exposure. In addition, consistent with the EGRRCPA, the Federal Reserve Board is rescinding its 2016 amendments to the LCR rule, which treated a narrower range of municipal obligations as HQLAs. With respect to FDIC- and OCC-regulated financial institutions, municipal obligations were not previously permitted to be treated as HQLAs. The interim final rule will take effect upon its publication in the Federal Register, with comments due within 30 days of publication.

[View full text of the interim final rule.]

Shearman & Sterling LLP

August 30, 2018

[Commentary BDA Calls on Michigan Legislature to Promote Investment, Not Hamper Growth.]

Michigan municipalities' statewide have turned the corner since the 2008 recession. According to the Center for Michigan, since 2009 the state has the nation's seventh fastest growing economy. Investment is flowing back into the state including Metro Detroit where the economy accounts for over half of the state's GDP.

Recently State Treasurer Nick Khouri announced that for the first time in nearly two decades, no Michigan municipality or school district was under state financial oversight. This feat is an incredible accomplishment by issuers in the state and demonstrates most issuers across Michigan are quite capable of managing their finances prudently.

As cities continue to build upon their fiscally stable condition, a Michigan Senate bill was introduced that could hamper the continued growth and force residents – all taxpayers – to pay more for daily services and infrastructure, while limiting the ability of municipalities to finance vital capital infrastructure including roads, bridges, schools and more.

Senate Bill No. 1054, the Revised Municipal Finance Act, would be detrimental to this recovery. This bill will create unintended consequences by increasing debt costs for municipalities, school and water districts, extending timely access to the capital markets, and isolating municipalities from much of the municipal securities market.

If passed, the bill would prohibit issuers from negotiated underwritings of municipal bonds, limiting their choice and forcing issuers of public debt to sell their debt in competitive underwritings in nearly all cases, removing a critical issuance option and isolating municipal issuers in Michigan.

What is the difference between competitive and negotiated underwritings you may ask? The Bond Dealers of America is the trade association in Washington, DC representing the U.S. bond markets and while the BDA is not advocating in favor of one or the other, it is essential to understand the difference and the important role each can play for municipalities.

In a competitive sale of municipal bonds, an issuer publishes a notice of sale and seeks bids on its bonds from underwriters across the marketplace. Issue size and structure is predetermined, and the bond issue is awarded to the bidder offering the lowest interest cost. In a negotiated sale, an issuer selects an underwriter or group of underwriters to purchase its bond issue. The selected underwriter works closely with the issuer to structure and market the bonds, and the terms of the issue are tailored to the needs of the issuer and the demands of investors.

Many observers of the municipal marketplace have debated whether competitive or negotiated underwritings are more cost-effective for municipal issuers, and the BDA is not taking a position in that debate. However, what is beyond debate is that categorically eliminating the ability of Michigan municipalities to access the marketplace through negotiated underwriting will limit their ability to respond to market conditions, create unnecessary hurdles to market access, and diminish the cost-effectiveness of their bond issuances. The end result will be increased costs to the taxpayer, especially for those constituents of issuers whose bond offerings are more complex, whose credit quality is less than ideal, or who sell public debt in distressed or volatile market environments.

Municipal bond financing is working well for local governments in Michigan, so why limit the tools available to issuers by prohibiting one of the ways in which bond issuances are transacted?

We call on the Senate to reject Senate Bill No. 1054 and allow municipalities to be able to continue to issue debt in the manner that works best for them, and not to force a one-size-fits-all methodology that will cost taxpayers more of their hard-earned money.

Bond Dealers of America

August 31, 2018

By Michael Nicholas

MSRB Supports SEC Decision Regarding Bank Loan Disclosure.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today said it supports a decision by the Securities and Exchange Commission (SEC) that will result in issuers of municipal securities and obligated persons publicly disclosing additional information about bank loans and other material financial obligations, certain material terms in connection with financial obligations, and specified events that reflect financial difficulties.

“The MSRB believes this SEC action is a major step to ensure investors have a better understanding of the financial status of municipal securities issuers and conditions that could affect the repayment of bonds,” said MSRB President and CEO Lynnette Kelly.

The SEC decision to amend its Rule 15c2-12, designed to ensure the public availability of certain disclosures about municipal securities, means that additional information about bond issuers will be available on the MSRB’s Electronic Municipal Market Access (EMMA®) website. EMMA provides public access to municipal bond trade price, disclosure and other information.

Under Rule 15c2-12, municipal securities underwriters generally must secure an agreement from issuers and obligated persons to make publicly available certain ongoing information about the security. Examples include annual financial statements and the occurrence of certain material events. The new disclosures required by the SEC's action must be included in continuing disclosure agreements in connection with offerings that occur after the compliance date specified in the SEC's order (180 days following publication of the order in the Federal Register).

The MSRB is in the process of updating the EMMA website to accept and display the new disclosures. EMMA currently accepts and displays bank loan and alternative financing disclosures on a voluntary basis.

Date: August 21, 2018

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Seven Things to Know About the SEC's Amendments to Rule 15c2-12: McGuireWoods

In about six months, municipal bond issuers and obligated persons will see additions to their continuing disclosure undertakings related to SEC Rule 15c2-12, and broker-dealers will need to have systems in place to ensure compliance with those new undertakings.

On Aug. 20, the Securities and Exchange Commission released adopted amendments to Rule 15c2-12, adding two events to the list of events needed to be included in continuing disclosure undertakings related to Rule 15c2-12. The amendments also add to Rule 15c2-12 a corresponding definition and make a technical amendment.

Pursuant to these amendments, future continuing disclosure undertakings must include the following notice events:

(a) Incurrence of a material financial obligation of the issuer or obligated person, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

(b) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The amendments define "financial obligation" as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The definition does not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board (MSRB), consistent with Rule 15c2-12.

In addition to issuers and obligated persons updating the form of a continuing disclosure agreement (and their disclosure policies), and broker-dealers updating their 15c2-12 compliance procedures, below are seven notable takeaways from the adopting release (Exchange Act Release No. 34-83885):

1. **Existing continuing disclosure undertakings are unaffected.** The amendments apply only to "primary offerings" that close on or after the compliance date, which is 180 days after publication

of the amendments in the Federal Register. A "primary offering" is an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities (i) that is accompanied by a change in the authorized denomination of such securities from $100,000 or more to less than $100,000; or (ii) that is accompanied by a change in the period during which such securities may be tendered to an issuer of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.In other words, after the amendments become effective, existing continuing disclosure undertakings will be unaffected by the amendments. However, existing undertakings related to securities that are remarketed as part of a primary offering under 15c2-12 (where the remarketing closes after the compliance date), will need to be revised to comply with the amendments.
2. **The definition of "financial obligation" includes only debt, debt-like and debt-related obligations, but it does not include ordinary liabilities.** In the adopting release, the SEC notes that ordinary financial and operating liabilities are not included in the definition of financial obligation. When earlier proposed, the amendments included a broader definition of financial obligation. However, based on public comments received, the SEC elected to narrow the definition of financial obligation to transactions that are debt, debt-like or debt-related because those transactions are more likely to affect liquidity, overall creditworthiness or an existing security holder's rights. (See Section III(A)(2)(i) of the adopting release.)
3. **Event notices must be filed upon the occurrence of any of the events that reflect financial difficulties, regardless of whether the related financial obligation was incurred before the effective date of the amendments.** Unlike the impact of the amendments on existing continuing disclosure undertakings described in (1) above, if a default or other event reflecting financial difficulties under any financial obligation occurs (regardless of when that financial obligation was incurred), an event notice would be required under an undertaking that includes the notice events added by the amendments. (See Section III(A)(3)(v) of the adopting release.)
4. **Broker-dealers will not need to perform diligence on an issuer's or obligated person's past compliance with the events added by the amendments unless the issuer or obligated person has a continuing disclosure undertaking that includes the added events.** The SEC recognized that for continuing disclosure agreements entered into before the compliance date, the recommending dealer would receive notice solely of those events covered by such continuing disclosure undertaking, which would likely not include any of the events added by the amendments. Consequently, the adopting release states that for municipal securities issued prior to the compliance date, broker-dealers will not need to have procedures in place that provide reasonable assurance that they will receive prompt notice of the events added by the amendments. However, a dealer cannot recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraphs (b)(5)(i)(C) and (D) and paragraph (d)(2)(ii)(B) of Rule 15c2-12 with respect to the security.
5. **Leases are not included in the definition of financial obligation, except when they are debt or debt-like.** The proposed definition of financial obligation included leases, but the SEC deleted lease from the definition in the adopted version because it considered the term too broad. However, any lease that operates as a vehicle to borrow money, such as an equipment financing lease, is included in the definition. (See Section III(A)(2)(i) of the adopting release.)
6. **A notice of the incurrence of a material financial obligation generally should include a description of the material terms of the financial obligation.** However, the SEC provided little guidance on its interpretation of materiality, leaving the determination to the reporting entity. The SEC provided the following examples of material terms: date of incurrence, principal amount, maturity and amortization, interest rate (if fixed) or method of computation (if variable) plus any default rates, and other terms, depending on the circumstances. The SEC acknowledges

that this requirement may, depending on the facts, be achieved by submitting a summary of the terms, the term sheet or the applicable transaction documents, like a continuing covenant agreement.

7. **Derivative instruments of the type described in the definition of financial obligation must always be disclosed on EMMA, even if the underlying debt would be exempt from disclosure under the amendments because the underlying debt is the subject of a final official statement that was provided to the MSRB.** Such exemption from disclosure extends only to securities for which a final official statement is required to be provided to the MSRB under Rule 15c2-12. It does not extend to the derivative instrument related to those securities. In addition, the exemption does not extend to securities for which the final official statement was provided to the MSRB voluntarily. Only securities in a primary offering that is subject to Rule 15c2-12 are exempt under the amendments.

McGuireWoods LLP

August 24 2018

SEC Adds Two New Disclosure Events to Rule 15c2-12.

On August 20, 2018, the US Securities and Exchange Commission (SEC) adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934. These amendments require additional disclosure related to the material financial obligations of municipal issuers and conduit borrowers.

Through Rule 15c2-12, the SEC indirectly imposes disclosure obligations on municipal issuers and obligated persons by requiring that underwriters in primary offerings of municipal securities reasonably determine that the issuer or obligated person has agreed to provide certain annual financial and operating information, audited financial statements and timely notice of certain events to the Municipal Securities Rulemaking Board (MSRB). Previously, notice event obligations were largely tied to events affecting the securities issued in that particular offering—for example, payment defaults, changes to credit or liquidity providers, or adverse tax opinions to the extent that any of the foregoing affected those securities. These amendments represent a shift toward more timely and comprehensive disclosure about the issuer or obligated person’s financial health.

The SEC has become more active in regulating the municipal securities markets in recent years. An increase in direct placements of debt obligations with banks or investors in lieu of public offerings has led regulators to focus more on general disclosure of financial obligations. The MSRB and other industry organizations had encouraged voluntary disclosure with respect to financial obligations. However, after these efforts elicited only limited participation, the SEC determined that amending Rule 15c2-12 was appropriate to “improve [investors’] ability to analyze their investments and, ultimately, make more informed investment decisions.” Consequently, the amendments add the following two notice events:

- “Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
- “Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.”

These notice events are consistent with the SEC's March 2017 proposed rule. In response to several commenters' concerns about the broad definition of "financial obligation" in the proposed rule, the SEC narrowed the definition of "financial obligation" in the final rule to mean a "(i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (iii) a guarantee of (i) or (ii)."

While there are substantive differences, these additional notice events will remind conduit borrowers that are also SEC registrants of the Form 8-K events relating to material definitive agreements, material financial obligations and triggering events that accelerate or increase a financial obligation.

The compliance date for these amendments will occur 180 days after the amendments are published in the Federal Register. Beginning on that date, municipal issuers and obligated persons entering into continuing disclosure agreements required by Rule 15c2-12 will need to include the new notice events. Continuing disclosure agreements entered into prior to the compliance date will not be affected.

For the SEC's press release regarding the amendments, see https://www.sec.gov/news/press-release/2018-158.

Eversheds Sutherland (US) LLP

by Herbert J. Short, Jr., Darryl F. Smith and Will Pickens

August 23 2018

SEC Adopts Amendments to Rule 15c2-12.

On August 20, 2018, the U.S. Securities and Exchange Commission ("SEC") announced it adopted amendments to Rule 15c2-12 of the Securities Exchange Act ("Rule 15c2-12"). Rule 15c2-12 requires brokers, dealers, and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities to reasonably determine that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board ("MSRB") timely notice of certain events.

The adopted amendments add two new events to the list included in the rule:

(15) Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The amendments define the term "financial obligation" to mean a: (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

While the amendments address some of the concerns raised by market participants, the amendments do not address all of the concerns. For example, numerous commenters asked the SEC to provide guidance on how to determine the materiality of a financial obligation. The SEC responds by stating that an issuer may consider a number of factors when assessing the materiality of a particular financial obligation, however, at this time, the SEC does not believe it is necessary to provide additional guidance.

The compliance date for the amendments is 180 days after the amendments are published in the Federal Register (the "Compliance Date"). The amendments will only affect those continuing disclosure agreements entered into on or after the Compliance Date. However, an event under the terms of a financial obligation pursuant to (b)(5)(i)(C)(16) that occurs on or after the Compliance Date must be disclosed regardless of whether such obligation was incurred before or after the Compliance Date.

A copy of the SEC's adopting release may be found here.

It is important that market participants understand the impact of the amendments on their current obligations, including under the federal securities laws and MSRB rules.

Bracewell LLP

by Paul S. Maco, Edward Fierro and Britt Cass Steckman

August 20 2018

SEC Approves Narrower 15c2-12 Disclosure Amendments.

WASHINGTON — The Securities and Exchange Commission has released a final set of more narrowly tailored amendments to its Rule 15c2-12, which will create new disclosure obligations for issuers who incur debt outside of the municipal bond market.

The SEC said that the final rules, which were approved in writing by commissioners on Aug. 15 without a meeting, "will focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness, or an existing security holder's rights."

The compliance date for the rules will be 180 days after they are published in the Federal Register.

Reaction to the final rules was mixed, with some groups saying the revisions are helpful and others suggesting more changes should have been made.

The SEC's initial proposal last year to add two new event notices to the list of events issuers must agree to disclose through the Municipal Securities Rulemaking Board's EMMA system met with backlash for what many issuers thought was an overly broad definition of a "financial obligation."

"Our municipal securities market is a $3.844 trillion dollar market, with new issuances of approximately $448.1 billion in 2017," SEC chairman Jay Clayton said in a statement on the final rules. "Our Main Street investors are exposed to this market through many channels, including through mutual funds, money market funds, closed-end funds, and exchange-traded funds. Disclosures required by these rule amendments will better equip investors and intermediaries to make informed investment decisions about municipal securities."

The final rules will require disclosure of the incurrence of a financial obligation of the issuer or obligated person, if material, as well as any agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, if these are material.

Under the new rules, “financial obligation” means a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation or a guarantee of a debt obligation or derivative.

Gone from the rules is the broader language that included leases and “a monetary obligation resulting from a judicial, administrative or arbitration proceeding.”

That change is in line with what many bond lawyers had expected, as the SEC received close to 100 comments on the proposal and a large many of those arguing for a more narrow definition of “financial obligation.”

The rules also will require an event notice to be filed for certain actions or events related to the financial obligation that “reflect financial difficulties” such as a default, event of acceleration, termination event, or modification of terms.

Underwriters will have to reasonably determine that an issuer or borrower has agreed to provide notice of such events in order to be able to underwrite the bonds.

The SEC approved the final rules in an effort to better reflect the reality that many issuers have been incurring debt outside of the traditional bond market, particularly through private transactions with banks.

The SEC cited the Federal Deposit Insurance Corp.’s Consolidated Reports of Condition and Income filed by financial institutions, which show that the dollar amount of commercial bank loans to state and local governments has tripled since the financial crisis, increasing to $190.5 billion by the end of the first quarter 2018 from $66.5 billion as of the end of 2010.

Reaction to the SEC’s move varied.

Securities Industry and Financial Markets Association Managing Director and Associate General Counsel Leslie Norwood said the group is disappointed that the SEC did not incorporate into the revised rule any of SIFMA’s suggestions from its 2016 white paper on Rule 15c2-12. In that paper, SIFMA suggested various changes, including asking that rating changes no longer be event notices since the MSRB’s EMMA website now provides live ratings information.

“SIFMA’s broker-dealer members are disappointed that the SEC did not take this opportunity to adopt any of the suggestions in SIFMA’s Rule 15c2-12 white paper to streamline, update, and minimize unnecessary burdens of Rule 15c2-12,” Norwood said. “We hope that the SEC will address these issues in the future.”

Brett Bolton, vice president of federal legislative and regulatory policy at the Bond Dealers of America said BDA will be working to digest the changes.

“The lack of transparency of bank loans within the municipal securities market has created concerns among investors for many years,” Bolton said.

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said GFOA will be focused on how to help issuers make materiality determinations for these new event notices.

"While we are pleased to see a narrowing of the definition of financial obligations to be only related to debt obligations and derivative instruments, and not ordinary financial and operating liabilities nor judicial, administrative or arbitration proceedings, our focus will need to be on helping communities understand how to address these issues and discuss with counsel and their financing team how to determine and make such material event filings," she said.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 08/20/18 07:16 PM EDT

SEC Amends Municipal Bond Continuing Disclosure Rules.

On August 15, the Securities and Exchange Commission (SEC) adopted amendments to the Securities Exchange Act Rule 15c2-12 (the "Rule") intended to better inform investors and others about the current financial condition of issuers of municipal securities and obligated persons. In its press release announcing the amendments to the Rule, the SEC noted as background that "[d]irect placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities have increased since 2009, demonstrating the need for more timely disclosure."

The Amendments

The Rule governs continuing disclosure by prohibiting an underwriter in a primary offering from underwriting most municipal securities unless the underwriter has reasonably determined that the issuer of such securities, or an obligated person, has agreed in writing (e.g., pursuant to a Continuing Disclosure Agreement) to make the required post-issuance disclosures. The amendments add additional events to the list of event notices that an issuer or obligated person needs to provide to the Municipal Securities Rulemaking Board via its electronic platform "EMMA" within 10 business days of the event's occurrence. The two new events are:

- incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- default, event of acceleration, termination event, modification of terms or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The term "financial obligation" is defined as a (i) debt obligation, (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for an existing or planned debt obligation, or (iii) guarantee of (i) or (ii). The term financial obligation does not include municipal securities for which a final official statement has been filed with EMMA pursuant to the Rule.

The Effective Date

The compliance date is 180 days after the final rule is published in the Federal Register.

The attorneys in Day Pitney's Municipal Finance Group routinely counsel clients on addressing compliance with their disclosure obligations. Please feel free to contact any of the attorneys listed to the right of this alert if you would like to discuss this alert or your disclosure obligations.

Day Pitney Alert

August 21, 2018

by Namita Tripathi Shah Judith A. Blank Douglas W. Gillette

MSRB Seeks Input on Draft FAQs on Use of Social Media in Advertising.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today sought comment from regulated entities and other stakeholders about draft answers to frequently asked questions (FAQs) addressing the use of social media in advertising by municipal advisors and municipal securities dealers and their associated persons.

“As social media becomes a more common communication tool, developing effective compliance policies and procedures for digital interactions is increasingly important for municipal market participants,” said MSRB President and CEO Lynnette Kelly. “The MSRB recognizes that municipal advisors, in particular, need guidance as they prepare to comply with newly established advertising regulations.”

New MSRB Rule G-40, on advertising by municipal advisors – together with amendments to MSRB Rule G-21, on advertising by municipal securities dealers – becomes effective on February 7, 2019. The MSRB has committed to providing guidance in advance of the effective date to assist regulated entities as they develop their compliance policies and procedures. In addition to today’s draft guidance on social media, the MSRB has sought feedback on draft FAQs on the use of municipal advisory client lists and case studies under Rule G-40. Next month, the MSRB plans to seek input on draft guidance related to Rule G-40’s content standards.

The MSRB developed today’s draft FAQs to enhance market participants’ understanding of permissible and impermissible uses of social media in the context of MSRB advertising regulations and certain other MSRB rules. The draft guidance was crafted with the purpose of maintaining consistency with the guidance of other regulators under comparable advertising regulations.

Read the request for comment. Comments should be submitted no later than September 14, 2018.

Date: August 14, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

MSRB Requests Comment on Draft FAQs Related to the Use of Social Media under Advertising Rules.

The MSRB is seeking public comment on a draft set of frequently asked questions (FAQs) related to the use of social media in advertising by municipal advisors and municipal securities dealers applicable under Rule G-21 and Rule G-40.

The draft FAQs can be viewed [here](#).

In May, the SEC approved the MSRB's proposed Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities, despite opposition from almost all broker-dealer groups. Both new Rule G-40 and amendments to G-21 are set to be effective on February 7, 2019.

In July, the BDA submitted a comment letter to the MSRB concerning a draft set of frequently asked questions (FAQs) related to the use of municipal advisory client lists and case studies under Rule G-40. The final comment letter can be viewed [here](#).

Bond Dealers of America

August 14, 2018

[BDA Continues to Be Leading Voice in Opposition to Michigan Senate Bill Restricting Negotiating Underwriting.](#)

WASHINGTON – Municipal bond market players in Michigan are at odds over a bill pending in the state Senate would require localities to sell municipal bond issues over $500,000 on a competitive or public basis to the underwriter offering the lowest interest cost. The municipalities also would have to publish a notice of sale at least seven days before the sale under amendments to the Revised Municipal Finance Act (Senate Bill No. 1054), which was drafted by John Axe, senior counsel at Clark Hill in Detroit. The measure was introduced on June 7 by Senate Finance Committee Chair Jack Brandenburg, a Republican from the eighth district in Harrison Township.

Axe, who said his clients include the Detroit Legal News, said the bill is an attempt to go back almost 20 years ago when the Municipal Finance Act required local governments to sell bonds competitively with public notices of the sales. In 2001, he said, the Michigan Legislature revised the Municipal Finance Act to allow municipalities to sell bonds on a negotiated or a competitive basis. At the time, state lawmakers promised to revise the new law if it didn't work, Axe said. During the last four years, fewer than 10% to 15% of bond issues have been sold on a competitive basis, which saves issuers money, Axe said, adding, "We even require competitive bidding for a garbage truck." "It's changed dramatically," said Axe. "But there's no way of tracking it because there's no public sale notice requirement." But Patrick McGow, a principal at Miller Canfield and head of its public finance group, said the earlier bill, which dated back to the 1940s, only required certain bond issues to be sold competitively and contained many exceptions. The Revised Municipal Finance Law was passed in 2001 to allow local governments to decide how to sell their bonds, he said. The pending bill would amend that law. "From my perspective, we oppose [the bill] because the legislation would restrict the ability of local governments and school districts to select the best method to sell bonds at the lowest rate and cost to the taxpayer," he said. "There are many issuers, credits, financial structures, and programs where a competitive sale is not the best choice." McGow also noted the bill would treat state and local issuers differently.

Mike Nicholas, chief executive officer of the Bond Dealers of America, warned the bill "would create unintended consequences by increasing debt cost for municipalities and schools, reducing timely access to the capital markets, and isolating municipalities from much of the municipal securities market and advisors in that market." Nicholas stressed that BDA is not taking a position in the long-standing debate over whether competitive or negotiated underwritings are more cost-effective for municipal issuers. “However, what is beyond debate is that categorically eliminating the ability of Michigan municipalities to access the marketplace through negotiated underwritings will limit their ability to respond to market conditions, create unnecessary hurdles to market access, and diminish the cost-effectiveness of their bond issuances,” Nicholas said. “The end result will be increased costs to the taxpayer, especially for those constituents of issuers whose bond offerings are more complex, whose credit quality is less than ideal, or who sell public debt in distressed or volatile market environments.”

“We call on the Senate to reject Senate Bill No. 1054 and allow municipalities to be able to continue to issue debt in the manner that works best for them, and not to force a one-size-fits-all methodology that will cost taxpayers more of their hard-earned money,” he said. Some legislative observers in Michigan said the bill doesn’t have much of a chance of passage because the Legislature is currently out on summer recess and there are not many legislative days left in the session.

“At this point I don’t think it has much legs,” said one source who did not want to be identified. But Axe said, “I think we’ve got a good chance of getting it passed.” Brandenburg is term-limited and must leave the Michigan Senate at the end of the session. State senators are limited to two four-year terms, sources said. Brandenburg would like this bill to be part of his legacy, they said.

Bond Dealers of America

August 15, 2018

By Lynn Hume

BDA Submits Comment Letter on CFTC’s Proposed Amendments to the De Minimis Exception to the Swap Dealer Definition.

Today, August 13, 2018, the BDA submitted a comment letter to the Commodities Futures Trading Commission (CFTC) in response to its request for comment on proposed amendments to the de minimis exception within the swap dealer definition. You can review a copy of the BDA’s draft letter here.

BDA Comment Letter Summary-Primary Areas of Focus:

- The aggregate gross notional amount threshold for the de minimis exception should be set at $8 billion in swap dealing activity or an amount in excess of $8 billion
- An exception should exist for swaps entered into by insured depository institutions in connection with originating loans
- An exclusion should exist for swaps entered into to hedge financial risk
- Wholesale changes to the calculations of notional amounts should be subject to market comment and review
- The CFTC should clarify Risk Participation Agreements as “swaps” or to be excluded as “dealing activity”

Additional Documents:

You can read more of the proposed changes from the CFTC here.

Bond Dealers of America

August 13, 2018

SIFMA and ISDA Comments to De Minimis Exception to the Swap Dealer Definition.

Summary

SIFMA and ISDA provided comments to the CFTC on the Notice of Proposed Rulemaking regarding the De Minimis Exception to the Swap Dealer Definition published by the U.S. Commodity Futures Trading Commission. The Associations support the Proposal to set the aggregate gross notional amount threshold ("AGNA") at $8 billion in swap dealing activity. Maintaining the de minmis threshold is the right outcome to ensure that banks and dealers can continue meeting their clients' risk management needs. As we have stated in the past, decreasing the size of the de minimis threshold would lead to a reduction in the number of swap market participants willing to engage in swap dealing activity with commercial end-users for fear of going above a lower threshold and triggering the SD registration requirement.

See also:

De Minimis Exception to the Swap Dealer Definition

SEC Says Muni Bond Firm in Boca Raton Committed Fraud.

A Boca Raton company improperly diverted municipal bonds at the expense of retail investors, the Securities and Exchange Commission said Tuesday.

The SEC alleges that from 2009 to 2016, two agents of Core Performance Management LLC of Boca Raton lied about their identities to cut in line in bond allocations.

The SEC says Core Performance Management's representatives bought new-issue muni bonds by posing as retail investors to gain priority in bond allocations. The defendants then flipped the bonds to broker-dealers for a fee. The SEC also alleged a municipal underwriter took kickbacks from one of the flippers.

The SEC names as defendants James Scherr of Boca Raton, the owner of Core Performance Management, and Deborah Dora of Lighthouse Point and Sharlene Mesite of Port St. Lucie, who are accused of using phony identities.

Also named in the SEC's suit is James O'Neil of Jupiter, who's accused of acting as an unregistered broker.

"My clients cooperated cooperated fully with the SEC investigation, and they're happy to put this behind them without protracted litigation," said James Sallah, the defendants' attorney.

As part of the scheme, the defendants lied about their Zip codes, because investors who live in the jurisdiction issuing the bonds often can move to the front of the line. The defendants also used phony business names to disguise their true intentions, the SEC said.

“By improperly placing retail orders on behalf of broker-dealers, we allege the flippers prevented true retail investors from receiving priority in municipal bond offerings,” said LeeAnn G. Gaunt, chief of the SEC Division of Enforcement’s Public Finance Abuse Unit.

Core Performance Management ceased operations in 2016, the SEC said.

Palm Beach Post

By Jeff Ostrowski

August 14, 2018

SEC Alleges Firms Conspired in ‘Flipping’ Deal With Muni Bonds.

- **Two investment firms, 18 people charged in bond trading case**
- **Related SEC case targets former employee of underwriting firm**

The U.S. Securities and Exchange Commission said two investment firms and an underwriter settled charges of conspiring to make quick profits by trading newly issued municipal bonds, a practice known as flipping.

The agency Tuesday said that Core Performance Management LLC, based in Boca Raton, Florida, and Chula Vista, California-based RMR Asset Management Co. used fictitious business names and posed as individual investors to get newly offered securities that were then immediately resold at higher prices. The SEC said the former head of municipal underwriting for NW Capital Markets purchased securities from Core Performance at above-market prices in exchange for a cut of the profits.

“More than a dozen of the individuals charged today are alleged to have engaged in plainly deceptive conduct,” said Stephanie Avakian, co-director of the enforcement division. “We are committed to investigating and charging individuals, especially where, as here, the alleged misconduct by many of these industry professionals harmed retail investors.”

The case provides a window into how professional investors may seek to game the $3.8 trillion state and local-government bond market to make short term profits, not unlike those that can be reaped by getting in on initial stock offerings. It is part of a broader push by the SEC to crack down on fraud in the state and local government debt market and marks a departure from recent cases that largely focused on misleading disclosures by borrowers.

The SEC said the investigation is ongoing, indicating that it may bring more cases.

“We are continuing our investigation to determine whether other market professionals had a role in these improper practices,” said LeeAnn Gaunt, the head of the agency’s Public Finance Abuse Unit.

While prices of municipal bonds are far less volatile than newly issued stocks, the debt offerings can be heavily sought after because many governments seek to ensure that some of them are sold to individuals, rather than just investment firms. Those small buyers are often given special priority.

The SEC said that Core Performance and RMR posed as so-called retail investors to purchase the newly issued bonds that were then resold to other firms at a profit.

They did that by using fictitious business names, falsely linking their orders to zip codes in the area where the bonds were being issued and dividing up its orders among dozens of accounts. Once the bonds were purchased, they were typically resold to dealers at a pre-arranged price, according to the SEC. The agency said 18 individuals were involved.

Core Performance and managing director James Scherr, RMR and its president, Ralph Riccardi, and 13 of their associates settled the SEC's charges without admitting or denying the allegations, the SEC said in a statement. NW Capital and its former underwriting head, Charles Kerry Morris, also settled without admitting or denying the charges.

A phone number listed for Core Performance in Boca Raton was disconnected. Loren Washburn, a lawyer for RMR, said the firm fully cooperated with the SEC and is glad to have resolved the matter. A message left with NW Capital's James Fagan, who supervised Morris and agreed to the settlement, wasn't immediately returned.

Bloomberg Markets

By William Selway

August 14, 2018

SEC Forces Cities to Reveal Wall Street Loans With Holdings Surging.

- **Step aimed at addressing concerns bondholders left in dark**
- **Loans to states, localities have nearly tripled since 2010**

The U.S. Securities and Exchange Commission moved to require states and local governments to disclose bank loans and privately placed debt, seeking to address concerns that bondholders are being left in the dark about a fast-growing segment of public finance.

The SEC adopted amendments to a rule, known as 15c2-12, that obligates securities dealers to ensure that municipalities report updated financial information and material events to bondholders. The amendments will force the disclosure of loans incurred by municipalities, loan defaults and changes to financial covenants that affect bondholders within 10 business days.

"Disclosures required by these rule amendments will better equip investors and intermediaries to make informed investment decisions about municipal securities," SEC Chairman Jay Clayton said Monday in a statement.

Direct lending by banks has proliferated since the financial crisis as states, local governments and non-profits found they could borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. Commercial bank loans to municipalities nearly tripled to $190.5 billion by the first quarter of 2018 from $66.5 billion at the end of 2010, according to the Federal Deposit Insurance Corp.

While investors may eventually learn about a locality's loans through annual financial reports, the obligations often aren't reported to regulators or made public immediately. The lag has meant that investors have had to wait months before finding out about new debt. The loan terms can favor banks over other investors and add to a borrower's financial risk.

The compliance date for the amendments to rule 15c2-12 is 180 days after they are published in the Federal Register.

Bloomberg News

By Martin Z Braun

August 20, 2018, 10:49 AM PDT

— With assistance by Benjamin Bain

How GASB Might Change Conduit Debt Reporting.

WASHINGTON — The Governmental Accounting Standards Board is proposing to standardize the way issuers of municipal bonds report conduit debt that is repaid by a third-party borrower.

The proposal, released last week by GASB, which is seeking comments, seeks to create uniformity in the way conduit issuers report information. There has been confusion over what constitutes a conduit debt obligation and GASB hopes to improve the quality of disclosure by clarifying that definition and making clear that such obligations are the responsibility of the conduit borrower rather than the issuer.

Bonds sold by issuers for borrowers in conduit transactions often support such revenue-producing infrastructure such as higher educational facilities and hospitals. The bonds are issued to allow such projects to access capital more affordably than would otherwise be possible.

The draft would define a conduit debt instrument as one that includes an issuer, an obligor, and a trustee, where the obligor receives the proceeds of the bonds and is responsible for their repayment, among other things.

The issuer would not recognize such an issuance as a liability, but would recognize related liabilities and expenses if it appears "more likely than not" that the issuer will support debt service payments.

The draft provides a list of factors that could be involved in such an analysis, including litigation that would negatively affect the project being financed or the conduit borrower entering into bankruptcy.

GASB first dealt with conduit obligations in Interpretation 2 in 1995. Under Interpretation 2, issuers were permitted to report conduit issuances as their own liabilities if they chose to do so. The new draft would improve disclosure by ending "significant diversity in practice." The proposal would not only provide better information, according to GASB, but also would allow for better apples-to-apples comparisons of different government financial statements.

"The clarified definition would resolve stakeholders' uncertainty as to whether a given financing is, in fact, a conduit debt obligation," GASB said in the draft.

The National Association of Health and Educational Facilities Finance Authorities, which represents conduit issuers, suggested it would submit comments to GASB.

"NAHEFFA will take a careful look at this draft and respond to GASB as required," the group's counsel and Mintz Levin member Charles Samuels told The Bond Buyer. "We will consider whether any real problem is being solved and new regulatory burdens are being imposed without justification."

Samuels said that while his group would be reviewing the proposal, it is not clear to him that it would apply to NAHEFFA members.

GASB standards are not binding on state and local governments but they must be adhered to in order for governments to receive clean opinions on audits of financial statements. The board periodically publishes updates to its reporting standards, and did so earlier this year with respect to reporting of bank loans and private placements of municipal debt.

Comments on the proposed statement governing reporting of conduit obligations are due by Nov. 2. If approved, it would take effect for reporting periods.

The Bond Buyer

By Kyle Glazier

August 07 2018

Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities.

SUMMARY

SIFMA provided comments to the MSRB on existing interpretive guidance that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. Some market participants have indicated that underwriters' disclosures are duplicative, often boilerplate and burdensome for issuers to review.

View the comments.

See also: MSRB Notice

GASB Proposes Improvements to Reporting of Conduit Debt Obligations.

Norwalk, CT, August 6, 2018 — The Governmental Accounting Standards Board (GASB) has proposed revised guidance that would provide a single method for government issuers to report conduit debt obligations and related obligations. This proposed guidance would eliminate diversity in practice associated with these issues.

Conduit debt obligations are debt instruments issued by a state or local government to provide financing for a specific third party that is primarily liable for repaying the debt instrument. Third parties sometimes seek this kind of financing for projects such as not-for-profit hospitals and universities and qualifying private businesses.

The GASB's review of the existing standards—Interpretation No. 2, Disclosure of Conduit Debt

Obligations—found variation in practice among governments that issue conduit debt obligations, which adversely affects the comparability of financial statement information. The variation arose from (1) the option in the standards that allowed government issuers to recognize conduit debt obligations as their own debt or just disclose the transactions and (2) diversity in how additional commitments associated with these transaction are reported by governments..

The GASB is proposing in the Exposure Draft, *Conduit Debt Obligations*, to address the variation in practice by:

- Clarifying what is a conduit debt obligation
- Eliminating the option for government issuers to recognize conduit debt obligations, thereby providing a single method of reporting
- Clarifying accounting and financial reporting guidance for (1) additional commitments extended by government issuers and (2) arrangements—often characterized in practice as leases—associated with conduit debt obligations
- Enhancing note disclosures.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by November 2, 2018.

BDA Submits Comment Letter on MSRB Retrospective Review of Underwriter Disclosures to Issuers.

Today, August 6, 2018, the BDA submitted a comment letter in response to the MSRB's request for public comment on existing interpretive guidance on the application of MSRB Rule G-17.

The letter can be viewed here.

The comment letter requests that the 2012 Guidance:

- Should be modified to allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances; and to
- Allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances; and to
- Clarify that only material, actual conflicts of interests should be disclosed; and to
- Clarify that co-managers usually have no requirement to deliver Rule G-17 Disclosures.

The MSRB issued a notice requesting comment on existing interpretive guidance on the application of MSRB Rule G-17 that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information.

August 6, 2018

BDA 3rd Qtr Advocacy Priorities 2018

[Read the Priorities.]

Bond Dealers of America

August 9, 2018

[MSRB Notes Compliance Risks of Issuer-Solicited Charitable Donations: Skadden]

Recently, the Municipal Securities Rulemaking Board (MSRB) noted in its quarterly compliance newsletter dated June 8, 2018 that it has "compliance concerns" regarding issuer-solicited charitable donations. The MSRB's quarterly newsletter does not have the force of formal agency guidance, however, it does offer insight into how the MSRB may view issuer-solicited charitable donations.

Though charitable donations do not implicate the MSRB's pay-to-play Rule G-37, the MSRB notes that the donations may have implications under other rules, as described below.

- **Rule G-17:** This rule requires dealers acting as underwriters in a negotiated underwriting to disclose actual or potential material conflicts of interest with respect to the issuance. The MSRB noted in its newsletter that it would be a violation of Rule G-17 for an underwriter to compensate any undisclosed third party in order to secure municipal securities business. Thus, if an underwriter makes a charitable donation for these purposes, the underwriter must disclose the donation to the issuer as a conflict of interest.
- **Rule G-42:** This rule generally prohibits municipal advisors from making payments for the purpose of obtaining or retaining an engagement. The MSRB noted that if a municipal advisor makes a charitable donation for these purposes, it would violate Rule G-42.
- **Rule G-20:** This rule prohibits, with some exceptions, any regulated entity or its associated persons from directly or indirectly giving any thing or service with value in excess of $100 to a person if such payments or services are in relation to the municipal securities or municipal advisory activities of the recipient's employer. The MSRB noted that, where a regulated entity makes a directed donation to a charity that is closely aligned with the third party requesting the donation, it may be deemed an indirect gift or gratuity under Rule G-20. Therefore, if that person is an official of an issuer and the donation is in excess of $100, the regulated entity may be in violation of Rule G-20.

Please note that the Financial Industry Regulatory Authority (FINRA, then known as the National Association of Securities Dealers), issued a similar cautionary notice to its members in 2006. However, FINRA expressed these concerns only to prevent a conflict of interest. The new MSRB guidance is notable in that it, for the first time, indicates that an issuer-solicited charitable donation also may be considered a gift under Rule G-20.

In light of this new guidance, it is more important than ever for municipal securities dealers and municipal advisors to have a robust company policy concerning charitable donations. For assistance in developing such a policy, please reach out to your usual Skadden contact.

The newsletter is available [here].

Skadden Arps Slate Meagher & Flom LLP

by Kenneth A. Gross, Ki P. Hong, Matthew Bobys, Melissa L. Miles, Charles M. Ricciardelli, Samuel Levor, Shayla K. Parker, Jeremy F. Regan and Tyler Rosen

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MSRB Releases Report Card on Investor Protection Initiatives.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today released a Report Card on Investor Protection Initiatives outlining how it has met policy recommendations contained in the 2012 U.S. Securities and Exchange Commission's (SEC) Report on the Municipal Securities Market. Over the last six years, the MSRB has further safeguarded the municipal market for investors through additional regulatory protections, improved access to disclosure information, and new tools and resources.

"Six years ago, the MSRB dedicated itself to addressing the investor protection recommendations put forth by the SEC in its report," said MSRB President and CEO Lynnette Kelly. "Our report card outlines the MSRB's substantial progress in this endeavor, summarizing initiatives that have enhanced market structure, improved disclosure practices and the efficiency of retail transactions."

Over the past two years in particular the MSRB has implemented reforms addressing the structure of the municipal market. The creation of a best-execution rule in 2016 and a mark-up disclosure rule in 2018 were designed to enhance the transparency of costs associated with municipal security transactions for retail investors and to provide them with valuable access to pricing and related information about their municipal securities. Former SEC Chairman Michael Piwowar said earlier this year that the MSRB's mark-up rule will "provide investors with clear disclosure about how much they are paying for their fixed income transactions."

The MSRB recently improved the Electronic Municipal Market Access (EMMA®) website to make it easier for investors to use, and has incorporated third-party tools into EMMA® allowing investors and municipal market participants to take advantage of market yield curves and indices, a new issue calendar and an economic calendar.

Date: July 31, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met on July 18-19, 2018, and addressed financial and fee issues, and its strategic focus on information technology and data assets, among other topics.

The Board approved a $40-million budget and an associated operating plan for the fiscal year that begins October 1, 2018. The flat, year-over-year expense budget reflects the MSRB's continuing strategic priorities. A summary of the budget will be made publicly available at the start of the fiscal year.

In conjunction with the FY2019 budget, and consistent with the Board's stated approach to monitor and manage organizational reserve levels, the Board agreed to temporarily reduce the rate of assessment for municipal securities dealers' underwriting, transaction and technology fees related to market activity during the last three months of calendar 2018.

"Temporarily reducing assessments is intended to be sensitive to the financial impact on the industry and to reduce excess reserves by approximately $2.6 million," said MSRB President and CEO Lynnette Kelly. The MSRB previously rebated over $9 million to dealers since 2014.

As part of the MSRB's continued efforts to optimize the use and dissemination of municipal market data, the Board approved a data strategy. The strategy establishes goals to advance the MSRB's mission through data governance, quality and analytics.

"The MSRB plays a recognized and critical role in ensuring fair and efficient access to municipal market data," said Kelly. "Our new data strategy provides the necessary foundation to ensure and enhance the quality and value of our data."

The Board also approved a $5 million budget designation that positions the MSRB's information technology infrastructure for the future. The investment will fund exploration and potential transition to cloud computing, which would support resilient and secure IT infrastructure and data systems. Relatedly, the Board agreed to continue to evaluate the MSRB's data subscription pricing model as part of its effort to diversify funding sources and promote the organization's financial sustainability.

At its meeting, the Board also discussed the MSRB's role in providing guidance and assistance to regulatory authorities in the examination for compliance with, and enforcement of, MSRB rules. It directed staff to advance the important goal of ensuring that MSRB rules are consistently interpreted as intended and enforcement activities are aligned to promote regulatory certainty.

The Board discussed stakeholder reactions to and observations on the MSRB's 2017 advisory on selective disclosure. While the Board appreciates feedback from regulated entities, issuers and investors on this and other MSRB publications, it continues to believe that selective disclosure is an important issue in the municipal securities market and that the advisory is serving its intended purpose of increasing awareness of this topic among market participants and the potential for issuers to use the EMMA website for broad dissemination of information.

Finally, the Board discussed implementation of the MSRB's mark-up disclosure requirements and related guidance on prevailing market price noting that there has been no material market disruption as a result of the new transparency rules.

Date: July 23, 2018

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SIFMA: Treatment of Municipal Securities under the Liquidity Coverage Ratio Rules.

SIFMA, together with the Government Finance Officers Association (GFOA), National Association of

State Treasurers, sent a letter to the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC) on the treatment of municipal securities under the agencies' Liquidity Coverage Ratio (LCR) rules. Congress recently enacted legislation that will require the agencies to amend their LCR rules to provide High Quality Liquid Asset treatment of municipal securities that are investment grade and liquid and readily marketable.

Read the Letter.

Senator Slams Muni Bond Regulator as 'Incestuous'

Kennedy of Louisiana says ex-industry leaders have the 'public' seats

Sen. John Kennedy, a Republican of Louisiana, on Tuesday slammed the self-regulatory body that oversees the $3.8 trillion muni-market "an incestuous…little club" that needs to be overhauled.

Kennedy called for reform of the Municipal Securities Rulemaking Board during comments at a Senate Banking confirmation hearing for Elad Roisman to be a member of the Securities and Exchange Commission. The SEC has oversight responsibilities for the MSRB.

Kennedy noted that the Dodd Frank Act required the MSRB board to have 11 public members and 10 representatives of regulated entities.

Kennedy said he didn't think that anyone on the board represented consumers. He noted that some of the public seats are taken by former industry executives, including JP Morgan JPM, +1.03% .

According to the MSRB website, Donna Simonetti, a former executive director at JP Morgan, is on the MSRB board for a term that expires in 2021. Ronald Dieckman, a former senior vice president and director of the public finance and municipal bond trading and underwriting department at J.J.B. Hilliard, is also a board member.

"They're insiders. The whole thing is incestuous," Kennedy said.

"Do you know how the board is picked? I'm glad you asked," he said to Roisman, who did not ask. "They pick themselves. It is a little club," he added.

A spokesman for the senator said he was working on legislation to address his concerns.

Roisman, currently the chief counsel of the Senate Banking Committee and also previously an aide to former SEC Commissioner Dan Gallagher, said it was important for self-regulatory organization to have transparency.

Michael Post, the MSRB's general counsel, defended the board's makeup in a phone interview.

He said the agency's standard on who can be a public member of the agency's board was approved by the SEC.

"We have standards set out in federal law and approved by the SEC and we consistently apply them," he said.

Under the by-laws, public members must have had no association with a municipal securities broker, municipal securities dealer or municipal adviser for two years, he said. Of the 11 public members, one slot is reserved for a representative of institutional or retail investors, one slot for a representative of municipal entities and one slot for a member of the public with knowledge or experience in the municipal industry, Post noted.

MARKETWATCH

By GREG ROBB
SENIOR ECONOMICS REPORTER

July 24, 2018

MSRB Requests Comment on Amendments to Primary Offering Rules.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today requested comment on draft amendments to MSRB rules on syndicate practices and disclosure of information related to primary offerings.

"Today's proposed rule changes are grounded in input we received in response to a retrospective review of primary offering practices in fall 2017," said MSRB President and CEO Lynnette Kelly. "In light of evolving market practices, the MSRB seeks feedback on how these proposed changes might improve the exchange of information among members of the syndicate, and increase transparency for issuers and investors."

The request for comment includes several potential amendments to MSRB Rule G-11 regarding syndicate practices, including requiring senior syndicate managers to provide specified information to issuers and standardizing the process for issuing a "free-to-trade wire" to communicate to all syndicate members at the same time that the new issue is free to trade. The MSRB's request for comment also includes potential changes to MSRB Rule G-32 to, among other things, collect additional information on Form G-32 to support municipal market transparency efforts.

"We are cognizant of the benefits of enhanced information sharing among industry participants and streamlined mechanisms for reporting of data. For example, our proposed changes to Form G-32 seek to leverage data already being submitted by underwriters during the new issuance process," Kelly said.

Comments should be submitted no later than September 17, 2018. Read the request for comment.

Following the public comment period, the MSRB will carefully consider the comments received and may amend the proposal, seek additional input or take no further action at this time. Should the MSRB determine to advance the proposal in the current or amended form, the MSRB would likely be required to submit some or all of the proposal, as amended, to the Securities and Exchange Commission (SEC) for its consideration and approval, in which case there would be a further public comment period. Read more about the rulemaking process.

Date: July 19, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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SIFMA's Response to MSRB Request for Comment on Draft MSRB Rule G-36, on Discretionary Transactions in Customer Accounts, and Related Draft Amendments.

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) in response to MSRB Notice 2018-09; request for comment on draft MSRB Rule G-36, on discretionary transactions in customer accounts, and related draft amendments.

Read the SIFMA Comment Letter.

What Dodd-Frank Has Done for Muni Ratings.

WASHINGTON – Federal financial reforms designed to reduce the less favorable treatment by rating agencies of municipal bonds compared to corporate bonds have resulted in higher ratings, fewer downgrades and lower bond yields, according to a just-released research paper.

The paper, titled "The Impact of Dodd-Frank on Credit Ratings and Bond Yields: The Municipal Securities' Case," is among those featured at the Brookings Institution's 7th annual Municipal Finance Conference. The paper's lead author is Craig Johnson, a professor at Indiana University's School of Public and Environmental Affairs. His co-authors are Yulianti Abbas and Chantalle LaFontant.

The analysis, which focuses on S&P Global Ratings' muni ratings from 2004 to 2014, stems from Johnson's interest in determining whether the Dodd-Frank Act affected munis differently than corporates.

Johnson was starting from some conclusions established by previous work on the corporate market, which found that Dodd-Frank caused credit rating agencies (CRAs) to issue lower ratings in the municipal market.

In academic literature this effect has been termed the "reputational hypothesis," the idea that tighter regulation will cause credit rating agencies to issue more pessimistic ratings in order to protect their reputations.

Johnson and his fellow researchers found the opposite case or "disciplining hypothesis" to be true in the muni market. The disciplining hypothesis states that rating agencies react to new regulation by trying to improve their methodologies to avoid running afoul of the new rules. That's the effect new laws and regulations intend to achieve.

Former Congressman Barney Frank, the Massachusetts Democrat for whom Dodd-Frank was partly named, was particularly interested in trying to get rating agencies to represent risk in the muni market the same way they did for corporates, which would result in higher muni ratings.

Muni market participants have griped for years that this has not been the case, as munis have defaulted at lower rates than similarly rated corporate bonds. While Johnson's study did not analyze the differences in default rates between munis and corporates, he said the question of whether

Dodd-Frank was working to level the playing field was central to his work.

"Was this going to put the risk/reward between municipals and other sectors on par?" he asked.

Johnson said his study used S&P ratings because S&P was the only one of the three largest agencies to have not publicly announced a change to its methodology following Dodd-Frank.

Johnson found that the probability a state general obligation bond will be rated higher after Dodd-Frank is 2.7 times greater than before Dodd-Frank. Further, the study revealed that total S&P actions (including rating changes, outlook changes, and watches) decreased by 17.3% and negative actions decreased by about 11.6%. Rating downgrades decreased by 9.51%, while rating upgrades increased by 8.29%.

"Our results provide evidence of greater rating stability after Dodd-Frank and are consistent with the disciplining hypothesis," the researchers wrote.

The study also looked at bond yields and found that they were lower across all asset classes after Dodd-Frank. It found no change among unrated bonds, suggesting that the ratings were affecting the yields rather than other market forces.

Johnson and his colleagues concluded that their results highlighted "the consequences of the gaping holes in the patchwork system of municipal disclosure."

Unlike in the more tightly regulated corporate market, he told The Bond Buyer, credit rating agencies may play an outsize role in providing information to municipal investors.

"Even though the municipal market in general, and state government GO bonds in particular, represent a low-risk sector of the fixed income market, CRAs not only certify to the interpretation of publicly available information, but they may also reduce the uncertainty associated with a system lacking complete and timely disclosure," Johnson wrote.

Johnson, who has his PhD from the State University of New York at Albany, has been researching municipal finance topics for many years. He previously published work on tobacco bonds, government borrowing costs, and the impact of Dodd-Frank on the fiscal management of state and local governments. Before that, he worked as a budget analyst for the state of New York and as a legislative policy analyst at the New York State Assembly.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 07/16/18 07:04 PM EDT

U.S. SEC Panel Recommends Review of Electronic Bond Trading Rules.

July 16 (Reuters) – The U.S. Securities and Exchange Commission should form a working group with two of its regulatory counterparts to review and harmonize the rules they use to police electronic corporate and municipal bond-trading platforms, an SEC subcommittee said on Monday.

The regulation of electronic fixed income trading venues varies depending on the business models and trading protocols of the venues, increasing the potential for investor harm, systemic risk and unfair competition, said a subgroup of the SEC's Fixed Income Market Structure Advisory

Committee.

The group of industry professionals recommended that the SEC, the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board consider creating a unified regulatory framework for all fixed income electronic trading platforms.

Some bond trading venues are regulated as alternative trading systems (ATSs), some are regulated as broker-dealers, while other major platforms operating similar models are not regulated at all, the group said.

"Without a unifying regulatory framework for all fixed income electronic trading platforms, market structures will likely fragment further as regulators adopt new regulations that apply to only one type of platform," they said in a statement.

For example, the regulation of ATSs largely reflects how trading occurs in the equity markets, and excludes electronic platforms that use a "request for quote" model, which are regulated as broker dealers. There is also at least one major municipal and corporate bond trading platform that does not fall under any U.S. regulatory oversight, the subcommittee said in its recommendation.

"These distinctions in regulatory oversight complicate efforts to improve the efficiency and resiliency of the fixed income electronic trading markets," the group said.

(Reporting by John McCrank in New York Editing by Marguerita Choy)

MSRB Chief Economist Examines Decline of Transaction Costs for Customer Trades in the Municipal Bond Market.

Washington, D.C. – The Chief Economist of the Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the municipal securities market, today shared his analysis on the steady decline of the effective spreads for customer trades in the municipal bond market. Dealer-to-customer spreads (also known as "mark-up"), which measure costs paid by investors to execute a trade, dropped by 51 percent to 73 basis points between 2005 and early 2018, signaling a more efficient market.

"Our analysis shows that effective spreads have fallen substantially since 2005 for customer trades of less than $1 million par," said MSRB Chief Economist Simon Wu. "We found that while bond characteristics, such as percentage of insured bonds, average yield and average trade size, had an impact on the declining spreads, it was likely MSRB regulatory activities, transparency initiatives and advancements in trading technology that drove more than half of these changes."

Transaction Costs for Customer Trades in the Municipal Bond Market: What is Driving the Decline? summarizes previous research on spreads and emerging issues regarding municipal market liquidity and municipal bond transaction costs. Using transaction data between January 2005 and April 2018, and methodologies to control for idiosyncratic municipal bond characteristics, Wu confirmed the results of previous studies. His research affirmed that dealers earn lower average mark-ups on trades over $1 million, while also showing that these high par trade spreads have remained relatively consistent since 2005.

The report also proposes considerations for future research to evaluate the post-dealer compensation disclosure environment arising from MSRB Rule G-15 mark-up changes that went into effect on May 14, 2018.

The MSRB studies market structure issues related to municipal securities as part of its mission to promote a fair and efficient market. It welcomes input from stakeholders on additional research ideas that would contribute to a better understanding of market dynamics. Access MSRB data reports and analysis.

Wu is responsible for economic analysis of MSRB rulemaking and municipal market transparency initiatives and leads related economic analysis of the financial markets. His previous report, *Municipal Bond ETFs: Liquidity Impact on the Municipal Bond Market*, explores the growth of exchange-traded funds in the municipal securities market.

Date: July 18, 2018

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MSRB Adds New Municipal Market Yield Curves to EMMA.

Check ’em out here.

EMMA Now Provides Free Access to Bloomberg BVAL’s AAA Callable Yield Curve.

Here she is.

MSRB Adds a AAA Callable Yield Curve from IHS Markit.

MSRB adds a AAA callable yield curve from IHS Markit to the free tools and resources on its EMMA website for understanding muni market trends.

BDA RECAP: Members Participate in Capitol Hill Fly-in on FINRA Rule 4210 & Host Congressional Fundraiser.

On Thursday, July 12, BDA members participated in a Capitol Hill fly-in, and hosted a fundraiser for Representative Bill Huizenga (R-MI), Chairman of the House Financial Services Committee’s Subcommittee on Capital Markets, Securities and Investment. The primary focus of the meetings was amendments to FINRA Rule 4210.

BDA members in attendance:

- Brian Brennan, KeyBanc Capital Markets
- Lana Calton, Hilltop Securities
- David Medanich, Hilltop Securities
- Demetri Patikas, Vining Sparks
- Guy Yandel, George K. Baum & Co.
- Don Winton, Crews & Associates
- Ron Bernardi, Bernardi Securities

BDA members met with the following congressional offices:

- Rep. French Hill – Arkansas
- Rep. Steve Stivers – Ohio
- Rep. David Kustoff – Tennessee
- Rep. Jeb Hensarling – Texas (Chairman, House Committee on Financial Services)
- Sen. Tom Cotton – Arkansas
- Sen. Rob Portman – Ohio
- Sen. John Cornyn – Texas
- **Policy discussion:**

In April, FINRA asked the SEC to delay Rule 4210 amendments to March 2019, indicating that many market participants have requested that FINRA reconsider the potential impact of amended Rule 4210 on smaller and medium-sized broker-dealers. BDA and its members are supportive of this delay and would like FINRA and the SEC to reconsider these amendments.

BDA believes that the 4210 amendments represent a regulatory overreach by FINRA:

FINRA is using a broad statutory authority of the Securities and Exchange Act in an attempt to adopt a systemic risk rule, potentially violating congressional intent.

BDA believes that the 4210 amendments are anti-competitive to BDA members:

The margin requirements will push small- to medium-sized dealers out of the trading of these securities with larger buy-side institutions. BDA expects large buy-side institutions to halt trading these securities with BDA members due to practical demands.

The amendments could actually create systemic risk as they may consolidate the trading of these securities into a fewer number of counterparties instead of the broad number and kind of counterparties who currently trade these securities.

BDA expects large buy-side institutions to manage their exposure with smaller dealers by reducing trading and outstanding volumes to below the Rule's gross open position limit of $10 million, making the required movement of margin unlikely.

BDA has also asked FINRA to consider allowing dealers to take a capital charge instead of requiring them to enter into margining agreements with customers:

A capital charge would allow dealers to remain competitive with money manager accounts and still manage any systemic risk.

Next steps:

BDA staff will continue to engage Capitol Hill on Rule 4210, and are working to gather further congressional support for a letter to regulators expressing the concerns of small and mid-sized broker-dealers with Rule 4210.

Specifically, BDA is working towards a rescission of the 4210 amendments, but is also engaging regulators on a capital charge, which would make the rule and amendments more tenable for BDA members.

Bond Dealers of America
July 17, 2018

IHS Markit Brings Bond Pricing Data to Municipal Securities Rulemaking Board's Market Transparency Platform.

NEW YORK–(BUSINESS WIRE)–IHS Markit (Nasdaq: INFO), a world leader in critical information, analytics and solutions, today announced that its benchmark yield curve for AAA-rated municipal bonds is now available to investors through the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) platform.

The free EMMA website is designated by the Securities and Exchange Commission as the official repository for data and disclosures on more than one million municipal securities.

"MSRB's EMMA website is now in its 10th year of providing free public access to municipal market data, documents and tools that support a fair and efficient market," said Lynnette Kelly, MSRB president and CEO. "We are excited to further enhance investor access to benchmarking and analytical tools with the addition of the IHS Markit yield curve to the EMMA website."

"Investors rely upon yield curves to measure market performance, and we are proud to join forces with MSRB to make IHS Markit data available to the public," said Frank Dos Santos, executive director and Americas head of business strategy for fixed income pricing at IHS Markit. "As a leading provider of municipal bond pricing data, IHS Markit strongly supports the MSRB mission in promoting market transparency and providing investors with a wealth of historical data."

The IHS Markit municipal bond yield curve consists of tax-exempt general obligation bonds with a 5 percent coupon and 10-year call date from AAA-rated state governments. IHS Markit has broad expertise across U.S. municipal markets and prices more than 1.1 million municipal bonds daily.

In addition, IHS Markit provides independent fixed income pricing and liquidity data for risk management, price verification, compliance and trading workflows. The firm's 100-plus fixed income evaluators and best-in-class pricing solution cover more than 2.5 million corporate and sovereign bonds, municipal bonds, securitized products, bank loans and CDS.

About IHS Markit (www.ihsmarkit.com)

IHS Markit (Nasdaq: INFO) is a world leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. The company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions. IHS Markit has more than 50,000 business and government customers, including 80 percent of the Fortune Global 500 and the world's leading financial institutions. Headquartered in London, IHS Markit is committed to sustainable, profitable growth.

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July 19, 2018 12:40 PM Eastern Daylight Time

Seven Things Everyone Asks About Continuing Disclosure: Gilmore Bell

In a vain attempt to be like the trendy media outlets that use odd-numbered lists and slightly misleading headlines as clickbait, we present answers to seven commonly asked questions about the continuing disclosure requirements of SEC Rule 15c2-12.

As anyone who would be interested enough to click on this post surely knows, Rule 15c2-12 generally requires underwriters of municipal securities to (1) review an official statement before an offering and (2) determine that an obligated person has promised to provide certain ongoing information to investors after the offering. In the years following the end of the SEC's Municipalities Continuing Disclosure Cooperation initiative in 2014, many in the industry have been revisiting the continuing disclosure component of the rule. The members of the Gilmore & Bell securities group frequently receive some version of the following questions.

Continue reading.

By: Bill Burns

Posted: July 5, 2018

Gilmore Bell

Is The Used Car Market More Transparent Than The Bond Market?

Summary

- The bond market lacks price transparency.
- A new rule requires disclosure of mark-ups and mark-downs.
- Investors need to do due diligence on bond pricing.

When a customer shops at a used car lot to purchase a previously owned vehicle, she can usually check the dealer markup by comparing the offering price to the book value in the Kelley Blue Book, a well-respected pricing guide.

That way, the consumer can tell if she is about to get ripped off and walk away from a bad deal.

Unbelievably, an investor could not do the same with the bonds bought or sold by her Wall Street broker until two months ago.

Bond pricing is confusing for investors, as a recent Reuters article noted. That's why new, additional disclosure rules should benefit investors.

However, even though the new industry rules require brokerage firms to disclose the bond-pricing information to clients, it may come too late or never be seen.

Let's back up a moment. In the past, brokers were not required to disclose to customers the "markup" or "markdown" on corporate and municipal bonds bought in the secondary market.

"Unlike with stocks, investors don't pay a commission when they buy a bond," according to Reuters. "Instead, they pay a markup, or the difference between the broker's cost and the price charged to the investor. Many brokers don't disclose their markups, meaning investors can't easily compare transaction costs."

"In a 2012 report, the SEC said the lack of price transparency undermined the fairness of the $3.8 trillion municipal-bond market," according to the article. "In addition to markups, brokers will also have to disclose markdowns, the haircuts investors have to take when selling bonds prior to their maturity."

In the past, many brokers fraudulently told investors that they did not receive commissions on the purchase or sale of bonds. In fact, the brokers in Puerto Rico never disclosed the exorbitant markups or markdowns they charged their customers. This evidence has come to light in numerous investment fraud cases brought against Puerto Rico brokerage firms, including UBS and Santander.

Under the new industry rule that took effect in May, Mom and Pop investors will now learn how much their brokers made selling them bonds. While an improvement for the brokerage industry, some problems remain.

"The disclosures are aimed at addressing long-standing concerns that individual investors who buy bonds don't know how much they are paying in fees, known as markups, that can eat into returns," according to the Reuters article. "Retail investors pay a variety of different prices for the same securities."

The article notes that investors may suffer "sticker shock" when they see the exorbitant charges firms take for purchasing corporate and municipal bonds right off the shelf. For example, if an investor purchased a $500,000 Puerto Rico municipal bond during the Puerto Rico bond market heyday of 2010 to 2013, an investor would be charged a markup in the tens of thousands of dollars, without any disclosure by the firm.

Nevertheless, most investors will likely still not realize how much they are paying for bonds even with the new rule. The new rule only requires dealers to include the markup on confirmation slips that are sent to investors by the post and do not require a discussion between the broker and customer when the transaction is made.

“The rule only requires dealers to include the markup on slips of paper they already send to investors confirming the details of the transaction,” as Reuters noted. “Though dealers are allowed to electronically confirm customer trades, the vast majority of these confirmations are still snail mailed to customers—meaning they might end up in a pile of junk mail and never be read.”

That means Mom and Pop investors will need to do their due diligence in reviewing confirmation slips when they buy bonds. The new rule is an improvement for bond investors, but unfortunately falls short. There is still no Kelley Blue Book for bonds.

Seeking Alpha

by Jake Zamansky
Zamansky LLC

Jul. 10, 2018

SEC Revokes Firm Registration and Bars Municipal Advisor Following Court Sanctions.

On June 29, 2018 Judge Halil Suleyman Ozerden of the Southern District of Mississippi entered judgments against Malachi Financial Products, Inc., and its president and sole shareholder, Porter B. Bingham, for alleged violations of the Securities Exchange Act of 1934 (“Exchange Act”) and Municipal Securities Rulemaking Board (“MSRB”) Rule G-17. The judgments were entered in accordance with a consent agreement signed by the Securities and Exchange Commission (“SEC”), Bingham, and Malachi. Without confirming or denying the allegations, Bingham and Malachi agreed to: (1) being permanently enjoined from further violations of Sections 15B(a)(5) and 15B(c)(1) of the Exchange Act and MSRB Rule G-17, (2) pay a joint and several disgorgement of $33,000 plus $2,858 of prejudgment interest, and (3) pay civil penalties of $50,000 for Malachi and $25,000 for Bingham.

Subsequently, and citing to these final judgments, the SEC acted on July 9, 2018 to revoke Malachi’s registration as a municipal advisor and to bar Bingham from association with any “broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.” This agency action effectively prohibits Malachi from engaging in municipal advisory activities and bars Bingham from engaging in activities that are regulated by the SEC. The combination of penalties sought and ultimately enforced by the SEC highlights its continuing focus on enforcing federal securities laws as they relate to municipal advisors.

According to the complaint filed by the SEC on January 2, 2018, these violations arise out of actions relating to Rolling Fork, Mississippi’s (the “City”) municipal bond offering in 2015 to fund certain improvement projects, such as paving streets and constructing a municipal swimming pool. In January 2015, the City hired Malachi as the municipal advisor for the proposed bond offering under an “Agreement for Professional Financial Advisory Services” (“MA Agreement”). Bingham, as Malachi’s president and sole principal, signed the MA Agreement on behalf of Malachi.

The complaint alleges that in May 2015, Bingham accepted two payments totaling $2,500 from a registered representative who was associated with a broker-dealer and municipal securities dealer. Approximately two weeks after receiving those payments, a Malachi employee recommended that the City hire the registered representative and his firm to underwrite the bond offering. Neither

Bingham nor the registered representative disclosed the payments or the resulting conflicts of interest to the City. Under the terms of the MA Agreement, Malachi was to be paid an amount not to exceed 2% of the debt issuance. While the City's Offering was originally contemplated to be for $2 million, statutory offering limits required reduction of the offering to $1.1 million and, pursuant to the 2% cap, Malachi's compensation was reduced from $40,000 to $22,000.

As alleged, Malachi and Bingham attempted to recoup this lost revenue by fraudulently charging the City for purported "additional services" that they did not actually provide. The day after the Offering closed, Bingham directed Malachi's employee to prepare and send two invoices totaling $55,000 to the bond trustee for payment. One invoice was for $22,000, which was Malachi's contractual fee for the municipal advisory services provided to Rolling Fork (2% of the $1.1 million issuance). The other invoice was for $33,000 and, according to the invoice, was purportedly for services related to the "investment of bond proceeds." This invoice, the complaint states, was false and fraudulent and was not authorized or agreed to by the City. Although addressed to the City's Mayor, Malachi only transmitted them to the bond trustee and never sent them to the Mayor or the City. As a result, the bond trustee paid the full $55,000 to Malachi before the City became aware of the invoices.

Malachi allegedly provided no services relating to the investment of bond proceeds to the City and the bond proceeds had not, in fact, been invested by the time of the second invoice. Neither Bingham nor Malachi had any documentation reflecting any investment services they purportedly provided the City in connection with the proceeds from the Offering. Although Malachi and Bingham may have also created some post-bond issuance compliance policies for the City and examined the City tax rolls to determine the City's legal lending limit, the complaint asserts neither of those services, even if provided, justified the $33,000 invoice. Rather, the post-issuance compliance policies purportedly created for the City contained nothing but standard boilerplate language, much of which can be found by doing a cursory internet search. As such, it would have been unreasonable to bill the City $33,000 for preparing these policies. More importantly, as the complaint notes, Malachi and Bingham never provided those written policies to the City.

The SEC orders barring Bingham and revoking Malachi's registration as a municipal advisor can be found here and here.

July 12, 2018

Bracewell LLP

Bill Making Munis HQLA Passed.

It's an exciting time to be in the municipal bond market after the U.S. Senate passed new legislation that reclassifies municipal debt as a High-Quality Liquid Asset (HQLA). For investors, this means municipal securities will fall under bank liquidity rules, making them instantly more attractive.

The House of Representatives last month passed the Economic Growth, Regulatory Relief, and Consumer Protection Act by a vote of 258 to 159 after the Senate approved the bill in March. The bill, which was sponsored by Senate Banking Committee Chairman Mike Crapo, will roll back some key provisions of President Obama's landmark 2010 Dodd-Frank Act. Once approved, the new legislation will make fewer banks systemically important by raising the amount of assets to $250 billion from $50 billion. By raising the threshold five times, fewer banks would be deemed "too big to fail" under the new guidelines.

In addition to the above, the new legislation will ease the impact of the so-called Volcker Rule, which had restricted U.S. banks from making certain speculative investments.

Under the new legislation, banks will be able to treat some municipal bonds as level 2B HQLAs, which proponents say will help ensure steady financing for state and local governments. The level 2B classification, which also applies to mortgage-backed securities, is a step down from 2A HQLAs. The market was hoping that munis would be placed into the 2A HQLA bracket, which would have put them on the same level as sovereign debt.

Continue reading.

municipalbonds.com

by Sam Bourgi

Jun 28, 2018

4210 Update: Rep Hultgren Sends Letter to SEC Chair Raising Anti-Competitive and FINRA Statutory Authority Concerns.

House Municipal Finance Caucus Chairman Randy Hultgren (R-IL) last week wrote a letter to the SEC and FINRA, in favor of the BDA "Capital Charge" proposal and warns of regulatory overreach by FINRA.

The letter highlights the potential effects of implementation of the rule on small and medium sized dealers in Illinois. The Congressman is strongly in support of the Capital Charge proposal stating, " These margin requirements will push small-to-medium sized dealers nationwide out of the trading of these securities with large buy-side-institutions." Further he added concern about competition, "A capital charge would allow these dealers to remain competitive and still manage any systematic risk."

In addition to strong support of the BDA proposal, the Congressman raised concerns of FINRA overreach stating, " FINRA may be overstepping Congressional intent by attempting to regulate credit markets, this authority has been traditionally reserved for the Federal Reserve Board." He concluded by saying, "I again urge the Commission to carefully reconsider the potential impacts and statutory limitations of this proposal. "

BDA Leading Advocacy

The BDA continues to work with partners on the House Financial Services Committee and Senate Banking Committee to pressure the SEC and FINRA to rethink the rule. This includes both advocating for the "Capital Charge" proposal as well for outright termination of the amendment due to its anti-competitive nature before implementation on March 25, 2019.

The strategy also includes direct engagement with the regulators. Last week, the BDA submitted a letter of support of the "Capital Charge" proposal to FINRA. The letter featured two smaller firms, Duncan-Williams and NatAlliance, and how the proposal would better the rule without creating a "race to the bottom."

The BDA will continue to provide updates as they become available.

Bond Dealers of America

June 28, 2018

GASB: From the President's Desk - Independence Day Special Issue

Read the Column.

06/28/18

NFMA Municipal Analysts Bulletin Vol. 28, No. 2

The NFMA publishes its newsletter, the Municipal Analysts Bulletin, three times per year. The current issue, Vol. 28, No. 2, is now available and includes photos and news from the 35th Annual Conference. The newsletter also provides members with the opportunity to hear from NFMA officers and committees, as well as constituent societies, with news about past and upcoming initiatives and events. You can find past newsletters under Resources on the navigation bar on the NFMA home page.

BDA: MSRB Requests Comment on Draft FAQs for Rule G-40.

The MSRB is seeking comment on a draft set of frequently asked questions (FAQs) related to the application of Rule G-40, on advertising by municipal advisors, to the use of municipal advisory client lists and case studies by municipal advisors.

- **Comments on the draft FAQs are due by July 27, 2018.**
- **The draft FAQs can be viewed here.**

In May, the SEC approved the MSRB's proposed Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities, despite opposition from almost all broker-dealer groups.

As part of our advocacy efforts:

- BDA met with senior staff of the SEC's Office of Municipal Securities prior to the approval of the rules to reiterate our opposition to the proposed changes.
- In May, BDA, along with the National Association of Municipal Advisors and the Securities Industry and Financial Markets Association, sent a letter to the SEC requesting that they institute disapproval proceedings with respect to the MSRB's proposed amendments to Rule G-21 and new Rule G-40 until the MSRB further clarifies and addresses key issues within the text of the rules themselves. A copy of the letter can be viewed here.
- In February, the BDA submitted a comment letter to the SEC in response to the MSRB's proposed new advertising rule change. You can view BDA's final comment letter here.

Bond Dealers of America

June 27, 2018

MSRB Seeks Input on Draft FAQ on Use of Municipal Advisory Client Lists and Case Studies.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today sought input from municipal advisors and other market participants about draft guidance to support understanding of the application of new advertising standards to the use of municipal advisory client lists and case studies.

MSRB Rule G-40, on advertising by municipal advisors, becomes effective February 7, 2019. The MSRB has committed to providing guidance in advance of the effective date to assist municipal advisors as they develop their compliance policies and procedures. In addition to today's draft guidance on client lists and case studies, the MSRB plans to seek input on draft guidance related to social media and Rule G-40's content standards. Although the MSRB intends to provide stakeholders a 60-day comment period whenever possible, the comment periods for advertising guidance will be shortened to 30 days to ensure guidance on all three topics is finalized and made available to municipal advisors as they are developing compliance policies and procedures for the new rule.

Today's draft guidance, which takes the form of answers to frequently asked questions (FAQs), addresses potential permissible and impermissible uses of municipal advisory client lists and case studies in light of the prohibition on the use of testimonials in advertising under the new rule. The FAQs also illustrate the potential application of certain other MSRB rules to municipal advisors' use of municipal advisory client lists and case studies.

"Recognizing the diversity of the municipal advisor industry, the MSRB welcomes insight from a variety of perspectives to help ensure that the FAQs provide practical compliance assistance and speak to relevant scenarios," said MSRB President and CEO Lynnette Kelly.

Read the request for comment. Comments should be submitted no later than July 27, 2018.

Date: June 27, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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Why Issuers Want to Undo Money Market Mutual Fund Rules.

WASHINGTON – Pending legislation that would partially roll back regulations on money market mutual funds would be good for issuers of municipal bonds, issuer groups told a Senate panel Tuesday.

The Government Finance Officers Association and National Association of Health and Educational Facilities Finance Authorities both provided testimony in support of S.1117: The Consumer Financial

Choice and Capital Markets Protection Act of 2017. The bill, introduced more than a year ago by Sen. Pat Toomey, R-Pa., would allow institutional money market funds to return to a fixed net asset value after a 2014 SEC rule change required those MMFs to use a floating NAV.

The SEC rule, which took effect in 2016, allows funds investing in federal government securities, as well as “retail” funds that have policies and procedures in place designed to limit investors to “natural persons,” to use a stable NAV. Natural persons means human beings, rather than business entities. Other MMFs were required to “float” their NAVs, meaning that the value of a share can fluctuate rather than remain at a fixed $1. The change was designed to prevent investors from causing a “run” on MMFs by pulling out of them in a scenario similar to one that occurred during the financial crisis in 2008.

Muni groups have said requiring a floating NAV for so many MMFs would hurt issuers by both reducing demand for their short-term debt and locking them out of the funds they use as vehicles for short-term cash flow. The result, then-GFOA president Pat McCoy told lawmakers in 2017, is that issuers pay more to finance their infrastructure.

Christopher Daniel, chief investment officer of Albuquerque, New Mexico, testified for the GFOA Tuesday, telling members of the Senate Committee on Banking, Housing, and Urban Affairs that most local governments have policies or even state or local laws on the books requiring them to invest only in funds with a stable NAV. This is to ensure that public money is properly safeguarded, he said. With the effectiveness of the SEC’s floating NAV requirement, Daniel said, local governments have been forced to use lower-yielding funds investing in U.S. government securities.

“By allowing all MMFs — prime, tax-exempt and government funds accessible to both retail and institutional investors — to offer a stable NAV, S. 1117 would allow state and local governments to once again utilize suitable investments as defined by state and local elected officials, rather than by the SEC,” Daniel testified.

Chuck Samuels, general counsel to NAHEFFA, submitted written testimony. He said MMFs are among the largest purchasers of the short-term notes the authorities he represents issue, and that the rule has damaged that market.

“Unfortunately, funds that purchase the variable rate notes of the institutions we serve have experienced a nearly 50% decline as a result of the SEC’s floating NAV rule, thereby driving up the cost of borrowing for investments aimed at improving the quality of health care and education in our country,” Samuels wrote.

Mercer Bullard, a professor at the University of Mississippi School of Law, told the committee that he didn’t believe the SEC’s rule change was necessary to reduce systemic risk, but that he recommended against passage of S. 1117.

Bullard said he had four reasons for opposing the bill. First, he said that there has not been enough study on the impact of undoing the rule and that passing the bill now would risk rushing into a mistake the same way the SEC did in passing the floating NAV rule. Instead, Congress should instruct the SEC to analyze what effect the bill would have, said Bullard. Next, he said he does not have faith that the SEC is equipped to manage fund risk in the absence of the rule. Bullard’s third point was that banking regulators might use any future MMF failure as an excuse to impose crippling restrictions on all funds.

Lastly, the Dodd-Frank Act stripped banking regulators of the emergency powers they would need to handle another “severe liquidity event,” Bullard said, explaining that Dodd-Frank restricted banking regulators' authority to extend credit to non-banking institutions. As such, he told the committee, he couldn't recommend reviving the risks that existed under the old rules.

S. 1117 has an identical companion bill in the House: H.R. 2319. Like the Senate bill, it remains pending before committee.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 06/26/18 07:10 PM EDT

UBS to Pay $4.3 million in Puerto Rico Bonds Claim.

The claimant's broker at UBS has 183 disclosures on his BrokerCheck report

UBS Financial Services Inc. has lost another multi-million-dollar Finra arbitration award stemming from the sale of individual Puerto Rico bonds and closed-end funds.

According to the arbitration award, which was decided last Friday by a three-person Financial Industry Regulatory Authority Inc. dispute resolution panel, the claimants, the family and relatives of Jacobo and Raquel Bender, were awarded close to $4.3 million in compensatory damages and costs.

Mr. Bender and his wife alleged negligence, negligent supervision, fraud and other charges in their claim. The family invested in Puerto Rico bonds, including those underwritten by UBS, according to the award, as well as proprietary closed-end funds that invested predominately in Puerto Rico bonds.

The family's broker was Ramon Almonte, said the family's lawyer, Jeffrey Erez. According to his BrokerCheck report, Mr. Almonte has 183 "disclosures" in his work history, the overwhelming majority of which stem from sales of Puerto Rico bonds.

The market for Puerto Rico's $70 billion in muni debt bottomed out over the summer of 2013 after Detroit filed for bankruptcy that July. Puerto Rico has been struggling to stave off a widespread default ever since.

The Bender family sought between $1 million and $5 million in damages, according to the award.

"For all intents and purposes, the $4.2 million in damages and almost $100,000 in costs represents the complete return of the family's loss of capital," Mr. Erez said. "This was a great award. When an arbitration panel gives the claimants an award like this, they basically are rejecting every argument made by UBS during the hearings."

Mr. Almonte, a managing director at UBS Financial Services Inc. of Puerto Rico, did not return a call Wednesday to comment.

"While we respectfully disagree with this decision, it is important to note that the claimants were awarded less than they sought, perhaps because for over twenty years Puerto Rico bonds provided steady and substantial returns also coupled with extraordinary tax advantages available only to Puerto Rico residents," UBS spokesperson Maya Dillon wrote in an email.

UBS Financial Services has lost a handful of large arbitration claims stemming from losses in Puerto Rico bonds and closed-end funds, including investor claims of $4.4 million and $9 million in 2017.

Investment News

By Bruce Kelly

Jun 27, 2018 @ 4:25 pm

UBS Ordered to Pay $4.3M Over Puerto Rico Bonds Case.

UBS Financial Services must pay $4.3 million more to claimants who lost money in Puerto Rico bonds, InvestmentNews writes.

In an arbitration award decided Friday a Finra dispute resolution panel ruled UBS must pay compensatory damages and costs to the family and relatives of Jacobo and Raquel Bender, according to the publication. The Benders, who allege negligent supervision and fraud, among other charges, had bought Puerto Rico bonds, some of which were underwritten by UBS, as well as proprietary closed-end funds whose investment focus were also Puerto Rico bonds, according to the award cited by InvestmentNews.

The market for Puerto Rico's municipal bonds collapsed in 2013, the publication writes. UBS has since lost several arbitration claims arising from the losses in the bonds and closed-end funds brought by investors, according to InvestmentNews.

Last year, UBS lost a $4.4 million claim and another worth $9 million, the publication writes.

Just how many claims there are out there related to the Puerto Rico bonds is perhaps best demonstrated by the BrokerCheck record of the Benders' broker at UBS.

The family's lawyer tells InvestmentNews that its broker was Ramon Almonte — who has 183 disclosures on his record, most of which are tied to the sales of the bonds, according to the publication.

The Benders were seeking $1 million to $5 million in damages, and the $4.3 million award "represents the complete return of the family's loss of capital," Jeffrey Erez, the family's lawyer, tells InvestmentNews.

"This was a great award," he says, according to the publication. "When an arbitration panel gives the claimants an award like this, they basically are rejecting every argument made by UBS during the hearings."

A UBS spokeswoman tells the publication in an email that the firm disagrees with the decision but considers it important to note that the Benders were awarded less than they sought. Almonte, who's currently a managing director UBS Financial Services Inc. of Puerto Rico, didn't return InvestmentNews' call for comment.

To read the *InvestmentNews* article cited in this story, click here.

Financial Advisor

By Alex Padalka

June 28, 2018

New MSRB Report Examines Trends in Customer Trading Activity of Municipal Securities Dealers.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a report that shows—despite sharp declines in dealer inventories of municipal securities and the number of dealers—municipal securities trading activity on behalf of investors has remained relatively stable over the past several years, with robust dealer participation and less concentration among top dealers.

Today's report is the first-ever to analyze changes and trends in the customer trading activity of municipal securities dealers. The report notes the steady decline in the number of municipal securities dealers since 2006 but finds that most dealers that have exited the market were infrequent traders of municipal securities.

"Our analysis shows that most dealers that have exited the market provided little liquidity and participated in very few trades—typically fewer than 10 trades in a year," said MSRB Director of Research Marcelo Vieira. "Meanwhile, the number of dealers with substantial municipal business—those executing more than 25,000 trades per year—has increased."

The MSRB's *Dealer Participation and Concentration in Municipal Securities Trading* report also examines dealer concentration, or the dealer market share of municipal customer trades. Market share of top dealers has declined since 2006, when the top five dealers accounted for 42.2 percent of municipal customer trades. In 2017, the top five dealers accounted for 34.6 percent of all municipal customer trades. The report includes detailed tables and statistics on dealer participation and concentration, aggregated by bands of trade volume and most-active dealers.

The MSRB evaluates municipal market trends as part of its mission to promote a fair and efficient market and plans to continue studying dealer data. Public and industry input on additional topics, including trends in the inter-dealer market, is welcome and should be referred to Marcelo Vieira at mvieira@msrb.org.

Date: June 19, 2018

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BDA's 2nd Qtr Advocacy Priorities.

Read the BDA Priorities.

Bond Dealers of America

June 20, 2018

[Preparing for the Consolidated FINRA Registration Rules and Restructured Examination Requirements.]

In October 2017, the Financial Industry Regulatory Authority (FINRA) announced, through Regulatory Notice 17-30 (the "Notice"),[1] that the U.S. Securities and Exchange Commission (SEC) approved a proposed rule change, which, (i) consolidates FINRA's registration rules; (ii) makes a number of technical changes to permissible registration categories and related rules; and (iii) restructures the representative-level qualification examinations. Each of these is discussed in greater detail below. The Proposed Rules (as defined below) take effect on October 1, 2018.

Consolidated Registration Rules

Summary of the Proposed Rules

The proposed rules, FINRA Rules 1210-1240 (the "Proposed Rules"), will adopt and consolidate, with amendment, certain National Association of Securities Dealers (NASD) and New York Stock Exchange (NYSE) rules related to registration and qualification of individual persons associated with FINRA member firms. The Notice explains that while the legacy NASD rules generally apply to all FINRA members, the existing incorporated NYSE rules only apply to FINRA members that are also members of the NYSE. The proposed rules, however, will generally apply to all FINRA members. The Notice further posits that while there are certain key differences, as discussed below, the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated. The Proposed Rules are:

- *FINRA Rule 1210.* Requires that each person engaged in investment banking or securities business of a FINRA member firm be appropriately registered commensurate with the individual's job functions and responsibilities, unless exempt from registration. FINRA Rule 1210 also discusses: (1) the requirement to have a minimum number of registered principals at each member firm; (2) the ability to maintain permissive registrations for associated persons; (3) the requirement to pass an appropriate qualification examination and the process for obtaining a waiver of a qualification examination; (4) the requirements applicable to registered persons functioning as principals prior to passing an appropriate principal qualification examination; (5) rules of conduct for taking examinations and confidentiality of examinations; (6) waiting periods for retaking a failed examination; (7) the requirement that registered persons satisfy continuing education ("CE") requirements; (8) lapse of registration and expiration of the Securities Industry Essentials ("SIE") exam; (9) the waiver program for individuals working for a financial services industry affiliate of a member firm; (10) the status of persons serving in the Armed Forces of the United States; and (11) impermissible registrations.[2]
- *FINRA Rule 1220.* Defines "principal" and "representative" and sets forth the qualification and registration requirements for these categories. FINRA Rule 1220 also provides a number of additional registration-related rules and clarifications, including with respect to certain eliminated registration categories.
- *FINRA Rule 1230.* Sets forth the associated persons for whom FINRA registration is not required.
- *FINRA Rule 1240.* Sets forth the CE requirements for member firms, including the Firm and Regulatory Elements.

Accepting Orders from Customers

Once the Proposed Rules take effect, unregistered persons will not be allowed to accept an order from a customer under any circumstances.[3] In the event that a registered person is unavailable, an unregistered person will be permitted to transcribe order details if a customer contacts a firm to place an unsolicited order for the purchase or sale of securities. A registered person, however, will be required to subsequently contact the customer to confirm the order details prior to the order being accepted.

Financial Services Affiliate Waiver Program

Under the Proposed Rules, FINRA will be establishing a waiver program, effective October 1, 2018, for individuals who terminate their representative or principal registrations with a member firm in order to work for a non-U.S. or U.S. financial services industry affiliate of a member firm (the "Waiver Program"). The term "financial services industry affiliate of a member" is defined as "a legal entity that controls, is controlled by or is under common control with a member firm and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent [non-U.S.] regulatory authorities."[4] Individuals who are eligible for the Waiver Program would be granted a single seven-year waiver period beginning on the date that they are initially designated as eligible for the Waiver Program. This waiver period is fixed and cannot be tolled or renewed. During this time period, individuals will be responsible for timely completion of Regulatory Element CE programs based upon their most recent registration category. Failure to complete the Regulatory Element within the prescribed 120-day window will result in an individual losing his or her eligibility for the Waiver Program.

The Waiver Program will allow for an individual to re-apply with FINRA for registration as a representative or principal, provided that the following conditions have been met:

- the individual must have been registered as a representative or principal for a total of five years within the most recent ten-year period prior to his or her initial designation under the Waiver Program;
- the individual must have been registered as a representative or principal for at least one year prior to his or her initial designation under the Waiver Program with the member firm that is designating him or her;
- all waiver requests under the program must be made within seven years of the individual's initial designation;
- the individual's initial designation and any subsequent designation must be made concurrently with the filing of the individual's related Form U5;
- the individual must have continuously worked for a financial services industry affiliate of a member firm since his or her last Form U5 filing;
- the individual must have complied with the Regulatory Element of CE; and
- the individual must not have any pending or adverse regulatory matters, or terminations, that are reportable on Form U4, and must not have been subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while eligible under the program.

The Waiver Program will not require that individuals return to the same member firm that designated them as eligible for a waiver, and during the seven-year window individuals may move between member firms, between a member firm and a financial services affiliate of the member firm or another member firm, and between financial services affiliates of member firms; provided that the individual continuously works for a financial services affiliate of a member firm since the filing of the individual's last Form U5. An individual participating in the Waiver Program cannot, however, be working for a member firm while also working for a financial services affiliate of a member firm.

Member firms will be required to designate individuals as eligible for the Waiver Program by notifying FINRA concurrently with the filing of an individual's Form U5. Member firms will also be responsible for requesting waivers when registering individuals who have been eligible participants in the Waiver Program. FINRA will rely on representations made by the member firm at the time a waiver is requested under the Waiver Program, and also may independently verify that the conditions under the Waiver Program have been met. FINRA will review and determine whether to grant any waiver requests under the Waiver Program within 30 calendar days of receipt of the request.

Registration Changes

Principal Financial Officer and Principal Operations Officer Designations

Under the Proposed Rules, firms will be required to designate a:

- Principal Financial Officer with primary responsibility for financial filings and the related books and records; and
- Principal Operations Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivables and payables and reorganization redemptions and those books and records related to such activities.

While the day-to-day duties of these positions may be delegated to other principals of the firm, the ultimate responsibility for the functions must remain with the Principal Financial Officer and the Principal Operations Officer.

These designations will replace the existing requirement that all member firms designate a Chief Financial Officer, and that FINRA and NYSE dual-member firms also designate a Chief Operations Officer, and will apply to all firms, regardless of whether the firm is exempt from the requirement to have a Financial and Operations Principal (“FinOp”) or an Introducing Broker-Dealer FinOp. Principal Financial Officers and Principal Operations Officers will be required to be registered as either a FinOp or Introducing Broker-Dealer FinOp, as applicable, and must be registered in the CRD system as Operations Professionals. With respect to these requirements, because Principal Financial Officers and Principal Operations Officers must also be registered as either FinOps or Introducing Broker-Dealer FinOps, they will not be required to pass the Operations Professional (Series 99) examination in order to register as Operations Professionals, as they already hold a qualifying registration.

Firms that are not self-clearing or do not provide clearing services are not required to designate separate individuals to serve as the Principal Financial Officer, Principal Operations Officer, and FinOp or Introducing Broker-Dealer FinOp. Firms that self-clear or provide clearing services, unless granted a limited-size waiver from FINRA, must designate separate individuals to serve as Principal Financial Officer and Principal Operations Officer. Such individuals, however, may also carry out FinOp responsibilities. A firm may designate multiple Principal Operations Officers in accordance with the Proposed Rules, but may not designate multiple Principal Financial Officers.

Additional Principal Registration Categories

The Proposed Rules establish three new principal registration categories: (a) Compliance Officer; (b) Investment Banking Principal; and (c) Private Securities Offerings Principal.

- *Compliance Officer.* Under the Proposed Rules, individuals designated on Form BD as Chief Compliance Officer, with the exception of firms engaged in limited investment banking or securities business, must register as a Compliance Officer. Individuals who are currently registered as both General Securities Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will be able to register as a Compliance

Officers without having to pass any additional examinations. An individual who meets these requirements and is also designated on Form BD as Chief Compliance Officer as of October 1, 2018, will automatically be granted registration as a Compliance Officer. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to either pass the General Securities Representative examination (including passing the SIE) and pass the General Securities Principal examination, or pass the Compliance Official examination (Series 14).

- *Investment Banking Principal.* Under the Proposed Rules, principals who are responsible for supervising certain investment banking activities[5] are required to register as Investment Banking Principals. Individuals who are currently registered as both Investment Banking Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Investment Banking Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Investment Banking Representative examination (including passing the SIE) and pass the General Securities Principal examination.
- *Private Securities Offerings Principal.* Under the Proposed Rules, principals who are solely responsible for supervising specified activities relating to private securities offerings may register as Private Securities Offerings Principals, instead of registering as General Securities Principals. Individuals who are currently registered as both Private Securities Offerings Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Private Securities Offerings Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Private Securities Offerings Representative examination (including passing the SIE) and pass the General Securities Principal examination.

Under the Proposed Rules, an individual is not eligible to register as an Investment Banking Principal or Private Securities Offerings Principal solely by virtue of being registered as a General Securities Representative and General Securities Principal.

Permissive Registrations

FINRA member firms will be permitted under the Proposed Rules to permissively register or maintain the registration of any associated person or any individual engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of the member.[6] This expands the current categories of permissive registrations, which include individuals performing legal, compliance, internal audit, back-office operations, or similar responsibilities for a firm; individuals engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of a firm; and individuals performing administrative support functions for registered persons of a firm. Permissively registered individuals will be considered registered persons of the member firm and subject to all FINRA rules relevant to their activities.

Firms must have adequate supervisory systems and procedures in place to ensure that individuals who are permissively registered do not act outside of their registered function. A permissively registered individual does not need to be directly supervised by a registered person, although the member firm must assign a supervisor registered with the firm who is responsible for periodically verifying that the permissively registered individual is not acting outside the scope of his or her registered function. This registered supervisor must have at least the same level of registration as the permissively registered individual (i.e., if the individual is permissively registered as a principal, the registered supervisor must also be a principal), although the registered supervisor does not need to be registered in the same representative or principal registration category as the permissively registered individual.

Registered Persons Functioning as Principals

Under the Proposed Rules, registered representatives will now be permitted to function as principals of a firm for a period of 120 calendar days—an increase from the current 90-day period—before being required to pass the appropriate principal-level qualification examination. Firms will also be able to designate current principals to serve in another principal category (e.g., a current General Securities Principal can be designated to serve as a Municipal Securities Principal) for the same 120-day period. Registered representatives who are designated as principals in this manner, however, including with respect to principal categories that do not have pre-requisite representative-level registration requirements, must have at least 18 months of experience functioning as a registered representative within the immediately preceding 5 years.

Examination Changes

The Proposed Rules make a number of changes to the representative-level qualification examinations, which are designed primarily to eliminate redundancies in the testing of general securities knowledge across the representative-level examinations, and also retire a number of existing representative-level registration categories. These changes are described in further detail below, and summarized in chart-form in Appendix A.

Securities Industry Essentials Examination (SIE)

In connection with the Proposed Rules, FINRA will be restructuring its representative-level qualification examinations. Effective October 1, 2018, individuals seeking representative-level registration will be required to pass the SIE examination, as well as a revised function-specific qualification examination (e.g., General Securities Representative (Series 7)). Certain current and former registered representatives will be given credit for passing the SIE without having to sit for the exam. The SIE is designed to eliminate redundant testing of general securities knowledge across the representative-level examinations, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions, and regulated and prohibited practices. The revised function-specific examinations will focus on knowledge relevant to the day-to-day activities, responsibilities, and job functions of representatives. Individuals will be able to schedule the SIE and any function-specific examination(s) on the same day, subject to testing center availability. The SIE will be subject to a four-year expiration period, unlike the two-year registration lapse period that will continue to be applicable for representative- and principal-level registrations.

Individuals may continue to apply to become registered representatives prior to October 1, 2018. Such individuals will sit for the existing representative-level examinations, regardless of whether the examination takes place prior to October 1, 2018 (i.e., an individual who applies for registration on September 29, 2018, could sit for an existing representative-level examination in November of 2018). Individuals who attempt and fail an existing representative-level examination, and are precluded from sitting for the same exam until after October 1, 2018, will be required to take and pass the SIE and function-specific examination on his or her next attempt. If this occurs, however, the individual will not have to wait the typical 30-day period before sitting for the SIE and function-specific examination (e.g., an individual who fails the current Series 7 examination on September 29, 2018 could sit for the SIE and revised Series 7 examination on October 5, 2018).

All associated persons will be eligible to sit for the SIE. In addition, individuals not associated with a member firm, such as the general public, will be permitted to sit for the SIE, although passing the SIE alone will not qualify an individual for registration with FINRA. Associated persons who sit for the SIE will be subject to the SIE Rules of Conduct, which, among other things, requires individuals to attest that mere passage of the SIE does not qualify an individual to engage in investment banking or securities business. Individuals not associated with a member firm will be required to agree to be subject to the SIE Rules of Conduct. Firms will be able to register associated persons for the SIE through CRD, and FINRA is developing a separate system to allow associated persons not seeking registration as a representative and individuals not associated with a firm to enroll and pay the SIE examination fee.

Eliminated Representative Level Registration Categories

In connection with the Proposed Rules, the following registration categories and examinations are being retired:

- Assistant Representative – Order Processing (Series 11);
- United Kingdom Securities Representative (Series 17);
- Canada Securities Representative – with options (Series 37);
- Canada Securities Representative – no options (Series 38);
- Registered Options Representative (Series 42);
- Corporate Securities Representative (Series 62); and
- Government Securities Limited Representative (Series 72).

An individual currently registered in one of these categories will be grandfathered by FINRA and may maintain his or her registrations until the individual is terminated and remains terminated for a period of two years.

Research Analyst and Principal and Supervisory Analyst Qualification Requirements

Under the proposed rules, individuals seeking registration as a Research Analyst will no longer be required to pass the General Securities Representative examination. Instead, individuals will be required to pass the SIE and revised Research Analyst qualification examinations (Series 86 and 87). In addition, individuals seeking registration as a Research Principal may now either pass the Research Analyst and General Supervisory Principal qualification examinations, or, alternatively, qualify and register as a Supervisory Analyst (Series 16) and pass the General Supervisory Principal qualification examination. In connection with these changes, FINRA is eliminating the experience prerequisite for individuals seeking registration as a Supervisory Analyst, which required that individuals seeking registration have at least three years of experience involving securities or financial analysis in the immediately preceding six years.

Conclusion

With the Proposed Rules, FINRA seeks to streamline the examination and registration process by establishing the SIE and revising many of the current qualification examinations. The Proposed Rules also introduce additional principal registration categories and requirements, while also retiring a number of existing representative-level registration categories and qualification examinations. Finally, through implementation of the Waiver Program, FINRA seeks to provide flexibility to allow individuals to move between member firms and their non-U.S. or U.S. financial services industry affiliates without having to re-take qualification examinations upon their return to a member firm, provided that certain conditions are met. While the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated, there are certain key differences, such as those outlined above, which should be considered and understood before the October 1, 2018 implementation date.

Appendix A

Examination and Registration Changes under the Proposed Rules

The below chart captures the principal- and representative-level examination and registration changes under the Proposed Rules, as well as the addition of the Principal Financial Officer and Principal Operations Officer designations.[7] For more information please see the discussion above.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Shearman & Sterling LLP

Russell D. Sacks, Jennifer D. Morton, Steven Blau, Jenny Ding Jordan and P. Sean Kelly

June 25, 2018

BDA Sends Letters of Support for PCAOB Audit Exemption Bill Senate Banking Committee to Hold Hearing on the Bill Next Week.

June 21, 2018, the BDA sent letters to the Senate Banking and House and Financial Services Committees requesting their support of *The Small Business Audit Correction Act*. The Senate letter can be viewed here and the House letter can viewed here.

S. 3004 & H.R. 6021 would exempt privately held, small non-custodial brokers and dealers in good standing from the requirements to hire a Public Company Accounting Oversight Board (PCAOB) registered audit firm to meet their annual SEA Rule 17a-5 reporting obligation and that the audit firm perform the audit in accordance with PCAOB standards.

Passage of the legislation would allow eligible firms to conduct their annual audits in a less costly and burdensome manner. Many BDA members listed this issue as one of their top legislative priorities for the year.

In related news, the Senate Banking Committee will consider *The Small Business Audit Correction Act* (S. 3004) next Tuesday at a hearing. S. 3004 will be part of a package of bills that is being reviewed by the Committee. BDA staff will attend the hearing. For more information, please click here.

Call to Action

Now is the time to reach out to your Members of Congress and urge them to support and co-sponsor onto The Small Business Audit Correction Act! Members and their staff need to hear from you.

All Members of Congress are important in this effort, however House Financial Services and Senate Banking Committees are particularly important! The *Small Business Audit Correction Act* is expected to be rolled into a package of capital markets bills considered by the House Financial Services Committee soon.

- Financial Services Comm. Members and contact information can be viewed here.
- Senate Banking Comm. Members and contact information can be viewed here.
- Suggested talking points can be viewed here.
- Draft letter can be viewed here.
- Summary of the bill can be viewed here.

- House bill can be viewed here. Senate bill can be viewed here.

Bond Dealers of America

June 21, 2018

The Markup Rule for Municipal Bonds.

In bond transactions, investors are often curious to know the price that they pay for their securities and the markup that their brokers charge them. It becomes especially important for muni bond transactions wherein, because of the large number of issues and liquidity concerns, retail investors rely on their brokers to a large extent on pricing their securities.

In this regard, on September 2, 2016, the Municipal Securities Regulatory Board (MSRB) filed a proposed amendment to the Securities and Exchange Commission (SEC) regarding rules G-15, G-30 and FINRA Rule 2232. This change was to increase the transparency of the municipal bond market and to help further clarify the distinction between a bond's actual price and the markup the broker receives.

The amendment was finally approved and became effective on May 14, 2018, and is expected to raise a lot of discussions in the industry.

Let us go over some of the broader implications of these recently implemented rules.

Continue reading.

municipalbonds.com

Brian Mathews

Jun 21, 2018

SIFMA: Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds.

SIFMA provided comments to the SEC on recommendations of the Market Structure Subcommittee of the SEC Investor Advisory Committee on Municipal and Corporate Bonds.

Read Comments.

MSRB Compliance Corner - Summer, 2018

Read about charitable donations and MSRB Rule G-37, among other tips and info in the latest Compliance Corner.

MSRB Initiates Retrospective Review of Underwriter Disclosures to Issuers.

Washington, DC – As part of its commitment to ongoing review of its rules and published interpretations, the Municipal Securities Rulemaking Board (MSRB) is seeking comment on existing interpretive guidance that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information.

"The MSRB has received informal feedback from market participants that the disclosure requirements adopted in 2012 could more effectively and efficiently achieve their intended purpose of assisting issuers in making informed decisions when engaging the services of an underwriter," said MSRB President and CEO Lynnette Kelly.

For example, Kelly said, some market participants have indicated that underwriters' disclosures are duplicative, often boilerplate and burdensome for issuers to review. In addition, dealers have observed that in some cases the burdens on them of requiring certain disclosures may not be fully justified by the informational value to issuers.

"Soliciting formal public comment will help us consider whether and how to amend the guidance to improve its effectiveness and efficiency," Kelly said.

Read the request for comment. Comments should be submitted no later than August 6, 2018.

Date: June 5, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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Rule 4210 Update: BDA Submits Capital Charge Letter to FINRA.

On June 7, 2018, the BDA continued leading the advocacy push opposing FINRA Rule 4210 by submitting a letter in support of a "Capital Charge" provision in lieu of the proposed margin requirements. The letter, which comes on the heels of a 9 month delay of implementation of the rule by the SEC last month, showcases BDA firms and how the requested change would positively impact these firms.

Highlighted points include:

- These firms do not believe that the Capital Charge Proposal will have any anti-competitive impact on their businesses.
- These firms expect that the existing covered agency transaction rules will cause some erosion in their businesses.
- These firms strongly support the Capital Charge Proposal.

BDA Continues Advocacy on Capitol Hill

The BDA continues to work with partners on the House Financial Services Committee and Senate

Banking Committee to pressure the SEC and FINRA to rethink the rule. **This includes both advocating for the "Capital Charge" proposal as well for outright termination of the amendment due to its anti-competative nature before implementation on March 25, 2019.**

In the coming weeks, it is expected that multiple Members of Congress will reach out to both FINRA and the SEC. We will provide an update once this occurs

Bond Dealers of America

June 8, 2018

Interactive Brokers Welcomes New Bond Disclosure Rules.

Company Known for Low Fees Supports Amendments Requiring Brokers to Increase Transparency

GREENWICH, Conn.–(BUSINESS WIRE)–Interactive Brokers Group, Inc. (NASDAQ GS: IBKR) an automated global electronic broker, today announced its support for a new rule implemented by the Securities and Exchange Commission (SEC) on May 14th requiring brokers to disclose the fees they make on corporate, municipal, and agency bond transactions.

The amendments to FINRA Rule 2232 and MSRB Rule G-15 regarding Customer Confirmations requires SEC member firms to disclose the amount of mark-up or mark-downs applied to trades made for retail clients if the firm executes an offsetting trade in the same security on the same trading day. The amendments also require firms to provide clients with trading data for the security traded and the exact execution time of the transaction.

"Interactive Brokers welcomes the new rule requiring brokers to be transparent about their fees. In the past, many brokers claimed they did not charge commission, but hid fees in their spreads. Unlike most other brokers, our firm offers low, transparent pricing and does not charge spread mark-ups," said Thomas Peterffy, CEO of Interactive Brokers.

The company, which was ranked Number One in Barron's 2018 Best Online Brokers Ranking and the "Lowest Cost Online Broker" by Barron's five years on a row*, is known for its advanced technology, breadth of offerings, and low costs.

The company's bond commissions are:

US Treasuries .002% on the first $1,000,000 of face value and .0001% of the face value after the initial $1,000,000.

Municipal Bonds .05% on the first $10,000 of the face value and .0125% of the face value after the initial $10,000.

Corporate Bonds 0.1% on the first $10,000 of face value and 0.025% of the face value after the initial $10,000.

More details on IBKR's bond pricing can be viewed here.

"IBKR is committed to lowering clients' costs to help them maximize their returns. We provide online access to a broad range of bonds and sophisticated cash management tools for everyone from corporate treasurers to individual investors. We encourage our clients to enter their own bids and offers and negotiate instead of acting on the quotes of others," Mr. Peterffy noted.

In May, IBKR added mobile trading for both Municipal and Corporate bonds. Its Trader Workstation (TWS) trading platform provides Corporate Bond and Muni Bond Market Scanners that let clients quickly and easily scan global markets for the top performing bonds across instrument types and metrics.

About Interactive Brokers Group, Inc.:

Interactive Brokers Group affiliates provide automated trade execution and custody of securities, commodities and foreign exchange around the clock on over 120 markets in numerous countries and currencies, from a single IB Universal Account® to clients worldwide. We service individual investors, hedge funds, proprietary trading groups, financial advisors and introducing brokers. Focusing on technology and automation for over 41 years has enabled us to equip our clients with a uniquely sophisticated platform to manage their investment portfolios at the lowest cost. Due to our range of services, low costs and technology, IBKR is ranked the "Top Online Broker", according to Barron's Best Online Brokers review, March 24, 2018. We strive to provide our clients with advantageous execution prices and trading, risk and portfolio management tools, research facilities and investment products, all at low prices, positioning them to achieve superior returns on investments.

* Lowest Cost Rated by Barron's 5 Years Straight – Lowest cost broker 2014 through 2018 according to Barron's online broker review. Interactive Brokers earned a 4.6 star ranking in the March 26, 2018 Barron's Annual Best Online Brokers – "All Together Now". Criteria included Trade Experience and Technology, Usability, Mobile, Range of Offerings, Research Amenities, Portfolio Analysis & Reports, Customer Service, Education and Security, and Costs. Barron's is a registered trademark of Dow Jones & Co. Inc.

Contacts

For Interactive Brokers Group, Inc.

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or
Media: Kalen Holliday, 203-913- 1369

June 05, 2018

Hawkins Advisory: Cybersecurity - Municipal Disclosure

This Advisory describes recent developments regarding disclosure of cybersecurity risks and incidents and their import for municipal disclosure.

Read the Advisory.

MSRB Launches Re-Engineered Trade Reporting System.

Washington, DC – After an intensive three-year effort to re-engineer the underlying technology of the trade reporting system that supports one of the country's key capital markets, the Municipal Securities Rulemaking Board (MSRB) is now accepting and disseminating municipal securities trade information through a modernized Real-Time Transaction Reporting System (RTRS).

"Investment in technology is critical to the MSRB's ability to ensure a fair, transparent and efficient municipal market," said MSRB President and CEO Lynnette Kelly. "Modernizing our 13-year-old trade reporting system will contribute to improved data quality and enhance the MSRB's ability to prevent and respond to significant service disruptions in this vital market transparency system."

The MSRB created RTRS in January 2005, transforming price transparency in the municipal market by requiring municipal securities dealers to report information about most trades in municipal securities within 15 minutes. This real-time trade data was made publicly available on the MSRB's Electronic Municipal Market Access (EMMA®) website in 2008. The MSRB now processes approximately 39,000 trade reports each day for transactions in the more than 1 million outstanding municipal securities. Read more about the development of the MSRB's market transparency systems.

"RTRS is now better equipped to respond to an evolving municipal market and adapt as needed to future regulatory requirements," Kelly said.

The re-engineered RTRS will continue to accept computer-to-computer trade reports from dealers in the same manner but with some improvements to the way errors are detected and assigned. Dealers that report trades or monitor compliance with trade reporting requirements through the RTRS Web user interface will notice streamlined navigation and enhanced display of information. The MSRB Transaction Subscription Service has also been re-engineered to improve data quality and strengthen system security and reliability. Questions about the RTRS system may be directed to MSRB Support.

Date: May 30, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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Muni Bonds Measure Heads to White House.

The Economic Growth, Regulatory Relief and Consumer Protection Act – good for counties – moves on to the White House for president's signature

On May 22, the U.S. House of Representatives passed S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act, which is now headed to the president's desk for his signature.

A provision in the bill — Section 403 — is particularly beneficial to counties because it reclassifies municipal debt as a High-Quality Liquid Asset (HQLA). Under current law, banks are required to meet a Liquidity Coverage Ratio (LCR) to ensure each bank has enough liquid assets in the event of financial stress. By classifying municipal securities as a Level 2B asset, required to account for at least 15 percent of a bank's total stock, banks will be further incentivized to invest in these bonds.

This change Muni bonds measure heads to White House would make municipal debt more attractive to investors and banks, keeping the demand for municipal bonds high and interest costs of issuance low for counties and other issuers.

Tax-exempt municipal bonds are used to finance the construction of and repairs to infrastructure important to counties, including roads and bridges, public transportation, seaports and airports, water and wastewater facilities, electric power and natural gas facilities.

Classifying investment grade municipal securities as HQLA will help ensure low-cost infrastructure financing remains available as municipal issuers continue building the local infrastructure on which our communities and the national economy rely.

National Association of Counties

May 28, 2018

How an Arcane, New Accounting Standard is Helping Reporters Follow the Money.

MARK NIESSE WAS one of two reporters in a conference room inside a government building in downtown Atlanta in June 2017, listening to a presentation about an obscure accounting rule change. For the first time ever, governments were required to release detailed information about tax breaks given to companies. Niesse, a reporter at the Atlanta-Journal Constitution, hoped to answer a question that had long nagged him: Are tax incentives worth it?

In Fulton County, the largest of nine counties in the Atlanta metro area, officials were trying to comply with the new disclosures and had hired Ernst & Young to help. As the accountants spoke, Niesse peppered them with questions. At one point, the accountants left the room to discuss the accuracy of their numbers. “When they came back out, they agreed they needed to present the information in a clearer way,” Niesse recalls. That’s when Niesse noticed an extensive spreadsheet on an accountant’s laptop, open on the conference room table. Unlike the PowerPoint, the spreadsheet was crystal clear: it showed the parcel IDs and property taxes not paid on every recent development in Fulton County.

Niesse made a verbal FOIA request to the public relations officials in attendance. “They weren’t counting on that,” he recalls. Back in the newsroom, he followed up with a written request, and by late June, the spreadsheet—with its 56 columns and 77 rows of data—was open on his computer. “It was a lot of good information,” he recalls. “I would have had a hard time doing that myself.”

Continue reading.

Columbia Journalism Review

By Mya Frazier

MAY 29, 2018

The Fight for Advanced Refundings Continues.

The Fight to Re-generate Access to Advanced Refundings Continues

Discussions around the ongoing fight to recreate access to advanced refundings through new legislation have been in the news. Steve Benjamin, Mayor of Columbia, S.C., Chair of Municipal Bonds for America (a non-partisan coalition of municipal bond issuers and state and local government officials), and the incoming President of the Conference of Mayors, has been particularly vocal in his defense of advanced refundings.

There are three main components to understand and consider in this discussion:

Continue reading.

by George Friedlander

Posted 05/23/2018

Neighborly Insights

These Insights are brought to you by Court Street Group Research.

Congress Passes Legislation to Classify Municipal Securities as High Quality Liquid Assets.

This week the House of Representatives passed Senate legislation addressing a rule approved by the Federal Reserve Board, Federal Depository Insurance Commission and the Comptroller of Currency in September of 2014, which established new liquidity standards for banks. The new standards, which went into effect in January of 2015, require financial institutions with at least $250 billion in total assets to maintain prescribed levels of liquid assets that can quickly be converted into cash in times of national economic stress. These asset classes included foreign sovereign debt, but failed to classify municipal securities as High Quality Liquid Assets.

S. 2155 – Economic Growth, Regulatory Relief, and Consumer Protection Act (Closed Rule, One Hour of Debate) (Sponsored by Sen. Mike Crapo / Financial Services Committee) is now headed to the President's desk. Included in the bill is a provision that will mend an oversight of the Liquidity Coverage Ratio rule to include municipal securities as High Quality Liquid Assets. The core features of investment grade municipal securities are consistent with all of the criteria characterized as HQLA, including limited price volatility, high trading volumes and deep and stable funding markets, as described below.

The municipal securities market is a large, deep pool of capital representing a $3.85 trillion market. Institutional investors dedicate capital to the municipal market because muni securities are a secure investment. Municipal bonds are traded by a large number of committed retail participants in high trading volumes with timely and observable market prices through the MSRB's reporting system, EMMA.

After US Treasuries, municipal securities are the safest available investment, with state and local governments having nearly a zero default rate. Some municipal bonds (such as the GO bonds of nine states) are more highly rated that US treasury securities.

Classifying investment grade municipal securities as HQLA helps ensure that low-cost infrastructure financing remains available for state and local governments to continue to build the infrastructure for commerce, public safety, job creation and the development of an educated workforce. We applaud Leadership's recognition that the ability of banks to invest in municipal securities for infrastructure projects is critically important and should not be impaired and Congress' dedication to ensuring the municipal bond remains the cornerstone of a healthy and productive economy.

House Passes Senate-Approved Bank Regulatory Reform Bill – BDA's Advocacy Efforts Help Classify Muni Bonds as HQLA.

On May 22, 2018, the US House of Representatives passed by a vote of 258-159 the Senate's bank regulatory reform bill, *The Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155). With the bill's passage in both Chambers, the President is expected to sign it into law before the start of the weekend.

A legislative success for BDA members in the bill is a provision (Section 403) that directs the FDIC, the Federal Reserve, and the OCC to classify qualifying investment-grade, liquid and readily-marketable municipal securities as level 2B liquid assets under the agencies' liquidity coverage ratio (LCR) rules. This classification ensures that municipal bonds remain an attractive and low-cost financing tool for public infrastructure.

Working in tandem with state, local, and issuer groups, BDA has supported and advocated for the high-quality liquid asset (HQLA) provision in the bill. BDA's work on this issue can be viewed here.

Next Steps

The BDA will be tracking and updating members as the federal banking agencies amend LCR regulations to reflect the change in law.

Section 403 directs all the banking agencies to amend their LCR rules and any other regulation that incorporates similar liquidity definitions within 90 days after the date of enactment of the legislation.

Bond Dealers of America

May 23, 2018

Banking Bill Expected to Help Lower State and Local Borrowing Costs.

The banking bill President Trump signed into law on Thursday promises to help reduce state and local borrowing costs, public finance officials and experts said.

A section in the bill would reclassify investment grade municipal bonds as "high-quality liquid assets," referred to as HQLA for short.

This change opens the door for the nation's biggest banks to use the bonds to meet federal liquidity requirements. Liquidity is a measure of how swiftly assets can be converted to cash to meet financial obligations.

Enabling banks to count the bonds as liquid assets is expected to drive up demand for the bonds and, in turn, push down interest rates for state and local borrowers.

“HQLA is huge for us,” said Emily S. Brock, who leads the Government Finance Officers Association’s federal liaison center. “We’ve been working it for about four years.”

The Federal Reserve, Federal Deposit Insurance Corporation and the Comptroller of the Currency approved liquidity rules in 2014 for banks with over $250 billion in assets, setting guidelines for the high-quality liquid assets that they need to maintain. But “muni” bonds didn’t qualify as an HQLA asset under those rules.

Vermont Treasurer Beth Pearce is the current president of the National Association of State Treasurers.

“For me as a treasurer, and treasurers across the country, we’re concerned about the cost for our taxpayers and we see this as an important improvement,” Pearce said.

“It’s a very big deal,” she added.

State and local governments commonly borrow to pay for infrastructure like roads, schools and water systems. The municipal debt market in the U.S. totals about $3.8 trillion.

It’s too early to know how much the HQLA designation could save states and localities, according to Brock and Pearce.

But Brock anticipates no shortage of interest among banks in municipal debt. “Banks love safety, they love liquidity and they love yield,” she said. “Municipal securities do it for them.”

The bipartisan legislation the president signed Thursday is dubbed the Economic Growth, Regulatory Relief, and Consumer Protection Act.

It rolls back rules for small- and medium-sized banks that were imposed as part of the 2010 Dodd-Frank law, which lawmakers passed in the wake of the nation’s 2008 financial crisis.

Route Fifty

By Bill Lucia,
Senior Reporter

MAY 24, 2018

Better Disclosure Is One Florida Issuer's Path to Lower Borrowing Costs.

As the treasurer for the country’s fourth-largest school district, Tony Vu says his goal is to lower borrowing costs for a voter-approved $1.2 billion general obligation construction program in south Florida.

Vu said his Miami-Dade County School District is “a Fortune 500-sized organization” that is limited by legislation and faces shrinking resources, growing mandates and tighter regulations.

A priority since becoming the treasurer 10 months ago, he said, was to create a new investor community website to augment the district's use of Digital Assurance Certification and the Municipal Securities Rulemaking Board's EMMA filing system.

The Miami-Dade County School District has $3.73 billion of outstanding debt.

As he considered a new platform, Vu said he was approached by representatives of BondLink, a Boston-based financial technology company that provides investor outreach to municipal issuers. Vu liked what he saw.

"I think from the investor's standpoint we can reach a larger group and a larger pool," he said. "I think one thing we'll definitely be able to do is have a more localized outreach effort."

Vu said he expects BondLink to give him with the ability to get the district's "story out there as effectively as possible," and to conduct targeted and proactive outreach to new retail investors and existing bondholders.

"Higher transparency typically means lower borrowing costs," he said.

Studies have supported the notion that issuers with good disclosure practices tend to elicit lower interest rates.

That was the conclusion of "When transparency pays: The moderating effect of disclosure quality on changes in the cost of debt," a paper by Christine Cuny and Svenja Dube of New York University's Stern School of Business.

In their research, presented at Brooking's July 2017 Municipal Finance Conference, Cuny and Dube examined the relation between disclosure choice, changes in issuer credit ratings, and adverse local housing conditions.

The "results suggest that disclosure quality can lower the cost of debt by attenuating the impact of negative economic outcomes," they said.

Vu said he hopes improved disclosure will help the district lower borrowing costs as it completes its $1.2 billion 21st Century GO Bond Program approved by voters in 2012. To date, the district has issued $929 million of GOs, leaving $271 million in bonding capacity to be sold.

The district's bond advisory committee reported that $546 million has been spent on new and renovated schools and technology upgrades as of Dec. 31.

The Miami-Dade School District also has $2.37 billion of certificates of participation lease-revenue debt outstanding, secured by its capital millage rate, impact fees, and other legally available funds.

The ability of Florida school districts to issue COPs in the future is in question as a result of the Legislature's passage of House Bill 7069 in 2017.

The sweeping education bill required districts for the first time to share with charter schools a portion of their optional 1.5 millage rate dedicated to capital funding. One mill equals $1,000 of the assessed taxable property value.

HB 7069 "won't impact already issued debt," Vu said. The bill requires outstanding debt service of the districts to be paid first before funds are shared with charter schools.

The State Board of Education is continuing to implement the bill, and has yet to determine how the law will impact the ability of Florida school districts to issue COPs in the future.

More than a dozen districts have filed a law suit challenging HB 7069.

The Miami-Dade County School District, which operates 342 traditional public schools and must share a portion of its capital millage with 130 charter schools in the county, is not participating in the HB 7069 suit.

S&P Global Ratings raised its rating on the district's GO bonds to AA-minus from A-plus and its rating on the district's COPs to A-plus from A in April 2017. Moody's Investors Service (MCO) assigns an Aa3 rating to the GOs and an A1 to the COPs. Both have stable outlooks.

BY SOURCEMEDIA | MUNICIPAL | 05/14/18 07:03 PM EDT

By Shelly Sigo

FINRA to Start Examining New Muni Markup Rule Compliance.

WASHINGTON – The Financial Industry Regulatory Authority is going to immediately begin examinations of firms' compliance with markup disclosure rules, with early returns indicating minor speed bumps in the implementation of those landmark requirements, regulatory officials said Tuesday.

Cindy Friedlander, the senior director of fixed income regulation within FINRA's Regulatory Operations group, said during a panel at FINRA's annual conference that the regulator will not wait to begin examining firms' compliance with the markup disclosure requirements that took effect less than two weeks ago.

Amendments to Municipal Securities Rulemaking Board rules G-15 on confirmation and G-30 on prices and commissions require dealers as of May 14 to disclose their markups and markdowns on certain transactions in the confirmations they send to retail customers. Dealers had hoped for a compliance extension, but didn't get it.

Under the rules, dealers initially must look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. If that data is unavailable, they must make a series of other successive considerations.

They must look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms. Further down the waterfall, dealers can look at contemporaneous trades of similar securities.

Markup disclosures must be given as a total dollar amount and a percentage of the prevailing market price.

"We will be examining firms immediately," Friedlander said. "We are going to be very careful to take into account firms' good faith efforts to comply with the rules."

Michael Post, MSRB general counsel, said the board has been discussing how compliance with the markup rule has gone over the first week or so.

“What we’ve heard is that things have gone relatively smoothly,” Post said, acknowledging that there have been reports of some hiccups. “It’s a relief that the issues that people are encountering are things that they think that they can address.”

Post reserved some measure of caution about his remarks, realizing that a firm experiencing a significant compliance failure might be hesitant to admit that to the MSRB.

Peg Henry, a deputy general counsel at Stifel Financial (SF) in St. Louis, said she has spent a lot of time on the trading floor recently and has asked traders in the past couple of days how things are going with markup disclosure.

“The responses I got ranged from ‘not bad’ to ‘so far so good’ to ‘it is what it is,’” she said.

Henry said her firm has experienced some issues, such as the fact that it works with several vendors in its day-to-day business that don’t standardize how they report information. She also added that the size of the markup that needs to be reported on a trade could seemingly be affected by a trade of the same security that occurs later in the day.

“There are situations that have arisen just in the first week that have created problems for us,” she said. “We’ve developed workarounds, but the workarounds are very labor intensive.”

Post said that firms can choose to calculate the prevailing market price of a security earlier in the day if it chooses, so it can disclose the markup before another transaction occurs that could muddy the waters.

Ivonia Slade, an assistant director in the Securities and Exchange Commission’s Public Finance Abuse Unit, said her group is going to remain focused on topics it has acted on over the past several years, such as offering fraud that occurs when issuers make misleading statements in their bond documents. She highlighted the SEC’s focus on enforcing the fiduciary duty requirements of municipal advisors.

“Our focus has been on making sure that they’re meeting those obligations,” she said.

The FINRA conference began May 21 and concludes May 23.

BY SOURCEMEDIA | MUNICIPAL | 05/22/18 07:04 PM EDT

By Kyle Glazier

Pennsylvania Sues Over Troubled Harrisburg Incinerator Bond Deals.

NEW YORK (Reuters) – Pennsylvania Governor Tom Wolf’s administration on Monday sued an array of financial, legal and other professional firms over their involvement in a 15-year-old incinerator upgrade project that nearly bankrupted the state capital, Harrisburg.

The state sued RBC Capital Markets, Buchanan Ingersoll & Rooney PC, Public Financial Management Inc (PFM) and others over the 2003 ill-fated trash-to-energy project, which saddled the city with more than $360 million of debt.

The city filed for bankruptcy in 2011 but the case was later thrown out. In its time, Harrisburg’s debt saga was the most dramatic episode in U.S. public finance, coming before both Detroit and

Puerto Rico filed their respective bankruptcies.

“It is time to hold those responsible for the failed incinerator debt scheme accountable and recoup the taxpayer dollars wasted by their negligence and deception,” Wolf said in a statement.

In their push to close bond deals so they could be paid, the professionals named in the lawsuit, dubbed the Working Group, misled the city by providing false information and concealing important facts, according to the complaint.

The city backed the bonds used to finance the project. After the bonds defaulted, the city was forced into the state’s first and only municipal receivership – paid for by state and local taxpayers.

A spokeswoman for RBC declined to comment. Representatives of Buchanan Ingersoll & Rooney and PFM did not immediately respond to emails seeking comment.

Eckert Seamans, which provided legal advice to underwriters of the 2003 bonds and in 2007 to the authority that issued the bonds, said on Monday that it had cooperated fully with investigations over the years “because we are confident that the firm represented its clients professionally, competently, and ethically.””We will vigorously defend our service to our clients and aggressively fight these unfounded allegations,” the firm’s Chief Executive Officer Timothy Hudak said in a statement.

The state seeks punitive damages, with interest.

Adding to taxpayer frustration was the case of Stephen Reed, who was mayor at the time and who ended his 28-year tenure in 2010.

Reed was charged in 2015 with hundreds of criminal counts for using some bond proceeds to travel the country and buy a bizarre list of roughly 10,000 artifacts, including a sarcophagus, a suit of armor and a “vampire hunting kit,” that he said were destined for museums.

Last year he pleaded guilty and received probation to a shortened list of charges.

BY HILARY RUSS

May 21, 2018

(Reporting by Hilary Russ; editing by Richard Chang and Lisa Shumaker)

The Curtain Is Lifted For Municipal Bond Markups.

Summary

- FINRA Rule 2232 requires municipal bond markups.
- Bond transaction fees examined.
- Market impact yet to be seen.

As of May 14th, 2018, FINRA Rule 2232 went into effect which requires broker dealers to disclose on customer confirmations their markup for principal trades executed within the same day. Previously, these markups were not disclosed and were rarely discussed. Since bonds are bought and sold on a yield basis, if an investor was looking for a certain yield, maturity, and credit quality, brokers would make sure they achieved these goals while still making a mark-up for themselves. Sometimes this markup was minuscule as is the case with high quality, very short-term bonds. Sometimes it was as much as 3% as it would be on a highly speculative, long dated bond. Dealers would buy bonds in the open market and mark the price up to their clients to cover their expenses and earn a living.

Now some of you may be saying 'what if I was looking for 5% and I could really get 6%, but my broker's undisclosed markup ate away at that return?' If that was occurring, your broker is a jerk (to put it politely). I am not here to defend anyone who does/did that. I am here to defend the reasonable fee charged on the onset of what is typically a multiple year and often a many decade long investment.

In many of the articles I read about the implementation of Rule 2232, the example that I always see is that a customer who invests $100,000.00 and is charged a 1% mark-up will now see that $1,000 one-time fee disclosed on their trade confirmation. This is true, that is how this new rule should work. Without a doubt, there will be some initial and significant sticker shock to seeing this markup printed on an investor's trade confirmations. "$1,000 for one phone call WTF?!?" What needs to be explained clearly by brokers and understood by investors, is that this is a one-time fee, in contrast to the annual fees charged by other competing products.

I read often that bond investors should look to bond funds or bond ETFs to avoid the fees that come with purchasing individual bonds. Fees that many deem too steep. Let's use the example of the $100k invested and the 1% fee charged and dig a little deeper. Let's assume, for argument's sake, that an investor is looking for a 20-year bond. Not too short, not too long, right in the meat of the yield curve to give a fair representation of an average bond investment time frame. The 1% fee charged at the outset of this investment breaks down to just 0.05% annually. Now, compare that to the 0.36% charged by the Fidelity Intermediate Municipal Income Fund (MUTF:FLTMX), or the 0.09% charged by the Vanguard Tax-Exempt Bond ETF (NYSEARCA:VTEB), or the 0.25% charged by the iShares National AMT-Free Muni Bond ETF (NYSEARCA:MUB). One percent on the onset of the investment doesn't stack up too bad. Now, bonds can be called in early, or might need to be liquidated by investors prior to maturity, which would increase the transactional annual fee. That I cannot argue with. If you are a true buy and hold investor, transactional fees, on annual basis, are very reasonable.

Fixed income investments, overall, are the buy and hold portion of an investor's portfolio. Meaning they are not bought and sold frequently to capture short-term gains (as one could do in the stock market) and generate mark ups for broker dealers. Rather bonds are purchased to preserve capital and/or to generate a predictable amount of income over a longer time frame.

I hope that the implementation of this rule does not kick off a large wave of investors moving into bond ETFs from traditional bond portfolios. I feel that these products are a square peg in a round hole. That they appear to accomplish the same goals as individual bond investing but do so by sacrificing certain objectives. We will see how the market reacts.

NatAlliance Securities LLC may hold a position in all bonds/funds referenced, and in the future may be a buyer or a seller of the securities. This is not a recommendation to buy, sell, or hold the securities. Las Olas Wealth Management is a wealth management group within NatAlliance Securities LLC.

Disclosure: I/we have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours.

I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it (other than from Seeking Alpha). I have no business relationship with any company whose stock is mentioned in this article.

Seeking Alpha

by Dean Myerow
Las Olas Wealth Management of NatAlliance

May 16, 2018

MSRB Requests Comment on Re-Establishing Standalone Rule on Discretionary Transactions in Customer Accounts.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today requested comment on a draft proposal to re-establish a standalone rule governing the handling of transactions in discretionary accounts — those customer accounts in which a dealer is authorized to determine what municipal securities will be purchased or sold.

The MSRB's proposal also seeks to address other uses of discretion for transactions in customer accounts, including when discretion is granted to a third-party agent of the customer, who is not an associated person of the dealer. Specifically, the MSRB believes it is important to expand the scope of the rulemaking to address these scenarios to recognize current practices in the municipal market and to provide investors with basic protections from unauthorized trading in their customer accounts.

The limited new proposed requirements for municipal securities customer accounts are harmonized with requirements of other financial regulators.

Comments should be submitted no later than July 16, 2018. Read the request for comment. Following the public comment period, the MSRB will carefully consider the comments received and may amend the proposal, submit the proposed rule with any necessary amendments to the Securities and Exchange Commission for its consideration and approval, or take no further action at this time.

Date: May 16, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

MBFA Chair Submits Commentary in the Bond Buyer.

Why mayors are 'completely baffled' by loss of advance refunding

The beginning of Infrastructure Week 2018 presents us with the perfect opportunity to highlight a major blow to community control and to local government infrastructure investment: the repeal of advance refunding of municipal bonds in the Tax Cuts and Jobs Act.

I deeply appreciate that the Tax Cuts and Jobs Act maintained the century-old tax exemption for municipal bonds. State and local governments make more than 75% of our nation's infrastructure investments, most of them financed with municipal bonds, and the tax law's preservation of the tax exemption for municipal bonds recognized that the best thing the federal government can do on infrastructure is to first do no harm.

Unfortunately, the tax law's elimination of the tax exemption for the advance refunding of municipal bonds will do considerable harm. This ill-conceived provision robs local governments of the ability to stretch infrastructure dollars and save taxpayer money by taking advantage of lower interest rates. Between 2012 and 2017, advanced refunding saved South Carolina cities, counties, school districts, universities, and utilities (and their taxpayers and ratepayers) approximately ***$164 million***.

Indeed, I am at a loss as to why the same tax law that recognizes the central role of municipal bonds to our nation's infrastructure is the same one that eliminated advanced refunding of municipal bonds. I am, to quote one of my fellow mayors, "completely baffled" by the law's advance refunding provision. Summaries of the tax law offered no policy justification for this provision, making it clear that it was nothing more than a money grab from local governments and local taxpayers to finance tax cuts elsewhere in the bill.

Even worse, I fear that eliminating advanced refunding does not even work as an offset for tax cuts: the Joint Tax Committee's estimate that it will generate $17 billion in revenue over the next decade seems to assume that issuers will continue to move forward with advanced refunding issues per usual, an assumption that defies common sense.

As Infrastructure Week launches and we focus on our nation's infrastructure challenge, Congress has an opportunity to make things right. Representatives Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., the Chairs of the bipartisan Municipal Finance Caucus have introduced legislation to reinstate that tax exemption for advanced refunding of municipal bonds.

It is no surprise that Hultgren and Ruppersberger are leading this charge. Both spent much of their careers in public service in local government and they are therefore fully aware of how infrastructure gets built, who builds it, and what tools are needed to do so. Members of Congress who care about infrastructure should follow their leadership and support their legislation to correct this blow to our nation's infrastructure, municipal finance, and local taxpayers.

Bond Dealers of America

by Steve Benjamin

Steve Benjamin is the Mayor of Columbia, South Carolina. He serves as Chair of Municipal Bonds for America, a non-partisan coalition of municipal bond issuers and State and local government officials along with other municipal market professionals working together to explain the benefits of the tax-exempt municipal bond market which provides the financing needed to build vital infrastructure throughout the United States.

May 15, 2018

SEC Adopts Amendments to Modify MA Forms.

The SEC recently adopted a set of rule amendments removing certain personally identifiable information (PII) from a group of SEC forms, including Forms MA and MA-I (and their variants). Specifically, the amendments eliminate portions of the forms that request filers to provide certain PII, including Social Security numbers, dates of birth, or Foreign ID numbers. **The amendments take effect today, May 14th. Information on the amendments can be viewed here.**

Though the rules have been amended, the actual forms the filers complete in EDGAR have not yet been updated to reflect the rule amendments. As a result, when completing Form MA, MA/A, MA-A, or Form MA-I or MA-I/A, filers will see sections that ask for PII. Filers should not provide this information.

A copy of the Commission's Adopting Release regarding the rule amendments can be viewed here.

Bond Dealers of America

May 14, 2018

MSRB Establishes Advertising Rule for Municipal Advisors and Enhances Dealer Advertising Rule.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today received approval from the Securities and Exchange Commission (SEC) to establish a new advertising rule for municipal advisors and to enhance the MSRB's existing advertising rule for municipal securities dealers. To assist municipal advisors in complying with MSRB Rule G-40, the MSRB will provide guidance in advance of the effective date of February 7, 2019. Read the approval notice.

"Preventing misleading advertisements is an important component of a comprehensive regulatory framework for financial services professionals," said MSRB President and Chief Executive Officer Lynnette Kelly. "The implementation of the new advertising rule is an important piece of the MSRB's foundational work to create standards of fair practice for municipal advisors. We took this opportunity to revisit and enhance our long-standing dealer advertising rules to build on our fair practice provisions and to align more closely our advertising rules with rules of other financial regulators."

The MSRB plans to provide guidance for municipal advisors relating to a municipal advisor's use of case studies and municipal advisory client lists; Rule G-40's content standards; and a municipal advisor's use of social media.

The MSRB is hosting a virtual compliance workshop in a question-and-answer format to discuss key provisions of the advertising rules on **Thursday, November 8, 2018 at 3:00 p.m. – 4:00 p.m. ET.** Register for the workshop.

Date: May 7, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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[SEC Approves Delay of Rule 4210.]

On May 7, 2018, official notice was sent stating that the SEC approved FINRA's request to extend the effective date of implementation of Rule 4210 until March 25th, 2019. As a result of exhaustive advocacy efforts from BDA membership with the SEC, FINRA and Capitol Hill, the delay was granted, in large part, to further study of BDA's "capital charge" proposal.
The FINRA notice can be viewed – Here

Background
In December 2017, BDA member firms met with FINRA CEO Robert Cook and urged FINRA consider a new solution to the margin requirements under Rule 4210. This BDA-member proposal would allow dealers to either charge margin to counterparties or to take a regulatory capital charge to cover any mark-to-market deficiency in excess of the de minimis threshold. This would allow dealers to remain competitive and still manage any systemic risk in the marketplace.

Additionally, BDA members discussed Rule 4210 Amendments in-person with SEC Chairman Clayton and SEC commissioners in January 2018. In February 2018, BDA received confirmation that FINRA is considering a change to Rule 4210 based on the capital charge idea BDA members brought up during the December 2017 meeting.

Next Steps
The BDA is pleased with this development, and will continue to work with FINRA on of the capital charge proposal in lieu of margin. In the coming weeks, the BDA will conduct outreach to members to further gather empirical data to provide with regulators in advocacy for the capital charge proposal.

Bond Dealers of America

May 7, 2018

New Commission Disclosure Rule Could Alter Bond Market.

A new rule going into effect Monday will let retail investors see how much money their brokers earn in commissions selling them bonds, the Wall Street Journal reports.

Brokers will be required to disclose their profits on the corporate and municipal bonds they buy and then sell to retail investors on the same day, according to the paper. In addition to markups, brokers will also need to disclose markdowns — the reductions in bond prices investors take when bonds are sold before their maturity, the Journal writes. Retail investors control the largest share of the $3.85 trillion market in state and local government bonds, according to the paper.

The new rule is a result of a multiyear effort by Finra and the Municipal Securities Rulemaking Board and was in fact ready in 2016, but the industry's two self-regulators delayed implementation until this month to allow brokers time to adjust, the Journal writes. Brokers have complained that automating the process for calculating markups on thousands of trades a day would cause complications, according to the paper. Don Winton, chief operating officer at brokerage Crews & Associates Inc., tells the Journal that the rule cost the firm "well into six figures" to prepare for and will continue eating up "high five figures" annually to implement.

Brokers may have to make further changes still in light of the rule. The new disclosures may cause some investors to try to negotiate their fees, according to the Journal. In addition, the rule could accelerate the current transition from direct ownership of bonds to ownership through managed funds such as mutual funds or exchange traded funds that typically come with lower fees, the paper writes.

Finra and MSRB say the rule is a major transparency improvement in the bond market and will save investors money, according to the Journal. Current and former officials of the two agencies have said that investor testing prior to the rule revealed little understanding of markups and markdowns or how brokers are paid on bond trades, the paper writes. Now, the disclosures on bond trades will be comparable to information provided to investors on stock trades, a spokesman for Finra tells the Journal.

Financial Advisor

By Alex Padalka

May 11, 2018

Why Your Clients May Push Back on Bond Fees.

For years, retail investors have groped in the dark with respect to the fees they pay to buy bonds. On Monday, the light's going on.

Thanks to a new rule designed to curb abusive sales practices, brokers will have to say how much they earn when they buy corporate and municipal bonds and sell them to retail investors later that day, The Wall Street Journal reports. At issue is the potential for excessive markups that can cut into returns. Regulators currently require dealer markups to be "reasonable" but there's no strict limit.

The new disclosures—which have been in the works for years—could lead some investors to bargain with their broker for lower fees. Some investors may also opt for lower-cost bond funds or ETFs instead.

Of course there are critics. Brokers are understandably concerned about their bottom line. Some industry participants, meanwhile, say the rule doesn't do enough to help investors. For instance, since many brokers will send the details of the markup via snail mail, investors can easily discard the information without a second thought, critics contend. Even if they read the disclosures, investors won't have a viable way to compare fees, opponents say.

"This is an inefficient way of promoting price competition," Larry Harris, of the University of Southern California, who has studied bond-trading costs, tells the Journal. The Municipal Securities Rulemaking Board and Finra prepared the new rule and defend it as necessary to improve bond-market transparency, among other benefits.

Barron's

Cheryl Winokur Munk

May 11, 2018 11:52 a.m. ET

U.S. Muni Bond Firms Race to Comply with New Price Transparency Rule.

NEW YORK, May 10 (Reuters) – U.S. municipal bond firms are rushing to comply with a new mandate taking effect on Monday that will force brokers for the first time to disclose how much they charge individual investors on some trades in the tax-exempt debt market.

The so-called markup disclosure rule is aimed at adding transparency to a $3.8 trillion market where the debt of states, local governments, hospitals, universities is traded though an opaque network of dealers as opposed to a central exchange.

"Everyone has been racing towards this deadline," said Michael Ruvo, president of Wheaton, Illinois-based BondWave, which focuses on fixed income analytics and other services for the financial services industry.

Dealers will now be required to disclose fees, known as markups for selling and markdowns for buying muni bonds, to retail customers, who owned $1.57 trillion of the debt last year.

The rule was first proposed by the Municipal Securities Rulemaking Board, the muni market's self regulator, in September 2016 and approved by the U.S. Securities and Exchange Commission later that year.

Trading in some corporate bonds, under an amendment to Financial Industry Regulatory Authority rules, will also be affected.

Under the rule, muni brokers will be required to determine a baseline number, known as a "prevailing market price," in order to show retail investors how much prices for a bond transaction were marked up or down.

With just days left before the rule is rolled out, Ruvo said he is receiving last-minute calls from clients requesting help with the calculation models to determine those prices among other needs related to the rule change.

The process of determining prevailing market prices for individual muni bonds can be particularly arduous because of the diverse, vast and sparsely traded nature of the market in comparison to U.S. Treasuries or equity markets, said Jeffrey MacDonald, head of fixed income strategies for Fiduciary Trust Company International in New York.

Smaller broker-dealers may find it especially challenging to get their systems into compliance by the deadline, MacDonald said. The new rule could also make brokers cautious about adding cost to investors, he said.

Those difficulties, along with heightened investor awareness of the costs, could lead to a shift in the market, analysts said.

Over the longer-term, individual investors could opt to replace their direct muni bond holdings with professionally managed portfolios, such as mutual funds or separately managed accounts (SMA).

"If SMA assets start to grow at an even faster pace as a result of the mark-up rule, we might see demand for 5-10 (year) paper increase, as this part of the curve is preferred by SMAs," Barclays municipal credit analyst Mikhail Foux said in a recent research note. That, in turn, would lead to a steepening yield curve, he added.

Financial advisers for investors, who sometimes buy individual bonds for clients, could also turn to larger investment management firms to handle those transactions due, in part, to the added burden of the new pricing disclosure rule, said Dawn Daggy-Mangerson, director of the muni bond team at McDonnell Investment Management in Oakbrook Terrace, Illinois.

The next step will be explaining and defending the number to investors.

by Laila Kearney

(Additional reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Cynthia Osterman)

Starting Next Week You Can See Brokers' Profits From Bond Sales.

New rule effective Monday is meant to curb abusive practices, but critics say getting the details by snail mail means they might be ignored

WASHINGTON — Starting next week, mom-and-pop investors will learn how much their broker made selling them bonds.

The change in practice is due to a new rule meant to curb abusive sales practices. Beginning Monday, brokers will have to say how much they pocket when they buy corporate and municipal bonds and sell them to retail investors later that day.

The disclosures are aimed at addressing long-standing concerns that individual investors who buy bonds don't know how much they are paying in fees, known as markups, that can eat into returns. Retail investors pay a variety of different prices for the same securities.

Continue reading.

The Wall Street Journal

By Andrew Ackerman and Heather Gillers

May 9, 2018

Here's How Much Your Broker Makes When You Buy a Bond.

- **As of May 14, broker-dealers must disclose the "transaction costs" customers pay when buying and selling corporate and municipal bonds.**
- **A 2007 study found that retail investors trading $20,000 of municipal bonds faced an average transaction cost of 2 percent.**
- **So-called "mark-ups" and "mark-downs" imposed by your brokerage firm are reflected in the price you pay for bonds.**

Let's be honest: Do you actually know much your broker earns when you put in an order to buy a municipal bond?

You'll be able to answer that question today. Starting on May 14, broker-dealers will need to disclose mark-ups and mark-downs they charge on bonds bought and sold to retail investors on the same trading day.

Firms will also have to tell customers the time they executed the trade and provide a reference and a hyperlink to a page detailing the publicly available trading data for the bond.

[Continue reading.]

CNBC

BY Darla Mercado

[Regulatory Changes Put Spotlight On Bond Pricing, Disclosure.]

From Invesco: Effective May 14, 2018, new regulations will be adopted aimed at increasing the transparency of bond pricing. The new rules require dealers of corporate, municipal and agency bonds to clearly disclose bond markups and provide retail investors with relevant price comparisons.

Although this initiative was spearheaded by the Municipal Securities Regulatory Board (MSRB) to cover municipal bonds, the Financial Industry Regulatory Authority (FINRA) has been working in tandem with the MSRB on language that covers corporate and agency bonds as well. Ultimately, the two regulatory agencies came up with similar sets of rules approved by the Securities and Exchange Commission that will be unveiled on the same timeline.

As retail investors discover the real cost of owning individual bonds, we believe these regulatory changes will strengthen the case for both fixed income exchange-traded funds (ETFs) and active fixed income investment managers.

What are bond markups?

When selling bonds, a dealer may acquire the bonds at one price and then sell them for a higher price as compensation for the dealer's services. Markups represent the spread between the price paid for a bond and the price the dealer receives when selling the bond. Seeing the need to "enhance the transparency of costs associated with municipal securities transactions," in November 2016 the MSRB amended existing Rules G-15 and G-30, which cover confirmation, clearance, prices and commissions. Working in concert with the MSRB, FINRA drafted disclosure requirements that are "materially the same" as the MSRB's.1 The rule changes for both agencies take effect on May 14 and target non-institutional investors.

What has changed?

1. Increased disclosure around bond markups

In a nutshell, the new rules require bond dealers to disclose any markups (or markdowns) on bonds bought and sold to retail investors on the same day. Markups and markdowns must be expressed both in dollar terms and as a percentage of each bond's prevailing market price.1

In order to make these disclosure requirements meaningful, retail investors must understand a bond's prevailing market price. That is the other key component of the rule changes.

2. Determining prevailing market prices

In the case of municipals, dealers will be required to provide a hyperlink to the MSRB's website, which hosts publicly available trading data for each security.1 Presumably, the data would allow retail investors to assess the fairness of the prices being charged by bond dealers. Because of its broader regulatory reach, FINRA offers its member firms wider latitude in disclosing prevailing market prices. Regardless of how members choose to disclose prevailing market prices, however, the "timing of the determination must be applied consistently across all transactions in corporate and agency debt securities."2

Ramifications for retail investors

US bond trading volume eclipses that of the equity markets by a large margin. Nonetheless, bond markets have long been shrouded in mystery. Unlike stocks, bonds are traded over the counter rather than on standardized exchanges. This means that bond pricing is less transparent and trades are often conducted on a one-off basis through informal networks of dealers. As a result, bond pricing can be confusing, while US bond markets can be inaccessible to retail investors. We believe these changes should help de-mystify bond pricing.

We believe these regulatory changes also highlight the benefits of managed fixed income strategies. Invesco offers a broad lineup of active and passive fixed income strategies covering municipals, investment grade and high yield asset classes. Our fixed income professionals are experienced in navigating the complexities of the bond markets. In fact, Invesco Fixed Income is a leading global fixed income manager — focused entirely on helping clients meet their investment objectives. And because of Invesco Fixed Income's global scale, we are able to purchase bonds in large blocks and secure institutional pricing.

Investors who currently invest in individual bonds might wish to consider our BulletShares suite of ETFs, which offers the precision and flexibility of individual bonds with the cost and tax efficiency of the ETF structure.3 BulletShares ETFs encompass both investment grade and high yield corporate bonds, enabling investors to build customized portfolios tailored to specific maturity profiles, risk preferences and investment goals.

Choosing Invesco as your fixed income partner can help simplify fixed income investing.

Welcome to a Know-Your-Fees World, Muni-Bond Buyers.

If you don't know how much you're paying, you may be paying too much. That's the idea behind a major change being ushered into the $3.9 trillion state and local government debt market, a haven for retail investors where the trading fees that securities dealers charge have largely gone undisclosed. That will change on May 14, when brokers will be required to start disclosing some of the fees that are embedded in the prices investors pay — or receive — when they buy and sell their securities.

1. What prompted the rule change?

Securities regulators are trying to inject more transparency into the trading of municipal bonds, which are largely held by individual investors looking for tax-free income. By forcing the disclosure, regulators think it may increase competition among brokers and ultimately drive down costs for investors.

2. Will the fees on all trades be disclosed?

No. A broker will have to break out how much it marked up the price of a bond — or how much they marked it down when buying from a client — to individual investors only in some circumstances. The disclosure will be required when the dealer uses its own money that day to trade the same securities as its customer, unless the volume of that trading is less than what the client bought or sold. For example, if a customer sold $5,000 of New York City bonds to a dealer that only resold $1,000 worth that day, the mark-down wouldn't be reported. So the fee reporting will capture cases where the broker soon offloads a bond, rather than taking on the risk of holding it in inventory.

3. How many trades are we talking about?

A sizable chunk. The Municipal Securities Rulemaking Board, the industry's regulator, estimated that it would have covered 8,546, or about 55 percent, of the trades of bonds with a face value of $100,000 or less made each day during the third-quarter of 2015 when the dealer acted as a principal by using its own money to buy or sell the security. It's possible, though, that some dealers may report the mark-ups on all their secondary-market trades with individual investors in the interest of transparency or to avoid the hassle of determining whether they need to on a case-b--case basis.

4. How is the mark-up calculated?

The firm must disclose the mark-up or mark-down in both dollar terms and as a percentage of the prevailing market price. For example, if a dealer went out and bought $10,000 of New York City bonds from a another dealer at 99 cents on the dollar and then resold them to a customer that ordered them at par, the mark-up would be 1 percent, or $100.

5. What if there was a big mid-day market move?

If the market was whipsawed by a big price move between the time when a dealer bought the securities and resold them, the broker will have to rely on a more complicated, step-by-step procedure known as "the waterfall." In such cases, the first step would be to use trades between securities firms as a baseline. If there's none to go on, they can rely on trades by big institutional investors — like mutual funds — that are made in blocks of $1 million or more. Absent that, they can turn to the quotes dealers put out for bid on electronic trading platforms. Similar securities or pricing models could serve as benchmarks as a last-ditch option, if all the others aren't available.

6. What will this mean for investors and brokers?

Giving buyers the information will help ensure they're not overcharged and may put some downward pressure on fees. Mutual-fund managers — who would love for investors to invest through them instead of trading in their own accounts — hope they will see an influx of cash from sticker-shocked investors surprised at the size of the fees they're paying. It cost about 0.54 percent a year to invest through such fee-based accounts in 2016, about half what the average trading fee was, according figures from the Investment Company Institute and S&P Global Inc. But some brokers are dismissive, saying buy-and-hold investors are better off paying a one-time fee, even if it's bigger, than paying their fund manager year after year.

Bloomberg

By Martin Z Braun

May 11, 2018

SEC Sues Municipal Adviser for Lying to Texas School District.

- **Hinojosa, his firm didn't disclose conflicts to district: SEC**
- **SEC says one-time paralegal misled issuers about experience**

The U.S. Securities and Exchange Commission sued a municipal-bond adviser and his firm for lying to a south Texas school district by misrepresenting its experience and failing to disclosing conflicts of interest.

Mario Hinojosa, who set up his firm Barcelona Strategies LLC while working as a paralegal, defrauded the district by creating the "misleading impression" that he and the firm had worked as an adviser on many municipal bond deals and failed to reveal that he had a financial interest in the district's offerings, the SEC said. Misrepresenting his experience and omitting the conflicts of interest allowed Hinojosa and his firm to reap hundreds of thousands of dollars in fees, according to the SEC.

The lawsuit stems from the powers that the SEC was given to police the municipal-bond advisory business under the Dodd-Frank law, which Congress enacted to address last decade's credit-market crash. Until then, the business had been largely unregulated.

"Undisclosed conflicts of interest can lead to significant investment losses, and prevent municipal entities from making informed decisions in their selection of municipal advisors," Shamoil Shipchandler, director of the SEC's Fort Worth regional office, said in a statement. "Barcelona fell well short of its obligations to this school district client."

Hinojosa and his firm settled with the SEC without admitting or denying the accusations. Both agreed to a cease-and-desist order and must pay $362,606 for disgorgement and $19,514 in prejudgment interest. The fraud accusations were connected to three municipal bond offerings between January 2013 and December 2014, the SEC said.

Hinojosa was unable to be reached for comment.

Bloomberg

By Elizabeth Campbell

May 9, 2018, 8:54 AM PDT

SEC Charges Texas-Based Muni Advisor With Defrauding School District.

The municipal advisor overstated its municipal finance experience and failed to disclose conflicts of interest.

The Securities and Exchange Commission charged a registered municipal advisor and its owner with defrauding a south Texas school district in connection with multiple municipal bond offerings.

According to the SEC's order Mario Hinojosa and his wholly owned municipal advisor, Barcelona Strategies LLC, acted as the municipal advisor to the La Joya Independent School District on three bond offerings between January 2013 and December 2014, earning more than $386,000 in fees.

During the school district's process of selecting Barcelona as its municipal advisor, Barcelona and Hinojosa overstated and misrepresented their municipal finance experience, according to the SEC.

While working as a paralegal, Hinojosa set up Barcelona, registered it as an SEC municipal advisor, drafted a marketing brochure about the firm, and circulated the brochure to the school district and other municipalities.

The brochure created the misleading impression that Hinojosa and Barcelona had served as a municipal advisor on numerous muni bond issuances and failed to disclose that Hinojosa had a financial interest in the school district's offerings. According to the SEC, Hinojosa was employed by the attorneys who served as bond counsel for all three bond offerings.
By virtue of their misrepresentations and omissions, Barcelona and Hinojosa improperly earned hundreds of thousands of dollars in municipal advisory fees, the SEC says.

"Municipal advisors owe a fiduciary duty to their municipal clients, who rely on advisors to make important financial decisions," Shamoil Shipchandler, director of the SEC's Fort Worth Regional Office, said in a statement. "Undisclosed conflicts of interest can lead to significant investment losses, and prevent municipal entities from making informed decisions in their selection of municipal advisors. As described in today's order, Barcelona fell well short of its obligations to this school district client."

The SEC's order found that Hinojosa and Barcelona engaged in fraudulent, deceptive or manipulative acts and breached their fiduciary duties to municipal clients.

Without admitting or denying the allegations, Barcelona and Hinojosa consented to a cease-an--desist order and are jointly and severally liable for paying $362,606 in disgorgement and $19,514 in prejudgment interest.

Barcelona was also assessed a civil penalty of $160,000, while Hinojosa was assessed a civil penalty of $20,000.

Hinojosa was barred from association with various regulated entities, including muni advisors.

ThinkAdvisor

By Emily Zulz | May 09, 2018

Muni Brokerage Head Says Pricing Rules Won't Aid Mutual Funds.

- **'It's so much cheaper to pay a one-time charge on a bond'**
- **FMSbonds President Klotz says brokers not worried about rule**

On May 14, new rules will require brokerage firms to start disclosing some of the fees they charge individuals to buy and sell state and local government debt. Those fees, which firms build into the trades by marking the price up or down, averaged about 1.1 percent on investment-grade bonds in 2016, or $1,100 for a $100,000 bond, according to S&P Global.

Some analysts have speculated the new disclosures could accelerate a shift by individual investors toward mutual funds and other fee-based accounts. On average, long-term municipal bonds funds charged fees of 0.54 percent in 2016, according to the Investment Company Institute.

James Klotz, president of Boca Raton, Florida-based broker-dealer FMSbonds Inc., disputes that the disclosure of fees will have a big impact on behavior. He said individual investors, who tend to buy and hold municipal securities until they mature, are better off paying a one-time markup than annual fees to professionals to manage their portfolio.

Q: Why do you think individual investors will continue to buy individual bonds rather than shift to funds?

A: It's so much cheaper to pay a one-time charge on a bond an investor might hold 10, 15, 20, 30 years with no annual fees. Individual investors are buy and hold investors. They might get [bonds] called, they might sell them, but bonds aren't intended to be bought and sold every three months. They're bonds, not stocks.

Q: What's the average mark-up at FMSbonds?

A: I can tell you it's between 1% and 1.5% on a long-term bond. You have different situations. Bonds of a lesser quality may have more markup because of the risk.

Q: Isn't there some value to credit research that funds provide?

A: The percentage of defaults on investment grade bonds is less than 1%. 99.5 of 100 bonds are going to mature at par. That's history. There's no promise of face value when you invest in a mutual fund. Every bond dealer spends a great deal of money on research and on creditworthiness because that's our livelihood. If dealers were selling bonds that were defaulting, they wouldn't be in business very long. We've been in business since 1978.

Q: Are you worried about losing customers because of the markup disclosure rule?

A: No bond dealers are scared of this new rule. The only thing we're scared of is the instrumentation to be able to report it properly. Let's say I sell you a Boca Raton 4% bond at par at 10 a.m. and I'm looking at trades that came before me, they were all at par or a little premium. At 4 p.m., somebody does a trade at 98.5. What's the prevailing price? That's the difficulty. You can't just think what preceded your price, you have to think what came after your price, that's what's going to make it difficult. All those trades have to be reviewed the following morning. We're doing 300 trades a day. I don't think the SEC understands how complex it is.

Bloomberg

By Martin Z Braun

April 30, 2018, 8:30 AM PDT

Increasing Civil and Criminal Enforcement in the Municipal Bond Market.

In this Corporate Crime column, Steven M. Witzel and Daniel C. Fishbein focus on recent and novel enforcement actions in the municipal bond space. They survey municipal securities regulatory changes and enforcement innovations geared toward municipal issuers, and look at the future direction for enforcement and regulation in the muni-bond market.

The historically sedate municipal bond market has been jarred by recent civil enforcement actions and criminal prosecutions. In the past several years, in a focused targeting of the muni-bond marketplace previously afforded "second-class treatment," the SEC has brought many "first-of-the-r-kind" actions against municipal bond issuers, underwriters and public officials. As this column went to press, the federal criminal trial of former Town of Oyster Bay Supervisor John Venditto (and former Nassau County Executive John Mangano) on securities fraud charges related to municipal bond sales by the Town of Oyster Bay was heading to conclusion. This trial follows on the heels of the December 2017 sentencing to 30 months' imprisonment of former Ramapo, New York Town Supervisor Christopher St. Lawrence after his conviction on the DOJ's first-ever criminal securities fraud trial related to municipal bonds.

In the wake of the financial crisis, disclosure requirements and other regulations protecting the $4 trillion municipal debt market were strengthened. Despite its importance, the muni-bond market had been substantially less regulated than most others. This regulatory ramp up was the result of an announced effort by regulators to police the muni-bond market and try to make it more transparent for investors.

Continue reading.

New York Law Journal

By Steven M. Witzel and Daniel C. Fishbein | May 02, 2018

MSRB Holds Quarterly Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met April 25-26, 2018, where it discussed numerous initiatives related to its oversight of the municipal securities market, focused on several retrospective rule reviews and advanced the development of a new professional qualification exam for municipal advisor principals.

The MSRB is midway through a fiscal year during which regulated entities are adapting to previously adopted rules aimed at protecting investors and municipal entities. The Board discussed ongoing efforts to assist municipal securities dealers in implementing a mark-up disclosure rule, and the numerous compliance support resources and events the MSRB is providing to assist regulated entities in understanding and complying with rules.

At its meeting, the Board discussed several market practices and agreed to seek public comment on potential rule updates and interpretations in the interest of market fairness and efficiency, and regulatory clarity. For example, the Board agreed to seek public comment on potential guidance or uniform practices for underwriters related to the dissemination of information about new bond issues and refunding transactions. This action is part of a long-term retrospective review of MSRB rules on syndicate practices.

Separately, the Board agreed to seek public comment on draft interpretive guidance for dealers that would clarify existing regulations on the practice of "pennying," sometimes called "last look," and draft revisions to existing guidance on the MSRB's best-execution rule to clarify how dealers can satisfy their obligations without posting bid-wanteds on multiple electronic bidding platforms.

The Board also considered regulations governing duties owed by dealers to issuers when underwriting municipal securities that are codified in interpretive guidance under MSRB Rule G-17 issued in 2012 and agreed to publish a request for comment on the merits of any potential changes to the guidance.

"With over five years of experience with the application of our Rule G-17 guidance, we think it is the appropriate time to engage in a retrospective review to determine its effectiveness, as well as any opportunities to improve the guidance," said MSRB President Lynnette Kelly.

Kelly said the Board recognizes that industry responses to requests for comment can be time-consuming and will continue to be cognizant of how it sequences new and planned requests and provide stakeholders with adequate time to respond. "We have multiple initiatives that require public feedback, and we want to ensure that we receive substantive input on the scope and substance of these proposals and their potential impacts," Kelly added. Those initiatives include a proposed consolidation of MSRB requirements related to transactions in discretionary accounts and a proposal to streamline submission of data submitted by underwriters related to new offerings and the potential collection of additional information that could support market transparency.

The Board also discussed the MSRB's ongoing development of a professional qualification examination for municipal advisors, consistent with its mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act. With a baseline qualification exam for municipal advisor representatives in place since September 2016, the MSRB has been developing a principal-level exam to qualify individuals engaged in the management, direction or supervision of the municipal advisory activities of the firm and its associated persons. At its meeting, the Board approved proposed amendments to MSRB Rule G-3, on professional qualification requirements, and to MSRB Rule A-16, on examination fees, and the filing of the Municipal Advisor Principal Qualification Examination (Series 54) Content Outline to formally establish the Series 54 exam. The proposal includes a 12-month grace period for municipal advisor principals to take and pass the Series 54 exam once the permanent exam becomes available following a pilot of the exam.

Date: April 30, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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S&P: Bank Loan Structures Risks Remain, But GASB 88 Is A Positive Step Toward Transparency In Financial Reporting.

BOSTON (S&P Global Ratings) May 2, 2018–In March 2018, the Government Accounting Standards Board (GASB) released Statement No. 88, new accounting guidelines that detail disclosure requirements for a variety of financial instruments.

Continue Reading

Muni Regulator to Seek Comment on 'Pennying' by Dealers.

WASHINGTON – The Municipal Securities Rulemaking Board, seeking comment on various initiatives and potential guidance, wants feedback on "pennying" or "last look" practices by dealers, and how they may reduce market liquidity.

MSRB president Lynnette Kelly said Monday that the board agreed at a meeting last week to seek public comment on potential rule updates and interpretations on several market practices.

Pennying occurs when a dealer places a retail client's bid-wanted out to the market and determines the winning bid, but then, rather than executing the trade with the winning bidder, instead marginally outbids the high bid and buys the bonds for the dealer's own account.

Market participants will be asked to comment on draft interpretive guidance for dealers that would clarify existing regulations on the practice. The MSRB raised concerns about pennying in a letter to the Securities and Exchange Commission in October.

The MSRB has previously released guidance warning dealers against putting out a bid-wanted solely for the purpose of price discovery so that they can buy the bonds for their own accounts. Pennying was one of two market practices the MSRB said it was concerned about in last year's letter to the SEC's Investor Advocate.

While the practice is beneficial to the retail customer in the short term, Kelly said Monday that the MSRB remains concerned about the broader implications of the practice.

"If the practice is widespread, that will disincentivize other firms to bid," she said. "It's possible that this practice could negatively impact liquidity."

The board also agreed to publish a request for comment on the merits of any potential changes to 2012 guidance on its Rule G-17 on fair dealing covering duties owed by dealers to issuers when underwriting municipal securities. The guidance laid out a variety of disclosures underwriters are supposed to make to issuers at the beginning of a transaction, including the disclosure that underwriters are not fiduciaries and not required to act in the best interests of issuers. Kelly said the disclosures have largely become boilerplate and extremely lengthy, and that there is probably a lot of "room for improvement" in that practice.

"With over five years of experience with the application of our Rule G-17 guidance, we think it is the appropriate time to engage in a retrospective review to determine its effectiveness, as well as any opportunities to improve the guidance," Kelly said.

The board also discussed other retrospective reviews, including potential guidance or uniform practices for underwriters related to the dissemination of information about new bond issues and refunding transactions.

The board approved proposed amendments to its Rule G-3 on professional qualification requirements and to Rule A-16 on examination fees, related to the filing of the Municipal Advisor Principal Qualification Examination (Series 54) content outline to formally establish the Series 54 exam. The proposal includes a 12-month grace period for municipal advisor principals to take and pass the Series 54 exam once the permanent exam becomes available following a pilot of the exam.

The board also discussed some current topics, such as the fast-approaching effectiveness of new markup disclosure requirements on May 14, and the SEC's proposal earlier this month to require a broker-dealer to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. Kelly said discussions about that proposal, known as Regulation Best Interest, were "very preliminary" but could have implications for the MSRB's suitability rule if the SEC were to move forward with the proposal.

The next MSRB board meeting is scheduled for July 18-19.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 04/30/18 07:11 PM EDT

Commentary: EMMA Hits a Milestone in Muni Transparency.

A decade ago, Time.com celebrated the "50 Best Websites of 2008." About a third of the sites are now defunct, unable to keep up with the changing tastes of online consumers. The municipal market's most essential website made its debut in 2008, and while it didn't make Time's list, it continues to make a profound impact on market transparency. As the Electronic Municipal Market Access website, known as EMMA®, enters its second decade, the website will soon feature a series of investor-focused enhancements, including a streamlined design and more intuitive navigation.

The Municipal Securities Rulemaking Board (MSRB) created the EMMA website in 2008 to serve as a centralized, online source of information that would empower investors to make independent and informed decisions about buying and selling municipal bonds. Before EMMA, it was difficult, if not impossible, for an average investor to view and compare the price at which others were trading bonds. What's more, few investors knew how to track down timely and complete information about the features, risks and characteristics of a municipal bond investment, as the MSRB explores in a new report, Milestones in Municipal Market Transparency.

EMMA proved transformative for the municipal market, earning designation by the Securities and Exchange Commission as the official source for municipal securities market information in 2009. Over time, EMMA became much more than a place for investors to learn about particular municipal bonds. Municipal bond issuers began to recognize the value of EMMA for exploring how and when other state and local governments were funding their capital needs, significantly broadening their perspective on their own financing options and timing. Meanwhile, EMMA has provided municipal securities dealers, municipal advisors, bond lawyers and other market participants – whose direct experience may have been previously limited to particular regions or types of transactions – the ability to access information about other localities, deal structures and investor demand.

Over the last decade, the MSRB has continued to integrate more market-wide tools on EMMA, from municipal market yield curves and indices, to a calendar of bond issues showing the size, date and purpose of upcoming bond offerings. The navigational improvements to be unveiled on EMMA next week help spotlight these interactive tools for evaluating municipal market trends, and are informed by extensive user experience research and input from stakeholders.

To help investors drill down into the deep well of information about specific bonds and their issuers, EMMA's homepage will provide direct access to an intuitive map-based search. Information about each security in a bond issue will be clearly presented on individual security-specific pages, which will display interactive graphs of trade prices and yields and a searchable listing of important disclosure documents. Effective May 14, 2018, many investors will receive a direct link to this security-specific page on their trade confirmations under new mark-up disclosure rules designed to enhance transparency of pricing. For first-time visitors to EMMA, the security-specific page will include a transparent overlay highlighting key information and tools to facilitate easier navigation.

While the enhancements are aimed at the individual investor's user experience, 10 years on, EMMA has become an indispensable tool for municipal securities issuers and financial professionals as well. The next phase of EMMA enhancements will focus on improvements for issuers, including an improved submission process for disclosure filings. A third phase will address the utility of the website for municipal industry professionals, particularly advanced search functionality.

The MSRB remains committed to assessing the evolving information needs of municipal market participants and exploring new ideas and technologies to ensure the EMMA website stands the test of time and continues to support transparency in the municipal market for decades to come.

The Bond Buyer

By Lynnette Kelly

April 23, 2018

Lynnette Kelly is President of the Municipal Securities Rulemaking Board, the self-regulatory organization that operates the Electronic Municipal Market Access (EMMA®) website at emma.msrb.org.

Milestones in Municipal Market Transparency: The Evolution of EMMA.

Read about the turning point for muni market transparency that leveled the playing field for muniland investors.

EMMA Municipal Bond Info Website Becoming More User Friendly.

The Municipal Securities Rule Making Board is making its EMMA municipal bond information website more user-friendly today.

EMMA improvements include enhanced displays of information about individual muni bonds, including interactive graphics of trade prices and yields along with a searchable listing of key disclosure documents.

Beginning May 14, when a retail investor receives a trade confirmation for the purchase or sale of a municipal security, the notification will include a link to the EMMA page about the bond.

More and more intuitive information is being included for first time users on the “learn button” on the EMMA site: https://emma.msrb.org/

The changes are part of the agency’s efforts to prioritize the needs of individual investors it was created to serve, MSRB President Lynette Kelly said.

Forbes

by Ted Knutson

APR 30, 2018

[MSRB's New Online MuniEdPro® Course on Rules G-8 and G-9.]

Municipal advisors: refresh your knowledge of recordkeeping requirements. Take the MSRB's new online MuniEdPro® course on Rules G-8 and G-9.

Click here to learn more.

SIFMA: Draft FAQs Regarding Rule G-42 and the Making of Recommendations.

SUMMARY

The MSRB recently announced it is seeking public comment on its on a draft compliance resource about core requirements for municipal advisors related to providing advice on, and making recommendations of, municipal securities transactions or municipal financial products. MSRB Rule G-42, on the duties of non-solicitor municipal advisors, forms the foundation of a comprehensive regulatory framework for municipal advisors developed as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The MSRB's draft compliance resource is intended to enhance municipal advisors' understanding and application of Rule G-42.

Read the SIFMA's Comments to the Draft FAQs.

See also: Request for Input on Draft Frequently Asked Questions Regarding Rule G-42 and the Making of Recommendations.

BDA Submits Comment Letter: MSRB Seeks Input on a Compliance Resource to Help Distinguish Advice and Recommendations (Rule G-42).

The BDA has submitted a comment letter to the MSRB concerning municipal market participants and the public on a draft compliance resource about core requirements for municipal advisors related to providing advice on, and making recommendations of, municipal securities transactions or municipal financial products. The final comment letter can be viewed here.

The letter states that while the BDA is appreciative of the opportunity to review and comment on the Notice, the BDA continues to believe that the MSRB should follow a formal interpretative guidance process for these kinds of advisories.

Specifically, the comment letter outlines that the BDA believes that:

- The scenarios presented in the Notice do not provide meaningful guidance and create ambiguities.
- The Notice needs to more clearly explain that it is not intended to interpret the SEC's FAQs or Municipal Advisor Rule.
- The MSRB should consider adding clarification that there is no concept of "implied recommendation" like that under broker-dealer rules.

Bond Dealers of America

April 20, 2018

[BDA UPDATE: SEC Votes to Move Forward with “Fiduciary” Rule.]

On April 19, 2018, the SEC approved by a vote of 4-1 (Commissioner Stein voted no) to advance two proposed rules and an interpretation to address the ”fiduciary” rule/best interest standard. They include the following:

- Regulation Best Interest Rule
- Form CRS Relationship Summary Rule
- Investment Adviser Interpretation

The proposed Regulation Best Interest Rule requires broker-dealers to comply with three specific obligations to meet the best interest standard:

- Disclosure obligation: disclose to the retail customer the key facts about the relationship, including material conflicts of interest;
- Care obligation: exercise reasonable diligence, care, skill, and prudence, to (i) understand the product; (ii) have a reasonable basis to believe that the product is in the retail customer’s best interest; and (iii) have a reasonable basis to believe that a series of transactions is in the retail customer’s best interest; and
- Conflict of interest obligation: establish, maintain and enforce policies and procedures reasonably designed to identify and then at a minimum to disclose and mitigate, or eliminate, material conflicts of interest arising from financial incentives; other material conflicts of interest must be at least disclosed.

The proposed Form CRS Relationship Summary Rule would:

- Create a new rule under the Exchange Act that would restrict broker- dealers and associated natural persons of broker-dealers, when communicating with a retail investor, from using the term “adviser” or “advisor” in specified circumstances and
- Create new rules under the Exchange Act and Advisers Act that would require broker-dealers and investment advisers, and their associated natural persons and supervised persons, respectively, to disclose, in retail investor communications, the firm’s registration status with the Commission and an associated natural person’s and/or supervised person’s relationship with the firm.

The SEC is requesting comments for the proposed Investment Adviser Interpretation on:

- Licensing and continuing education requirements for personnel of SEC-registered investment advisers;
- Delivery of account statements to clients with investment advisory accounts; and
- Financial responsibility requirements for SEC-registered investment advisers, including fidelity bonds.

Addtional Information

- The SEC Fact Summary sheet on these proposed rules and interpretation can be found here.
- An archived webcast of the hearing can be found here.
- When the rule proposal is officially filed and published in the Federal Register, a 90-day comment period will begin.

BDA Action and Next Steps

The BDA has been closely tracking and actively engaged with the SEC Commissioners and staff on this issue over the last few months.

GASB Statement No. 88 Defines Debt and Increases Disclosure Requirements for Government Financial Statements: Orrick

The Governmental Accounting Standards Board issued GASB Statement No. 88 (the "Statement") in March 2018. The Statement requires increased disclosure in notes to financial statements of all state and local governments. The new disclosure requirements are effective for reporting periods beginning after June 15, 2018; however, GASB encourages earlier application of the Statement requirements.

GASB's goal in issuing the Statement is to address stakeholder concerns regarding the current inconsistency in disclosure of essential information related to debt in government financial statements. Of particular concern to stakeholders is the need for more information regarding the terms of direct borrowings and direct placements.

To address those concerns, the Statement defines debt and identifies what debt is subject to disclosure requirements in notes to financial statements:

Definition of Debt:

A liability that arises from a contractual obligation to pay cash (or other assets that may be used in lieu of cash) in one or more payments to settle an amount that is fixed [1] at the date the contractual obligation is established. For disclosure purposes, debt does not include leases, except for contract reported as a financed purchase of the underlying asset, or accounts payable.

The Statement also requires additional areas of summarized information related to debt that are not currently required. The increased disclosure provides users of government financial statements better information about the debt of the governmental entity, specifically the effect of debt on future resource flows of the entity and the consequences that may result in an event of default or termination.

Notes to the Financial Statements:

The Statement requires the following new disclosures in notes to the financial statements:

a) Amount of unused lines of credit

b) Assets pledged as collateral for debt

c) Terms specified in debt agreements related to:

1. Events of default with finance-related consequences,
2. Termination events with finance-related consequences, and
3. Subjective acceleration clauses.

Disclosures regarding direct borrowings and direct placement of debt should be separated from other debt in the notes to the financial statements.

Please see the Statement in full for more information regarding the background and scope of the new requirements.

[1] See full Statement for what amounts are considered fixed at the date the contractual obligation is established.

Public Finance Alert | April.09.2018

Orrick

FINRA Publishes Regulatory Notice Regarding 2018 GASB Accounting Support Fee .

On April 17, the Financial Industry Regulatory Authority issued Regulatory Notice 18-12, which announces that FINRA will collect a total of $8,346,300 to fund the annual budget of the Governmental Accounting Standards Board (GASB) by collecting $2,086,575 from member firms each calendar quarter beginning in April 2018.

The GASB Accounting Support Fee is collected quarterly from member firms that report trades to the Municipal Securities Rulemaking Board (MSRB). Each member firm's fee assessment is based on that firm's part of the total par value of municipal securities transactions reported by all FINRA member firms to the MSRB in the previous quarter. As some firms choose to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA will continue to provide firms with an estimated fee rate per $1,000 par value. FINRA has estimated that the 2018 GASB Annual Support Fee will be between $0.0024 and $0.0030 per $1,000 par value. Member firms choosing to pass along this fee must ensure that such fees are properly disclosed.

The regulatory notice is available here.

Katten Muchin Rosenman LLP – Janet M. Angstadt

April 20 2018

Commentary: Muni Industry Best Served by Wider Acceptance of Group Net Syndication Rule.

This year the municipal industry marks the tenth anniversary of the launch of its milestone breakthrough for market transparency — the creation of EMMA or the Electronic Municipal Market Access. It is a reminder of the imperative of modernizing an industry that provides three-quarters of the annual U.S. infrastructure spend and is a $3.7 trillion market.

While commendable in its creation, the transparency provided by EMMA for municipal bond investors existed for other debt markets years before. Other long-held municipal industry practices are overdue for review and change as well.

Toward the top of the list of areas requiring a fresh approach is the way negotiated bond underwriters are paid. Not how much, but by whom. This arcane issue is stuck in decades-old practice long ago abandoned by other markets such as the corporate and securitization bond sectors.

Some background at this point is useful. Once the municipal debt issuer determines the amount of compensation to be paid to the underwriters, there is also a discussion of syndicate rules or the method by which these dollars will be divided among the underwriters.

In the municipal market, the syndicate rule of choice is "net designated." This approach, selected by many state and local governments, is intended to reward underwriters that deliver actual orders from investors to purchase bonds.

That thought seems initially to have merit, and that may have been so in years past. Why not reward compensation to the underwriters who deliver the orders? But the reality of the market place today, as any institutional investor knows, is that if they place their purchase order with the book running manager as opposed to other firms that are part of the underwriting team, they stand a much better chance of having a larger percentage of their order filled.

That then results in the need for the investor, within syndicate rule guidelines, to "designate" other underwriters a portion of the fees associated with its order. Said clearly, the investor decides which underwriter receives the sales credit or takedown monies associated with the controllable "co-managed designation" related to their order rather than the issuing client.

It is a lingering myth in the municipal market that the discretionary co-manager designations, meaning amounts available to designate above and beyond an issuer's prescribed requirements, are highly correlated to the co-managers' sales effort on the particular issue being sold.

In reality, institutional investors weigh multiple factors in what is typically a thoughtful and defensible co-manager remuneration methodology. The objective criteria forming the assessment may include such items as an evaluation of the underwriter as a liquidity provider, generation of relevant macro/micro economic research, provision of credit facilities or other financing vehicles, and the level of filling bond orders from other issues when serving as book-running senior manager.

The fact is discretionary co-manager designation dollars are deployed in a manner representative of the totality of the relationship between the dealer and the institutional investor, and where that relationship falls within the given institutional investor's determined hierarchy of services. This approach is accepted to the point that if an investor was to have overcompensated a dealer based on a recent set of transactions, that investor would likely recalibrate on upcoming transactions to maintain alignment with the established hierarchy.

But to repeat, some issuing clients may be under the mistaken notion that these designations by institutional investors — monies paid to underwriters from their bond issue — are related solely to the sales efforts on their transaction. In most circumstances, it does not or, at best, is only partially so.

Further, the net designated syndication rule may be providing compensation to an underwriter who may or may not be providing liquidity on that issuers' bonds in the secondary market–a service typically useful to the especially active issuers of debt–but may not be appropriately weighed in the determination of designations by the institutional investor as it relates to a given issuer.

Other markets migrated away from this net-designated approach long ago to a syndicate rule equivalent to "group net" in the municipal market. This option leaves the allocation of underwriting revenues firmly in the hands of the debt manager for the issuing client.

In the parlance of the business, this is a "pot" transaction where all revenues from the sale of securities are pooled and divided among the underwriters by the issuing client representative. Consequently, the issuer, not the institutional investors, determines how much and why a given underwriter is paid.

This approach has the additional benefit of better synching underwriter compensation with the risk allocation the issuer assigns to each member of the underwriting syndicate. Too often, co-managers have a greater risk percentage than the proportional revenues they ultimately receive.

Note that the adoption of this alternative method of distributing underwriting compensation requires no change in federal, state or local law or regulation. It is completely in the hands of the debt issuers' staff and advisors.

Currently, debt managers widely opt for the net designated approach of underwriter compensation but are able to make the change to the group net alternative with relative bureaucratic ease. It is time that they do so.

The net designated syndication rule is one whose time has passed. The municipal market should modernize, following the lead of other markets as to how issuer monies from its bond issues are paid to underwriters.

The Bond Buyer

By Chris Hamel

April 20, 2018

MSRB Provides Overview Of Municipal Market Derivatives Regulatory Framework.

The MSRB published an issue brief outlining the regulatory framework for swaps that may be commonly used by municipal securities issuers. Publication of the brief was partly a response to the Tax Cuts and Jobs Act of 2017, which eliminated tax-exempt advance refunding bonds as a means to refinance outstanding municipal bonds and has prompted municipal issuers to consider swaps as an alternative.

In the brief, the MSRB reviewed Dodd-Frank Title VII and material CFTC regulations, highlighting the heightened conduct requirements for swap dealers transacting with "special entities," including municipalities. Specifically, the MSRB described the requirements that establish that a special entity have a "qualified independent representative" or "QIR" and duties (subject to safe harbors) to act in the "best interest" of a special entity when making recommendations. The MSRB detailed regulatory requirements for municipal advisors which will generally apply to QIRs, including exemptions for swap dealers.

The MSRB further highlighted Dodd-Frank requirements that directly or indirectly apply to municipal entities, including documentation requirements. The MSRB stated that it considers ISDA documentation guidance as a tool to reduce the administrative burden of these documentation requirements, noting that they are voluntary and that a municipal end user can choose to negotiate alternative bespoke agreements provided that the resulting terms comply with applicable regulations.

The MSRB's publication provides a useful orientation for municipalities that may be looking to use swaps for the first time.

by Jeffrey L. Robins

April 12 2018

Cadwalader, Wickersham & Taft LLP

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

BDA Submits Comment Letter: FINRA Requests Comment on the Application of Certain Rules to Government Securities and to Other Debt Securities More Broadly.

On March 9, 2018, the Bond Dealers of America submitted a letter to FINRA in response to Regulatory Notice (18-05) requesting comment on the Application of Certain Rules to Government Securities and to Other Debt Securities More Broadly. You can view our final comment letter here.

The comment letter outlines that:

- The BDA believes that the application of the many rules identified in the Notice to government securities and U.S. Treasury securities does not make sense because dealers do not comprise a sufficient amount of the markets in these securities to justify the specificity of rules to them.
- FINRA rules already adequately protect investors in U.S. Treasury securities and other government securities (other than municipal securities).
- The BDA believes that the key rules that should apply to these transactions already apply, which include fair dealing, anti-manipulative and anti-fraud rules, fair pricing, and suitability. These rules adequately provide FINRA and the SEC with the regulatory authority to ensure that dealers fairly and appropriately trade in these securities.

Background

FINRA is requesting comment on the application of the following rules to government securities, including U.S. Treasury securities for:

- FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports);
- FINRA Rule 5240 (Anti- Intimidation/Coordination); 5250 (Payments for Market Making);
- FINRA Rule 5270 (Front Running of Block Transactions);
- FINRA Rule 5280 (Trading Ahead of Research Reports);
- FINRA Rule5320 (Prohibition Against Trading Ahead of Customer Orders);and
- NASD Rules 1032(f) (Securities Trader), 1032(i) (Limited Representative – Investment Banking) and 1050 (Registration of Research Analysts).

In addition, FINRA is requesting comment on the application of FINRA Rule 5320 as well as NASD

Rules 1032(f) and 1050 to all debt securities, in addition to government securities.

The FINRA Notice can be found here.

GASB Establishes New Guidance on Debt Disclosures, Addresses Direct Borrowings and Direct Placements.

Norwalk, CT, April 2, 2018 — The Governmental Accounting Standards Board (GASB) today released guidance designed to enhance debt-related disclosures in notes to financial statements, including those addressing direct borrowings and direct placements.

Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*, clarifies which liabilities governments should include in their note disclosures related to debt. This Statement requires that all debt disclosures present direct borrowings and direct placements of debt separately from other types of debt. Direct borrowings and direct placements may expose a government to risks that are different from or additional to risks related to other types of debt.

Statement 88 also requires the disclosure of additional essential debt-related information for all types of debt, including:

1. Amounts of unused lines of credit
2. Assets pledged as collateral for debt
3. Terms specified in debt agreements related to significant (1) events of default with finance-related consequences, (2) termination events with finance-related consequences, and (3) subjective acceleration clauses.

The full text of Statement 88 and a high-level overview featured in the current issue of *GASB Outlook* are available on the GASB website, www.gasb.org.

Continuing Disclosure in the Municipal Bond Market: Importance of Compliance.

When Congress passed the Tax Cuts and Jobs Act (TCJA) late last year, a much-heralded provision of TCJA was the reduction in the federal corporate income tax rate, from 35 percent to 21 percent. However, that reduction has had unforeseen consequences for the municipal bond industry. The reduction in the tax rate is expected to result in efforts by banks to increase the interest rates charged by banks for current outstanding loans to municipalities and 501(c)(3) tax-exempt organizations. Whether a bank may increase the interest rate on a loan will depend on the language of the loan documents. Even if the loan documents permit the bank to unilaterally increase the interest rate, some banks may be hesitant to do so, as the request may be received poorly, potentially jeopardizing the bank's ongoing relationship with the borrower.

Due to these concerns and others, there is speculation that banks will revisit their tax-exempt debt portfolios in 2018, scaling back their holdings and purchasing less tax-exempt debt in the future. For municipalities that traditionally have financed their capital needs through bank loans, the pool of available banks for such loans may shrink, with the remaining choices offering less attractive financial terms. Municipalities may also be turned off by the prospect of another bank placement of their debt after receiving notices of interest rate increases on their existing debt due to the passage of the TCJA.

Therefore, some municipalities may be considering a public offering of bonds after being out of the market for a few years. While the basics of a municipal bond transaction have not changed, a municipality that hasn't been in the market for a few years should expect to see some differences in how the transaction unfolds. Municipalities should anticipate seeing a heightened emphasis by the underwriter on confirming the municipality has met its continuing disclosure undertaking responsibilities and is able to continue to meet those responsibilities in the future.

Municipal bonds are regulated by the U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB). Under the securities laws, the SEC and the MSRB are prohibited from requiring any issuer of municipal securities to make any filings with the SEC or the MSRB prior to the sale of securities. The MSRB is further limited in its ability to require any municipal issuer to furnish it or any purchaser or prospective purchaser with any documents.

Despite this prohibition, the SEC and the MSRB have been successful in requiring municipal issuers to make specific disclosures and to file documents of various types with the MSRB, through SEC Rule 15c2-12. Under this rule an underwriter of municipal bonds (which may be regulated by the SEC) may not market the bonds unless it obtains a written commitment from the municipal issuer to make periodic disclosure filings. The written commitment of a municipal issuer to make periodic disclosure filings is generally called a "Continuing Disclosure Agreement," or CDA.
Under the CDA, the municipal issuer agrees to file with the MSRB its financial statements and certain operating data on an annual basis. In addition, under the CDA the issuer agrees to file with the MSRB notices of the occurrence of certain significant events (such as rating changes or defaults on the bonds). The filings are made with an electronic system established by the MSRB called the Electronic Municipal Market Access system, or EMMA .

Municipal issuers that have not undertaken a public offering of bonds in recent years may be familiar with these "basics" of continuing disclosure, but may not be aware of the heightened interest the SEC has shown lately on this issue and ensuring that municipal issuers comply with their continuing disclosure obligations. Many in the industry trace this heightened interest to 2014, with the announcement by the SEC of its Municipalities Continuing Disclosure Cooperation (MCDC) Initiative.

Under MCDC, municipal issuers and underwriters were afforded the opportunity to self-report if they were involved in bond issues in the last five years in which the offering documents for the bonds did not accurately report the issuer's historic compliance with Rule 15c2-12. For example, a municipal issuer might have chosen to self-report under MCDC if it had failed to disclose in an offering document that it had failed to file annual financial information for a prior bond issue, as required by its CDA. To encourage self-reporting, the SEC offered both a carrot (favorable, standardized settlement terms) and a stick (increased sanctions for unreported violations discovered later).

The MCDC Initiative ended on Sept. 10, 2014, and the SEC subsequently brought enforcement actions against a number of municipal issuers located throughout the country that had self-reported a variety of violations. Municipalities caught up in the enforcement initiative did not face monetary penalties in accordance with the settlement guidelines established by the SEC. Instead, the settlements generally focused on ensuring future compliance with the rule, by requiring issuers to establish appropriate policies and procedures and training regarding continuing disclosure obligations.

The SEC has continued its aggressive enforcement of this issue since the MCDC Initiative ended. In the last few years it has brought actions against issuers and individual officials of issuers, alleging inadequate disclosure in offering documents. For example, in August 2017, the SEC settled charges against the Beaumont Financing Authority of the City of Beaumont, California that the authority made false statements about its prior compliance with its continuing disclosure obligations in five bond offerings. The SEC had discovered the violations in connection with its investigation of municipal issuers and underwriters that had chosen not to participate in the MCDC Initiative.

To settle the charges, the authority had to agree to retain (at the authority's expense) an independent consultant to review its continuing disclosure policies and procedures and make recommendations for appropriate changes to them. Generally, the authority was required to accept the consultant's recommendations in order to comply with the settlement. The appointment of an independent consultant would not have been a condition of a settlement under MCDC—if the authority had self-reported.

A municipal issuer entering the bond market in 2018 should expect to see during the underwriting process a heightened level of attention placed on continuing disclosure compliance. Municipalities may be surprised to learn that in connection with the underwriting process they must file one or more notices on EMMA, disclosing that they failed to comply with their continuing disclosure undertakings. In addition, an underwriter may request that a municipality engage a dissemination agent to assume responsibility for future EMMA filings before the underwriter will proceed with a public offering of the municipality's bonds, if the underwriter has concerns regarding the municipality's ability to comply with its continuing disclosure responsibilities in the future.

Municipalities that are faced with a request to engage a dissemination agent, or that simply want to lessen the administrative burden placed on their staff in connection with this regulatory mandate, have options when it comes to seeking third-party support. For instance, the attorneys and specialists of the McNees public finance group provide dissemination agent and continuing disclosure support services to municipal issuers, both in connection with an initial public offering of bonds, and on an ongoing basis after the bonds are sold. Contact us to learn more.

By Timothy J. Horstmann and Penny Pollick | April 05, 2018

McNees Wallace & Nurick

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Compelling a Muni Indenture Trustee to Arbitrate Before FINRA: Kramer Levin

A recent decision out of the federal district court in Nevada, *BOKF, NA v. Estes* D. Nev. March 2, 2018), addressed the interesting question of whether an indenture trustee for municipal bonds could be compelled to arbitrate bondholder claims in front of the Financial Industry Regulatory Authority (FINRA). The court answered in the affirmative, navigating through a labyrinth of rules of FINRA and the Municipal Securities Rulemaking Board (MSRB). The decision creates precedent in the muni bond world, but because it rests on MSRB regulation, it would not ordinarily extend to trustees for corporate debt instruments.

Background

The *Estes* case is yet another outgrowth of the misdoings at Lawson Financial Corporation, a now-demised demised municipal bond underwriter that was effectively shuttered by the Securities and Exchange Commission. (*See* Debt Dialogue, April 2017.) Between 2015 and 2017, the SEC filed complaints against principals of Lawson, Christopher Brogdon and Dwayne Edwards, and issued a cease and desist order against Lawson for fraud and violation of the federal securities laws.

The indenture trustee for the muni bonds underwritten by Lawson was BOKF, N.A., doing business as Bank of Oklahoma, N.A., through its corporate trust department. The SEC also filed complaints against BOKF and the former head of its corporate trust department, Marrien Neilson, for their involvement in the Lawson schemes, with BOKF entering into a consent agreement with the SEC over its alleged role as aider and abettor in the fraud.

In June 2017, a group of holders of bonds underwritten by Lawson initiated arbitration against BOKF under FINRA's Code of Arbitration Procedure (Customer Code; Rule 12000 et seq.), alleging violations by BOKF of the federal securities laws in connection with its service as indenture trustee for the bonds. The bondholders contended that BOKF was subject to FINRA arbitration as a "bank dealer" engaged in municipal securities dealer activities pursuant to the rules of the MSRB.

In November 2017, BOKF brought suit against the bondholders in federal district court seeking a declaration that BOKF was not subject to FINRA arbitration, and also sought related injunctive relief. With the FINRA arbitration set for July 2018, in December 2017, BOKF sought a preliminary injunction enjoining the bondholders from taking any action in furtherance of the arbitration.

The Decision

The court brought the usual principles to bear on BOKF's preliminary injunction and found that BOKF was unlikely to prevail on the merits.

The court began with the observation that arbitration cannot be compelled absent a contractual basis, and BOKF was not a member of FINRA and not directly subject to its rules. The contractual basis advanced by the bondholders were the rules of the MSRB that import FINRA arbitration procedures. Rule G-35 of MSRB rules provides that "every bank dealer … shall be subject to the [FINRA] Code of Arbitration Procedure … for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such."

In turn, under the FINRA Code, "customers can compel registered members of FINRA to arbitrate certain disputes even when no written arbitration agreement exists."

BOKF raised two arguments in its attempt to halt the arbitration proceedings. First, it reasoned that the bondholders were not its "customers" within the meaning of the FINRA Code, such that they lacked standing to commence an arbitration even assuming that the FINRA Code applied to BOKF. Second, BOKF maintained that its corporate trust department was not a "bank dealer" within the contemplation of MSRB Rule G-35. The court rejected both arguments.

Bondholders as "customers" of an indenture trustee

"Customer" is not affirmatively defined in the FINRA Code, but relying on precedent of the Court of

Appeals for the Ninth Circuit, the district court held that the term is to be interpreted broadly. The bondholders had, in the court's view, alleged sufficient circumstances to bring BOKF within the ambit of the "customer" concept, liberally construed. BOKF was indenture trustee, bond registrar, dissemination agent and paying agent. It paid bondholders on their investments and provided bondholders information about their investments. It owed fiduciary duties to bondholders and its fees were paid from the "bondholder's [sic] investment proceeds, which shows a direct investment relationship even though [the bondholders] did not specifically buy the bonds from BOKF."

The court therefore found that BOKF was not likely to succeed on its claim that the bondholders were not its "customers."

The indenture trustee as "bank dealer"

MSRB Rule D-8 defines "bank dealer" as "a municipal securities dealer which is a bank or a separately identifiable department or division of a bank … ." MSRB Rule G-1, in turn, provides that "[a] separately identifiable department or division of a bank … is that unit of the bank which conducts all the activities of the bank relating to the conduct of business as a municipal securities dealer." Finally, municipal securities dealer activities are defined to include underwriting, trading and sales of municipal securities; financial advisory services in connection with the issuance of municipal securities; processing and clearing activities; related research and investment advice; any other activities involving communication with public investors in municipal securities; and maintenance of related records. BOKF contended that its corporate trust department did not engage in any of these defined activities and therefore was not a "bank dealer."

Rejecting BOKF's contention, the court credited the bondholders' position that BOKF engaged in activities beyond mere ministerial function. Among other things, Ms. Neilson, the former head of BOKF's corporate trust department, allegedly served as the primary contact person between BOKF, Lawson and the conduit borrowers, and also provided financial advice and consultation regarding the terms, structuring, and timing of the bond offerings. The bondholders also contended that employees within the corporate trust department, including Ms. Neilson, engaged in research activities on behalf of Lawson. The court credited these allegations and found that these functions fell comfortably within the zone of municipal securities dealer activities, as defined.

Other considerations

In rejecting BOKF's request for preliminary injunction, the court also adverted to what it called "the strong policy in construing the scope of arbitrable issues under FINRA broadly and in favor of arbitration." The court noted that other courts had held consistently that "forced participation in an arbitration forum that does not have jurisdiction over the dispute is *per se* irreparable harm." Here, however, BOKF did not establish that FINRA lacked jurisdiction.

Some Thoughts

Reading the decision, there is some sense that the court bootstrapped its way to the conclusion. Its denial of the requested preliminary injunction was premised in large measure on the as yet unproven allegations of the bondholders. What can be said is that the court seemed convinced by the cumulative weight of the allegations in the various SEC complaints, particularly those against BOKF and the former head of its corporate trust department, indicating that BOKF was much more than a passive administrator in the web of fraud woven by Lawson and its principals.

Putting aside the particulars, the case is a cautionary tale of a municipal indenture trustee being hauled before a FINRA arbitration panel despite the fact that it is not a FINRA member and that it would not ordinarily be regarded as engaging in municipal securities dealer activities. While indenture trustees ordinarily view themselves as administrative creatures acting within the four corners of their indenture, a demand for arbitration would necessarily arise in circumstances where the trustee was acting outside the zone of ministerial function. In the *BOKF* case, these activities were alleged to have occurred around the time of issuance of the securities, and not down the road when the trustee was pursuing (or not pursuing) remedies after a default. It is unclear therefore whether the rules of the MSRB could be stretched so thin as to reach even post default remedial activities of the trustee. But the warning light is there.

There are no rules in the corporate bonds arena to bind indenture trustees to FINRA arbitration, analogous to MSRB Rule G-35. There would have to be another contractual lever to compel the trustee to appear in a FINRA or other arbitral proceeding. The case nonetheless suggests that where a hook exists to bring a trustee into a retail-friendly arbitration forum, a court may stretch to do so.

Kramer Levin Naftalis & Frankel LLP

by Abbe Dienstag

March 30, 2018

Hawkins Advisory: Municipal Market Regulatory Update.

Read the Advisory.

NAST Writes HQLA Letter to Congressional Leadership.

Read the Letter.

National Association of State Treasurers

March 22, 2018

MSRB Publishes Issue Brief on Minimum Denominations of Municipal Securities.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published an issue brief about historical policy issues and additional considerations related to the use of minimum denominations in the sale of municipal securities. The report, intended as a resource for municipal market stakeholders and others, details information drawn from the MSRB's outreach to diverse market stakeholders on minimum denominations.

Minimum denominations for municipal securities are established at issuance to help target their sale to an appropriate category of investors or reduce administrative costs, among other reasons. The MSRB has no rulemaking authority over issuers, including with respect to the use of minimum denominations. However, to help to ensure that municipal securities dealers observe established minimum denominations, MSRB has since 2002 generally prohibited dealers from effecting a municipal securities transaction with a customer in an amount below the minimum denomination of the issue.

In recent years, industry concerns emerged about the limited nature of two exceptions to MSRB Rule G-15(f), on minimum denominations, that were intended to protect customers who hold positions in securities that are below the minimum denomination of an issue. In 2015, the MSRB began to explore possible revisions to the rule that would have created additional exceptions, but in response to strong commenter opposition and an absence of comments from issuers or their representatives, the MSRB in May 2017 decided not to pursue any amendments. Instead, it engaged in formal outreach with bond issuers, their advisors and counsel, dealers in municipal securities and other market participants to more fully understand their perspectives and policy issues raised in the rulemaking process.

The issue brief includes considerations that may merit further discussion among issuers, dealers and other market participants. While the MSRB does not plan to propose changes to its minimum denomination rule, it is providing this resource to support any efforts by market stakeholders to evaluate market practices regarding the use of minimum denominations, particularly in light of developments in technology, a growing interest in small-denomination municipal bonds and the allocation practices of investment advisers.

Date: March 12, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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BDA Advocacy 1st Quarter – 2018

Federal Regulatory and Legislative Priorities

FINRA Rule 4210
In 2016, the BDA was successful in getting FINRA and SEC to file a last-minute amendment to the rule that significantly expanded the "gross open position" exception from $2.5 million to $10 million. BDA had advocated for a more expansive gross open position limit throughout the rulemaking and the $10 million level expands the universe of counterparties and trades where the transfer of margin will typically not apply.

More recently, the BDA was supportive of a delayed effective date and lobbied FINRA directly for the delay. In September 2017, the rule was delayed to June 2018.

In 2018, the BDA has met with SEC Chair Clayton and each SEC Commissioner in addition to FINRA CEO Cook and senior counsel advocating for excluding from the rule transactions from the "Covered Agency Securities" definition that do not pose systemic risk, such as specified pools and CMOs; transactions from the "Covered Agency Securities" definition that settle on the next or first good settlement date; and/or allowing dealers to take a capital charge instead of requiring them to enter into margining agreements with customers.

The BDA believes that FINRA should revise the amendments to allow dealers to either charge margin to counterparties or to take a regulatory capital charge to cover any mark-to-market deficiency in excess of the de minimis threshold. This would allow dealers to remain competitive with money manager accounts, prevent non-FINRA regulated banks from marketing their status as a non-FINRA regulated entity, and still manage any systemic risk. This idea was discussed with Robert Cook and senior FINRA staff in December 2017, and in February 2018, the BDA received word that FINRA is considering this proposal. FINRA has discussed this idea in-depth with BDA member firms, and an update is expected shortly.

Retail Confirmation Disclosure Rules
In the fall of 2017, at the request of Robert Cook of FINRA, a BDA working group submitted an amendment recommendation for the retail confirmation disclosure rules to both FINRA and MSRB. The BDA policy recommendation introduced the concept of "general market liquidity provider" to allow dealers that provide liquidity and offer bonds in support of their network of financial advisors to rebut the presumption that their cost is the best measure of prevailing market price for the purposes of the disclosure. The BDA also continued to advocate for a delay of the rules.

Throughout December 2017, BDA staff continued conversations with FINRA staff, and also reached out to SEC commissioners' staffs to discuss our concerns in-depth after hearing that SEC commissioners were balking on a delay of the rules.

In January 2018, BDA members met with SEC Chairman Jay Clayton, SEC Commissioner Kara Stein, and senior staff to SEC Commissioner Mike Piwowar in support of a delay of the rule and to make clear to the SEC the numerous compliance problems small firms are facing with vendors, etc. The BDA also explained to the commissioners the "general market liquidity provider" amendment.

The SEC commissioners held their position that the rules should not be delayed. However, the BDA felt that they did leave the door open for an extended timeline without enforcement. During the meeting with Chairman Clayton, he prompted the BDA to draft a "business plan" laying out the framework of steps to be taken if a delay of enforcement were to be granted. The plan BDA presented includes a "conformance period," in which the regulations would not be enforced if broker-dealers acted in good faith and worked to come into full compliance with the rules by December 31, 2018.

As a follow-up, in March 2018, BDA members met with the two new SEC commissioners, Hester Peirce and Robert Jackson, Jr., regarding the markup rules.

In March 2018, the BDA was notified that regulators are seriously considering the BDA's conformance period proposal. Currently, the BDA is in communication with member firms, industry groups and regulators to ensure a positive outcome. More information on this issue will be distributed soon.

Municipal Advance Refundings
The BDA is leading the advocacy push for H.R. 5003, legislation that would fully reinstate municipal advance refundings. While disappointed in the elimination of advance refundings in the Tax Cuts and Jobs Act of 2017, the BDA continues to work simultaneously with Capitol Hill, MBFA and the full issuer community and the U.S. Treasury to find a market-based, regulatory no cost solution for municipal bond issuers.

Grassroots lobbying efforts are ongoing with BDA membership contacting their representatives in Washington. Municipal Bond Division Leadership has provided the BDA with advance refunding project data for Ways and Means comments on "expired tax provisions" in March, showing a wide variety of cost savings lost for state and local governments of all sizes. The BDA also plans to host a member fly-in surrounding "Infrastructure Week 2018" to help raise awareness for municipal advance refundings on Capitol Hill this May.

Private-Activity Bonds
In early 2018, the Trump Administration released an infrastructure guideline that would eliminate the AMT provision, provide change-of-use provisions to preserve the tax-exempt status and allow for the advance refunding of PABs. The BDA continues to work with its partners on Capitol Hill to promote these fundamental pillars in any infrastructure package.

The BDA plans to incorporate PABs into the “Infrastructure Week” fly-in this May.

MSRB Rule G-15 Minimum Denomination Rule
As a result of direct lobbying efforts of the BDA, the MSRB withdrew a proposed rule to amend MSRB Rule G-15 for minimum denominations (Proposed and withdrawn MSRB Rule G-49). The withdrawal of the rule took place after a BDA conversation with MSRB Counsel Mike Post that was supported by Dan Deaton from Nixon Peabody. During that call, BDA highlighted that the rule proposal and the existing G-15 framework was harming the marketplace, especially retail investors. After withdrawing the rule, the MSRB sought additional input from the BDA on a conference call with BDA members. The accomplishment is that BDA advocacy resulted in the rule being withdrawn. The BDA educated the MSRB and they appear committed to updating G-15 in a way that would focus the minimum denomination rule on issuances with minimum authorized denominations of $100,000 and above, removing a significant burden on the retail municipal market. Pending regulatory discussions will continue in 2018.

DOL Fiduciary Duty / SEC Best Interest Standard
While the DOL fiduciary rule and exemptions are extremely burdensome, the BDA and dealer firms were successful in getting significant changes included in the final rule. Initially the Best Interest Contract Exemption (BIC) and the Principal Trading Exemption (PTE) excluded a series of assets including municipal bonds, UITs, CDs, and mortgage securities.

At present, the DOL fiduciary rule has been partially implemented; but several sections of the rule have also been delayed by the Trump Administration to examine if DOL or the SEC is best suited to take the lead on this issue. In June 2017, SEC Chairman Jay Clayton requested public comments on how the SEC might best approach a “fiduciary” standard. The BDA met with the Chairman Clayton, Commissioner Stein, and senior staff to Commissioner Piwowar in January 2018 and let them know that BDA will submit comments to the SEC soon.

The BDA supports a “best interest standard” and strongly believes that the standard should fit within the existing broker-dealer regulatory regime.

Review and Withdrawal of IRS Political Subdivision Rule
The IRS political subdivision rule was proposed in 2016. The BDA opposed the proposal. Due to market participant feedback the rule was not approved during the Obama Presidency. The Trump Administration reviewed IRS rule proposals and identified the political subdivision rule as a particularly burdensome rule.

The BDA and MBFA wrote to the IRS confirming that the rule was burdensome, unnecessary, and harmful for economic growth. The IRS repeatedly identified the comments of market participants as a reason why it identified this rule as particularly burdensome. The proposal was withdrawn on October 20, 2017.

SEC Proposes Amendment to 15c2-12 for Bank Loan Disclosure
The BDA supports the disclosure of bank loans and the most effective way to require the disclosure

of bank loans would be for the SEC to amend 15c2-12. In 2017, the SEC released a proposed rule to amend 15c2-12 to require the disclosure of bank loans. This proposal is a BDA accomplishment. While the rule is not yet final, the BDA has engaged in direct advocacy with the SEC prior to and after the rule proposal on the subject of bank loans. Discussions are ongoing in 2018.

High Quality Liquid Asset (HQLA) Legislation/Regulation
Working in tandem with state, local and issuer groups, the BDA has supported the introduction and re-introduction in the House and Senate and passage through the House of legislation to define municipal bonds as HQLA under banking liquidity rules.

In early 2018, municipal securities were classified as level 2B HQLA in 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, which also is expected to pass the Senate soon.

SEC Fixed Income Market Structure Committee
In 2017, the BDA recommended four candidates (Craig Noble, Brad Winges, Horace Carter, Mike Marz) for the SEC's Fixed Income Market Structure Advisory Committee (FIMSAC). The BDA is pleased that Horace Carter (Raymond James) was selected for the committee, as were BDA members Amar Kuchinad, (Trumid Financial) and Richard McVey (MarketAxess). The BDA continues to monitor FIMSAC activities and will look for ways to actively engage the SEC on these topics.

Additional BDA Priorities 2018

PCAOB Exemption Legislation
The BDA is working with other industry participants and trade groups on potential legislation that would exempt privately-held, non-custodial brokers and dealers from the requirement to have a Public Company Accounting Oversight Board (PCAOB)- registered audit.

The PCAOB requirements do not make sense for privately-held, non-custodial firms. The one-siz--fits-all PCAOB audit standards that were designed for public companies, and are priced accordingly, have inflicted substantial harm on small businesses around the country.

Currently, the BDA is waiting to see final bill text, and once the legislation is introduced, the BDA plans to actively advocate for it on Capitol Hill.

MSRB Seeks to Establish Rule for Municipal Advisors/Update Dealer Standards on Advertising
The BDA has been active in submitting comments in opposition to the MSRB's proposed new rule, MSRB Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities dealers.

Most recently, the BDA submitted comments in February 2018 to the SEC in response to the MSRB's proposed new rule. While the rule is not yet final, the BDA continues to be active in direct advocacy with the SEC prior to the implementation of new advertising standards.

Bank Qualified Debt
The BDA continues to support the reintroduction of the Municipal Bond Market Support Act or inclusion or this Act in an infrastructure package. Bank-qualified debt legislation would increase the annual volume limit for bank-qualified bonds from $10 million to $30 million and index for inflation. Past legislation has also allowed for the use of pooled financings and calculates the volume cap at the issuer, rather than issuance, level. The BDA has lobbied Congress extensively on the bank-qualified issue during the past seven years and we will continue to do so in 2018.

FINRA Government Securities Initiative
In February 2018, FINRA issued a request for comment (Notice 18-05) on the application of various

FINRA rules to government securities including U.S. Treasury securities and debt securities. The BDA believes that the application of FINRA rules to government securities will place undue compliance burdens and staffing challenges and opposes the proposal. The BDA is working with its various committees to draft comments in response to FINRA 18-05.

Debt Research
The BDA submitted comments to FINRA in mid-2017 concerning the proposed limited safe harbor from FINRA debt research rules for desk commentary. The letter outlined the belief that the best solution to help facilitate the timely flow of commentary to investment managers would be a clear interpretation of "research report" that demonstrates that the vast majority of desk commentary is not fundamental research. The BDA also asked that if and when FINRA proposes rule text for the safe harbor, it should provide clarity on desk commentary content. The BDA continues to monitor this proposed rule.

Update: Municipal Bonds for America coalition (MBFA)
In February 2017, 385 organizations and individuals signed an advocacy letter, representing nearly all-50 states, to House and Senate leaders urging them to retain the current law status of municipal bonds as they began deliberation on comprehensive tax reform. The MBFA Coalition was extremely active in its advocacy efforts to preserve all tax-exempt financing options for municipal bonds, including PABs and advance refundings, in the Tax Cuts and Jobs Act. In 2018, MBFA Executive Chair Steve Benjamin will become the president of the

U.S. Conference of Mayors, and will further advocate for the tax-exemption in this highly-visible position. The Coalition will continue to educate Congressional leaders and staff members through its Muni Bonds 101 seminars on Capitol Hill, meetings with staff members of influence at the White House, and developing and maintaining its relationship with members of Congress to preserve the tax- exempt status of municipal bonds.

Bond Dealers of America

March 15, 2018

BDA Legislative Update: Senate Approves Financial Regulatory Reform Bill.

After weeks of debate and discussion over 100 amendments, yesterday the Senate passed a financial reform bill by a vote of 67-31. *The Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155) makes bipartisan changes to the Dodd-Frank Act that will right-size post-crisis rules that were imposed on small and regional lenders after the global financial crisis.

***Important to BDA members*, S. 2155 includes a provision that directs the FDIC, the Federal Reserve, and the OCC to classify qualifying investment-grade, liquid and readily-marketable municipal securities as level 2B liquid assets under the agencies' liquidity coverage ratio rules. BDA has long supported "high-quality liquid asset" (HQLA) provisions like this one.**

BDA will send a thank you letter to all the Senators thanking them for the HQLA provision and passage of the bill.

The House passed its version of financial reform legislation, the *Financial CHOICE Act* (H.R. 10), last June. Both H.R.10 and S. 2155 have a variety of similar provisions, including a type of regulatory off-ramp, however S. 2155 does not roll back Dodd-Frank regulations to the same degree as the CHOICE Act. Because of these differences, it will be challenging for both the House and Senate to conference a bill together and the future of a financial regulatory bill getting signed into law is uncertain.

BDA will continue to keep you updated as financial regulatory reform proposals advance through Congress.

Here's Why Muni-Bond Demand Could Get a Lift from Bank Legislation.

Banks own close to 15% of the municipal bonds outstanding

As municipal bondholders continue their struggle to make sense of last year's tax legislation, Congress is set to knock down one argument against participating in the $3.8 trillion market.

Investors are expecting the Senate to pass a bipartisan bill that would include municipal debt in the coveted category of high-quality liquid assets as part of a bid to roll back some elements of the Dodd-Frank law put in place after the financial crisis. The proposed legislation would stoke appetite for municipal bonds among banks, steadying a market still reckoning with the recent tax cuts.

"It takes one of leg of the argument against the muni market as it goes through a shake-up," said John Mousseau, director of fixed-income strategy at Cumberland Advisors.

It was only a few months ago when President Donald Trump's revamp of the tax code threatened to sink the viability of municipal debt by eliminating private activity bonds and advanced refunding paper, two key pillars of the $3.8 trillion market. That led local governments to issue billions of dollars in bonds in December in order to front-run the tax changes. But since then, municipal bonds have largely recovered.

The bill would put municipal bonds in the company of high-grade corporate paper and government debt in the eyes of financial watchdogs.

Rules elevating corporate bonds above munis in the regulatory environment has been a chip on the shoulder of market participants. The National Association of State Treasurers blamed the absence of municipal debt from the high-quality liquid assets designation, or HQLA, for contributing to higher borrowing costs for local governments.

Regulations mandating banks hold a minimum amount of HQLA to handle market turmoil were designed with the intention of avoiding a repeat of the 2008 financial crisis when banks found much of the investments on their books were difficult to off-load and less creditworthy than they had initially seemed.

On that front, analysts point out municipal debt features a lower default rate than their private-sector peers at every rung of the credit ladder as they are backed by the full taxing authority of local governments. According to a Moody's historical study stretching from 1970 to 2015, the frequency of defaults among BBB-rated municipal bonds was lower than that of AAA-graded corporate bonds.

"Why wouldn't you want better credit collateral than you're getting with existing legislation on corporation debt," said Mousseau.

Moreover, municipal debt could hold good value for banks with extra cash. The yield difference between municipal bonds and comparable Treasurys have widened, with the tax-free yield on a 10-year municipal bond slipping to around 85% of the taxable yield on a 10-year Treasury TMUBMUSD10Y, +0.00% for most of this year, well below the 95% seen in early 2017. A lower ratio implies munis are cheaper relative to Treasurys.

Though the revamped bank legislation should boost their investment in municipal paper, its unlikely to return Wall Street to their previous role as the linchpin of the market.

Nonetheless, Mousseau says the bill, if passed, is an under-appreciated step that could prove a boon to smaller financial institutions and commercial banks that have few avenues for long-term investments.

In 1975, banks owned close to half of the municipal bonds outstanding. Their share hit a low in 2004, shrinking to 5%, before making a comeback to 15% in 2017 after former President Barack Obama expanded the allowance for banks to qualify for tax exemptions on interest payments, a key appeal of the municipal bond market.

"If individual investor ownership is the bedrock of municipal holdings, then bank ownership is the topsoil," said Thomas Kozlik, municipal strategist for PNC Capital Markets, in a January note. He added that "bank buying patterns have historically been sensitive to tax reform and government incentives."

Their role as a backstop against weakening demand for municipal paper has come to the fore in recent years. Bank holdings of municipal paper rose close to $120 billion from 2015 to 2017, even as households sold around $110 billion of municipal bonds, according to the Federal Reserve data.

But some investors are still waiting for the dust to settle from the Republican tax legislation before making up their minds on how much of a boon a renewed Dodd-Frank bill would be for the municipal bond market.

"Right now the market is trying to figure out what bank activity will be as a result of the tax-cut legislation. Banks very well could find relative value elsewhere," wrote Kozlik.

Market Watch

by Sunny Oh

Published: Mar 9, 2018 2:12 p.m. ET

[Read About EMMA's Upcoming 10-Year Anniversary and the Enhancements We're Launching Later This Spring.]

[Read the MSRB Bulletin.]

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MSRB Compliance Corner.

Read about mark-up disclosure implementation, upcoming compliance dates and resources for municipal bond dealers and municipal advisors in the MSRB's latest Compliance Corner.

Big Banks Get a Big Win in Senate Rollback Bill.

Nation's largest banks would gain incentive to buy more municipal bonds in legislation targeting smaller banks

WASHINGTON—Bipartisan legislation expected to clear the Senate as early as this week has just one provision that is set to directly benefit the nation's megabanks: a section aimed at making it easier for them to buy state and local bonds.

The provision, championed by Citigroup Inc. and other large banks, would ease a new rule aimed at ensuring banks can raise enough cash during a financial-market meltdown to fund their operations for 30 days, requiring them to hold more cash or securities that are easily salable.

Under federal banking rules approved in 2014, those "high quality liquid assets" included cash, Treasury bonds and corporate debt—but not municipal debt. Banks historically like to hold municipal bonds because of their safety and tax advantages.

The Senate on Tuesday voted 67-32 to formally begin debate on the bill, which primarily benefits small and medium-size banks, easily reaching the 60 votes needed and signaling that the measure has enough support from Democrats to pass by a comfortable margin. The legislation was backed by 16 Democrats and one independent, Maine Sen. Angus King, bucking Massachusetts Sen. Elizabeth Warren and 31 other Democrats who opposed the procedural vote.

Including the municipal-bond provision in the deregulatory bill was a priority for the nation's biggest banks that buy a lot of municipal securities as investments. A Citi lobbyist recently told a Senate staffer that the firm would be pleased if easing the treatment of municipal debt under the bank-funding rule was the one thing it could accomplish during the current Congress, according to a person familiar with the conversation.

State and local officials have praised the move, saying their securities could suffer if banks begin to shun them.

A Citi spokesman said the bond provision "is supported by a wide array of groups focused on helping cities and states address critical infrastructure needs."

While the provision is a victory for Citi, the biggest U.S. banks haven't lobbied extensively on the Senate bill, according to congressional aides. Big firms have spent billions to comply with a gamut of postcrisis rules and generally aren't eager to tear them down.

Analysts have said changing the rule for municipal products would be a mistake because it would erode the core of a bank-safety rule put in place after the 2010 Dodd-Frank law. While municipal securities have relatively low default rates, they are traded thinly and shouldn't count as liquid assets, critics say.

"It's an outrageously bad idea," said Phillip Swagel, a professor at the University of Maryland who served in the George W. Bush Treasury, characterizing the provision as an implicit federal guarantee of the municipal market. In the next crisis, banks will have trouble selling their municipal securities, freezing up the market for them and requiring the government to step in to backstop it, he predicted.

While lawmakers agreed to include the municipal debt measure, they rebuffed Citi and JPMorgan Chase & Co. efforts to water down a separate postcrisis capital requirement known as the supplementary leverage ratio. That regulation effectively restricts banks from making too many loans without adding new capital, forcing firms to maintain a proportion of capital to fund their assets—including loans, investments and even the collateral clients post on derivatives transactions.

The legislation includes a provision to diminish the leverage ratio in a way that lawmakers say would only benefit financial institutions primarily engaged in "custody services," in which they hold assets on behalf of other banks. Citi and JPMorgan, global banks that don't fit the definition but still offer custody services, have argued it is unfair to carve out certain banks from the provision and not others.

"As Congress has sought to make a common sense change to the way capital rules treat custody assets, we have asked that they apply that change to all custody banks to maintain a level playing field in this important business," a Citi spokesman said.

Senate aides said lawmakers crafted a delicate compromise that can pass the chamber and don't want to broaden the bill with more provisions helping big banks—which became a target of criticism during the crisis—and risk having the bill fail. "That is not happening," said one Senate Democratic aide.

Federal Reserve Chairman Jerome Powell said on Feb. 27 that the Fed would prefer that Congress allow regulators to rewrite the leverage ratio rule. Instead, the bill directs regulators to exclude certain assets from the calculation of the leverage ratio for custody banks such as Bank of New York Mellon Corp. and State Street Corp.

The Wall Street Journal

By Andrew Ackerman

Updated March 6, 2018 2:49 p.m. ET

—Ryan Tracy contributed to this article.

Fitch to Include Disclosure on PR Special Rev Ruling in Related Issuer Research.

Fitch Ratings-New York-09 March 2018: On March 12, 2018 Fitch Ratings will begin inserting a comment into its rating action commentaries (RACs) for credits the agency believes could be affected if a final ruling upholds a recent decision on the interpretation of a section of Chapter 9 of the U.S. bankruptcy code. A Jan. 30, 2018 district court ruling dismissed claims regarding payment of Puerto Rico Highways and Transportation Authority (PRHTA) debt. The ruling states that section 922(d) was included in the code as permission for a municipality to continue paying special revenue obligations if it chooses to do so during bankruptcy rather than as relief for bondholders from the constraints of the code's automatic stay provisions.

A final ruling in the case that is consistent with this approach would create uncertainty about full and timely payment of special revenue obligations including those of utilities, transportation, and other enterprises of local governments as well as some dedicated tax bonds in the event the related government files for a Chapter 9 bankruptcy. Fitch's Rating Criteria for Public Sector, Revenue-Supported Debt already consider the influence on enterprise debt of the credit quality of the general government, including common management and service area characteristics as well as legal, financial and operational connections. Restrictions on the use of pledged revenues for other municipal purposes, such as federal law prohibiting diversion of airport revenues to other municipal uses, is another strong credit consideration.

Fitch will insert the following comment in RACs it believes are subject to uncertainty in the event of a final ruling in the PRHTA case that is consistent with the district court ruling:

"A Jan. 30, 2018 district court ruling that dismissed claims regarding payment of Puerto Rico Highways and Transportation Authority debt has raised questions about the scope of protections provided by Chapter 9 to bonds secured by pledged special revenues. Fitch's rating criteria treat special revenue obligations as independent from the related municipality's general credit quality. The outcome of the litigation could result in modifications to Fitch's approach. For more information, see 'What Investors Want to Know: The Impact of the Puerto Rico Ruling on Special Revenue Debt' (February 2018)."

Fitch will not include this comment in RACs of bonds rated based on the pledged special revenue definition described in section 902(2)(E) of the code. In these cases, Fitch believes the possibility of a payment interruption due to an automatic stay would remain remote even if the recent ruling were to stand. Fitch sets a high bar to consider tax-supported debt to be secured by pledged special revenues under section 902(2)(E) and thus unaffected by the operating risk of the related municipality. Among the elements required for Fitch to rate such bonds without regard to the government's issuer rating is a statutory requirement that a governmental official outside the municipality collects and remits the tax revenues to the paying agent, placing the funds outside the control and direction of the municipality.

Fitch has most commonly applied this analysis to bonds issued by school districts in California. In Fitch's opinion, this structure places the bond security outside the scope of the Puerto Rico decision. The court's opinion notes that section 922(d) permits third parties to continue to apply special revenues held by them to debtors, free from the automatic stay.

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What's the Outlook for Munis as HQLA?

PHOENIX – A bill that would allow banks to count municipal bonds among their high-quality liquid assets appears to be headed towards eventual passage, potentially alleviating a situation that some market participants have said has hurt demand for munis.

Provisions that would allow banks to treat readily-marketable, investment-grade municipal securities as high-quality liquid assets under federal banking rules is included in S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act sponsored by Sen. Mike Crapo, R-Idaho. The provisions, the same as were included in a previously-introduced bill backed by Sen. Mike Rounds, R-S.D., is a response to rules adopted in 2014 by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp.

These rules require banks with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion to have a high enough liquidity coverage ratio – the amount of HQLA to total net cash outflows – to deal with periods of financial stress.

The regulators did not include munis as HQLA under the rule because they felt the securities were not liquid enough. The Fed later amended its rules to include some munis as HQLA but muni market participants said the amendments were still too restrictive and, in any case, would mean little if the other banking regulators did not follow suit.

Banks have emerged as major buyers of munis in recent years, with their holdings rising to about $537 billion in 2016 from about $191 billion in 2006 according to the Municipal Securities Rulemaking Board, a trend many in the market were concerned would be curtailed by the rules.

If passed into law, banks would be able to treat some munis as level 2B HQLA, the same level as for mortgage backed securities. That’s a level down from the level 2A securities the market was hoping munis could belong to, the same level applied to sovereign debt.

The Senate voted March 6 to proceed to debate on the bill, which is broad and touches on not only munis but also mortgage lending and credit standards. The bill has 12 Democrat cosponsors and should be able to pass through the Senate and the House fairly smoothly and be signed into law within a few weeks, according to a source on Capitol Hill.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said she is "confident in the bill's progress."

"It's the bottom of the totem pole of what issuers could support," she said, noting that issuers had really hoped for a level 2A classification. "It's time to have a bipartisan, bicameral conversation about keeping the bond market strong," she added.

John Mousseau, executive vice president and director of fixed income at Sarasota, Fla.-based Cumberland Advisors said he believes the bill would be a win for the muni market if it becomes law, because it would help cement banks' important place as buyers of municipal debt.

The bill is unpopular with the more progressive Senate Democrats, who view it as largely a rollback of the Dodd-Frank provisions enacted in the wake of the 2007/2008 financial crisis rather than the effort to help the smaller regional and community banks that Republicans say the bill will help. Sen. Elizabeth Warren, D-Mass., has criticized her colleagues for supporting the bill and vowed to fight it.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 03/08/18 06:52 PM EST

SIFMA Comments on Amendments to MSRB Rule G-21 and New Rule G-40.

SIFMA provided comments to the Securities and Exchange Commission (SEC) on proposed new rule, MSRB Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities dealers. The MSRB in February 2017 requested industry and public comment on topics including how municipal advisors use advertising and considerations for streamlining and modernizing dealer advertising regulations. Based on commenter feedback, the MSRB revised its draft amendments to Rule G-21 to permit testimonials in dealer advertisements under certain circumstances. Further, the MSRB amended the definition of advertisement under proposed Rule G-40 for advertising by solicitor municipal advisors. Both rules also include guidance that the determination of the number of persons receiving a response to a request for proposal or similar request is determined at the entity level, another change suggested by commenters.

Read the comments.

SIFMA Comments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities; Regarding 529 College Savings Plans and ABLE Programs.

SIFMA provides comments to the Municipal Securities Rulemaking Board's (MSRB) in response to the Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities.

The MSRB is proposing to amend Form G-45 to clarify an existing data element and add three additional data elements about Investment Option information in 529 college savings plans and

Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE programs).

Read the SIFMA Comment Letter.

How Should You Respond When SEC Examiners Come Knocking?

PHOENIX – How a dealer or municipal advisor responds to a Securities and Exchange Commission examination or enforcement investigation is crucial in determining the outcome, lawyers and an SEC official said Thursday.

The comments were made during a pair of panels focused on topics and trends in securities law and SEC enforcement during the first day of the National Association of Bond Lawyers' Tax and Securities Law Institute. Panelists spoke about the process and pitfalls of both examinations by the SEC's Office of Compliance Inspections and Examinations (OCIE) and investigations by the commission's Enforcement Division's Public Finance Abuse Unit.

Nadine Sophia Evans, an OCIE attorney, said that the SEC has seen a lot of registration failures among municipal advisors, who are required to be registered with both the SEC and with the Municipal Securities Rulemaking Board if they provide muni bond-related advice to municipal issuers and other entities. Also frequent among MAs are books and records deficiencies and supervisory system shortcomings, Evans said. OCIE's current MA exam priority is independent MAs that who are not dual-registered as broker-dealers, she said.

When the SEC has seen failures with respect to the fiduciary duty — a duty created for MAs by the Dodd-Frank Act requiring them to put the interests of their municipal issuer clients ahead of their own — Evans said it has typically been related to a failure to disclose a conflict of interest such as a competing business arrangement. Whether a problem is handled by OCIE, the enforcement staff, or the Financial Industry Regulatory Authority, depends on a variety of factors, Evans said.

But several panelists agreed that how the target of an SEC exam or investigation reacts is crucial.

Evans said that OCIE offers registrants a chance to have an "open conversation" with the SEC about the preliminary findings, and that findings of deficiency are kept confidential inside the SEC. But a lawyer at the session said that litigation experience has taught her that there's "no such thing as an 'open conversation' with anyone from the SEC."

Nadine said that litigation is a different matter from a less formal discussion with OCIE. Andrew Kintzinger, a panelist who practices with Hunton & Williams in Washington D.C., cautioned that statements freely given to OCIE can bite firms later because they can be used against the firms by the Enforcement Division.

"The legal concern is still there," Kintzinger said. "Voluntary today can be treated as an admission tomorrow."

In a later panel Kathleen Marcus of Straddling Yocca Carlson & Rauth in Newport Beach, Calif., warned against taking a hostile view of SEC attorneys. SEC lawyers view themselves as regulators rather than as the enemies of the firms they are looking into, she said, and being professional them is best.

"Being very adversarial … it's not going to end well," she said. Enforcement actions could even be avoided with cooperation in some cases, panelists said.

The OCIE said in its recently-published priorities that it is also going to be focusing on examining the MSRB.

Michael Post, general counsel of the MSRB who was also a panelist, said that the board was recently examined with respect to its compliance with federal regulations aimed at safeguarding the technological infrastructure of the market. The MSRB has faced larger OCIE exams before and is apparently due for another, Post said.

“We produce thousands of documents to OCIE in those processes,” Post said, adding that he believes the MSRB’s experience is probably not unlike the experience of a registered entity like a dealer.

Panelists also discussed takeaways from recent SEC enforcement actions, noting that they have generally contained an element of public corruption such as when the commission in November charged Oyster Bay, N.Y. with hiding the existence and potential impact of side deals with a businessman who owned and operated restaurants and concession stands.

Evans said that the SEC is going to continue focusing on disclosure. “I don’t think that theme is going away anytime soon,” she said.

The NABL conference concludes Friday afternoon.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/22/18 07:01 PM EST

MSRB Seeks Input on a Compliance Resource to Help Distinguish Advice and Recommendations.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today requested input from municipal market participants and the public on a draft compliance resource about core requirements for municipal advisors related to providing advice on, and making recommendations of, municipal securities transactions or municipal financial products.

MSRB Rule G-42, on the duties of non-solicitor municipal advisors, forms the foundation of a comprehensive regulatory framework for municipal advisors developed as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The MSRB seeks to support compliance with various aspects of this key rule.

“Through our engagement with the municipal advisor industry, we have received many questions on the topic of advice versus recommendations,” said MSRB President and Executive Director Lynnette Kelly. “We are seeking further input from market participants to develop a useful compliance resource that addresses common questions and illustrates the application of the rule in scenarios that municipal advisors may encounter.”

The MSRB’s draft compliance resource is intended to enhance municipal advisors’ understanding and application of Rule G-42. The responses to frequently asked questions (FAQs) are not meant to be interpretive guidance and all proposed answers are derived directly from the rulemaking record. Though it is not routine for the MSRB formally to seek written comments on draft FAQs or similar compliance materials, the MSRB is seeking public input prior to the publication of a final document. Comments should be submitted no later than April 16, 2018.

“We have heard from stakeholders that they very much want the opportunity to further engage with the MSRB as we advance our long-term strategic goal to facilitate compliance,” Kelly said. “In this case, given that we are addressing a foundational rule for newly regulated entities, the MSRB believes market participation and public input will provide valuable insight that could improve the usefulness of the FAQs.”

Date: February 15, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

Q4 2017: Municipal Advisor Exam Results.

On November 7, the SEC’s National Examination Program issued a Risk Alert providing the SEC staff’s observations after conducting over 110 examinations of municipal advisors during the Municipal Advisor Examination Initiative. Some of the key observations highlighted by the Risk Alert include:

- **Registration Deficiencies:** The SEC staff frequently observed failures to (i) register with the SEC or the MSRB prior to engaging in municipal advisory activities; (ii) file annual updates and/or amendments to Form MA, Form MA-I, and MSRB Form A-12 when required; and (iii) complete Form MA with accurate and complete information, particularly with respect to compensation arrangements and outside business activities. The SEC staff also observed instances of municipal advisors failing to pay MSRB registration fees and late fees and file a Form MA-W and withdraw MSRB Form A-12 when withdrawing from registration.
- **Books and Records Deficiencies:** The SEC staff frequently observed failures to (i) maintain copies of written and electronic communications sent or received by the firm related to municipal advisory activities; (ii) make and keep documents material to a recommendation made to a client; and (iii) prepare and maintain accurate, required financial records, including general ledgers and records of cash receipts and disbursements.
- **Supervisory Deficiencies:** The SEC staff frequently observed failures to (i) have a system to supervise the municipal advisory activities of employees that was reasonably designed to achieve compliance with all applicable rules, such as monitoring gifts, travel, and entertainment expenses (including the maintenance of accurate records of travel and entertainment expenses) and overseeing the firm’s responses to requests for proposals; (ii) have WSPs reasonably designed to ensure compliance with applicable rules, tailored to the firm’s business activities and conflicts of interest; and (iii) designate one or more principals to be responsible for supervisory activities.

Rule Changes

MSRB Implements New CE Program for Municipal Advisors

January 1, 2018, The MSRB begins implementation of the continuing education program for municipal advisors, as required by amendments to MSRB Rule G-3.

Read the full information on the change.

Per the MSRB release, the adoption of continuing education (CE) requirements for municipal advisors represents an important milestone in developing professional standards and CE requirements as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The adoption of the amendments to establish CE requirements for municipal advisors furthers the MSRB's mandate to protect investors, municipal entities, obligated persons and the public interest. The amendments to Rule G-3 help to ensure that those individuals engaging in municipal advisory activities on behalf of a municipal advisor, as well as those individuals that directly engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, remain current in their industry knowledge. The accompanying amendments to Rule G-8 promote compliance with a municipal advisor's recordkeeping requirements related to the administration of its CE program. Municipal Advisors have until December 31, 2018 to complete a needs analysis, develop a written training plan and deliver training to comply with the annual CE requirements for 2018.

Rule Changes

Changes to MSRB Rule G-34

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on December 14, 2017, to amend MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements (the "amendments").

Read the full notice and additional information.

The amendments will codify the MSRB's longstanding interpretive view that brokers, dealers and municipal securities dealers (collectively, "dealers") are "underwriters" when acting as placement agent in private placements of municipal securities, including direct purchases. In addition, the amendments will extend to non-dealer municipal advisors, the requirement that a municipal advisor obtain a CUSIP number when advising on a competitive transaction in municipal securities. Finally, the amendments will provide a principles-based exception for dealers (and municipal advisors in competitive sales) from the CUSIP number requirements when selling a new issue of municipal securities in certain circumstances where the dealer or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity is to hold the municipal securities to maturity or earlier redemption or mandatory tender. Dealers also will be able to rely on the principles-based exception with respect to the requirement to apply for depository eligibility for a new issue pursuant to Rule G-34.

The amendments will become effective on June 14, 2018.

Dinsmore & Shohl LLP – Kevin S. Woodard

USA February 8 2018

FINRA Requests Comment on the Application of Certain Rules to Government Securities and to Other Debt Securities More Broadly.

Summary

FINRA is requesting comment on the application of the following rules to government securities, including U.S. Treasury securities: FINRA Rules 2242 (Debt Research Analysts and Debt Research

Reports); 5240 (Anti- Intimidation/Coordination); 5250 (Payments for Market Making); 5270 (Front Running of Block Transactions); 5280 (Trading Ahead of Research Reports); 5320 (Prohibition Against Trading Ahead of Customer Orders); and NASD Rules 1032(f) (Securities Trader), 1032(i) (Limited Representative – Investment Banking) and 1050 (Registration of Research Analysts). In addition, FINRA is requesting comment on the application of FINRA Rule 5320 as well as NASD Rules 1032(f) and 1050 to all debt securities, in addition to government securities.

Questions regarding this Notice should be directed to:

Afshin Atabaki, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8902; or Meredith Cordisco, Associate General Counsel, OGC, at (202) 728-8018.

Comment Period Expires: April 9, 2018

View the Full Notice.

SEC Announces 2018 National Examination Priorities.

The Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) recently announced its 2018 national examination priorities, which are broken down into five categories: (1) compliance and risks in critical market infrastructure; (2) matters of importance to retail investors, including seniors and those saving for retirement; (3) Financial Industry Regulatory Authority and Municipal Securities Rulemaking Board matters; (4) cybersecurity; and (5) anti-money laundering programs.

The areas of greatest interest to funds and advisers are:

- ***Cryptocurrency, Initial Coin Offerings (ICOs), Secondary Market Trading and Blockchain Technology.*** In light of the rapid growth of ICOs, OCIE will monitor the sale of these products, and, when the products are securities, examine for regulatory compliance. Noted areas of focus include whether financial professionals maintain adequate controls and safeguards to protect these assets from theft or misappropriation, and whether financial professionals are providing investors with disclosures about the risks associated with these investments, including the risk of investment losses, liquidity risks, price volatility and potential fraud.
- ***Mutual Funds and Exchange-Traded Funds (ETFs).*** OCIE identified ETFs in its exam priorities last year, but has broadened its focus to ETFs and mutual funds that seek to track custom-built indexes. OCIE will be looking for any conflicts the adviser may have with the index provider and the adviser's role with respect to the selection and weighting of index components. OCIE will also pay particular attention to mutual funds (1) that have experienced poor performance or liquidity in terms of their subscriptions and redemptions relative to their peer groups, (2) that are managed by advisers with "little experience managing registered investment companies," or (3) that hold securities that are potentially difficult to value during times of market stress (including securitized auto, student or consumer loans or collateralized mortgage-backed securities).
- ***Anti-Money Laundering (AML) Programs.*** Examiners will review for compliance with applicable AML requirements, with continued focus on examining whether applicable institutions are taking reasonable steps to understand the nature and purpose of customer relationships and to properly address risks. This includes, for example, compliance with new rules promulgated by the U.S. Treasury Financial Crimes Enforcement Network, effective on May 18, 2018, designed to strengthen customer due diligence requirements for "financial institutions," which includes mutual

funds (but not registered investment advisers).

- ***Cybersecurity.*** Remaining as an item from last year's priorities, OCIE will continue to prioritize examinations of broker-dealers' and investment advisers' cybersecurity programs. Emphasis will be placed on governance and risk assessment, access rights and controls, data loss prevention, vendor management, training, and incident response procedures.
- ***Other Issues Important to Retail Investors.*** Protecting retail investors continues to be a theme in OCIE's 2018 priorities. OCIE will focus examinations on the disclosure of investment costs and fees, wrap fee programs, retirement products and senior investors, and the execution of customer orders in fixed-income securities. OCIE will also continue to examine advisers and broker-dealers that are offering investment advice through automated or digital platforms, including "robo-advisers." These examinations will focus on compliance programs, marketing, formulation of investment recommendations, data protection and disclosures relating to conflicts of interest.

OCIE's announced priorities should come as no surprise, as they reflect many of the concerns and risks the SEC and its staff have expressed in recent years. More importantly, these priorities should serve as a roadmap for firms to test for, enhance and remediate any suspected deficiencies in these areas as they assess their policies, procedures and compliance programs.

by Ryan F. Helmrich and John P. Falco

USA February 16 2018

Pepper Hamilton LLP

SEC's 2018 Exam Priorities Reflect Continued Focus on Cybersecurity.

Annually, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") publishes its examination priorities for the new year. Recently, OCIE announced five priorities that will inform its examinations moving in to 2018.

OCIE is committed to "promoting compliance, preventing fraud, identifying and monitoring risk, and informing policy." In support of these "pillars," OCIE intends to focus on:

1. Issues of importance to retail investors, such as fee disclosures, mutual funds, and exchange-traded funds;
2. Entities that are critical to the proper functioning of capital markets, such as clearing agencies and national securities exchanges;
3. Oversight of the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB);
4. Cybersecurity; and
5. Anti-money laundering programs.

Continue reading.

Squire Patton Boggs – Coates Lear, Tara M. Swaminatha and Elizabeth Weil Shaw

USA February 13 2018

BDA Sends Follow-Up Letter to SEC Chairman Clayton Regarding Retail Confirmation Mark-Up Disclosure.

Read the letter.

New MSRB MuniEdPro® Course: Upcoming Mark-Up Disclosure Requirements and Determination of Prevailing Market Price.

Learn the fundamentals of upcoming mark-up disclosure requirements and determination of prevailing market price in a new MuniEdPro® course from the MSRB.

Click here to learn more.

MSRB Holds Quarterly Board Meeting.

Washington, DC –The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met January 24-25, 2018, where it discussed industry implementation of the mark-up disclosure rule, facilitating compliance with MSRB rules and other measures aimed at regulatory efficiency.

The Board discussed its mark-up disclosure rule scheduled to take effect May 14, 2018 under which municipal securities dealers will be required to disclose to retail investors their compensation on certain transactions, as part of a broader fixed-income market initiative that has been a coordinated effort with the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). The Board discussed the MSRB's ongoing efforts to address challenges associated with industry implementation of the rule, including such topics as vendor readiness, systems development, systems integration and the role of testing and validation. The MSRB is preparing additional guidance following its prior publication of a set of FAQs, and the Board agreed to continue to coordinate with the SEC and FINRA to support compliance with the mark-up rule.

A strategic goal of the MSRB is to provide additional assistance to its regulated entities in complying with its rules. At its meeting, the Board discussed the work of its Compliance Advisory Group and the importance of ensuring that MSRB compliance resources are useful and reflect the needs of regulated entities. The MSRB established the advisory group in October 2017 to provide expertise and input to the Board to help inform the organization's goal to facilitate industry understanding of and compliance with MSRB rules. In addition, the MSRB is currently seeking public and industry comment on how the MSRB can best support regulatory compliance. The comment period remains open until February 9, 2018.

"We are committed to listening and incorporating feedback from both our advisory group and market participants," said MSRB Executive Director Lynnette Kelly. "We encourage general feedback in the current request for comment and recognize that in some cases, formal public comment on specific compliance materials may further benefit their usefulness."

One way the MSRB supports compliance is by providing interpretive guidance on its rules, which is also used by entities that enforce MSRB rules. The Board agreed that it will consider changes to its policy on interpretive guidance that could better promote industry understanding of and compliance with MSRB rules while continuing to maintain an effective enforcement coordination program.

The Board also began to discuss comments received on its concept proposal regarding current practices in the primary offering of municipal securities that stems from its retrospective rule review. The MSRB will continue to consider ideas provided by commenters, but the Board agreed to prioritize an efficiency initiative discussed in the concept release related to data collected from underwriters by the MSRB on Form G-32. The Board directed staff to prepare a request for comment on a proposal to auto-populate Form G-32 with additional data that is currently submitted by underwriters into the Depository Trust & Clearing Corporation's New Issue Information Dissemination Service (NIIDS) but that is not currently required on Form G-32. The request for comment will also seek input on including additional information on Form G-32 that is not currently submitted to NIIDS but that could support additional market transparency.

In another efficiency measure that developed out of the retrospective review of MSRB rules, the Board agreed to publish a request for comment on the proposed consolidation of MSRB requirements related to transactions in discretionary accounts into a single rule. The proposal also would establish limited, new requirements for other uses of discretion in customer accounts to provide clarity on dealer obligations and create greater consistency with similar rules of other financial regulators.

The Board also discussed MSRB professional qualification standards that it has determined to revise because of the October 2018 release of FINRA's Securities Industry Essentials™ (SIE) examination. As previously announced, the MSRB will propose changes to the SEC to MSRB Rule G-3 to require the SIE as a prerequisite to qualification as one of four types of municipal securities representatives. The rule filing will also seek to update certain provisions of Rule G-3 to harmonize them with FINRA's professional qualification standards.

The Board concluded its meeting acknowledging that both municipal securities dealers and municipal advisors are continuing to adapt to new market regulations and agreed that the timing of new requests for comment will be carefully calibrated to allow commenters to provide meaningful feedback as they accommodate new regulatory requirements.

Date: January 29, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
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Reminder: Applications for the MSRB Board of Directors are due February 16, 2018

The MSRB is accepting applications for its Board of Directors from January 8, 2018 through February 16, 2018. The MSRB Board of Directors includes 11 members who are public and 10 members who are representatives of MSRB-regulated broker-dealers, banks and municipal advisors. All individuals must be knowledgeable about the municipal market. MSRB Rule A-3, "Membership on the Board," discusses the nomination and election process, including provisions about eligibility and membership requirements.

The Board of Directors' Nominating and Governance Committee publicly announces the solicitation of applicants for vacant positions on the Board that begin in October, which is the start of the MSRB's fiscal year. The committee accepts applications for at least 30 days through the online Board of Directors Application Portal; the beginning and end dates are specified in the announcement(s). Any interested individual with knowledge of the municipal securities market may apply or submit recommendations to the Nominating and Governance Committee.

MSRB staff conducts an initial review of applicants' materials to confirm their status as a public or regulated representative and ensure that all necessary information and documentation is provided.

At the end of the application submission period, the Nominating and Governance Committee reviews all applications and selects candidates for interviews during the third and fourth quarter of the fiscal year. Additional documentation, including the Board Member Candidate Questionnaire and consent to a background check are required for applicants who are interviewed. After completion of the interview process, the Nominating and Governance Committee nominates selected candidates to the full Board of Directors for election. This occurs during the fourth quarter of the fiscal year and is concluded by September 30. Upon election, the new Board members are publicly announced and the complete list of applicants is published on the MSRB's website.

Questions about the application process should be directed to MSRB staff at 202-838-1349.

Reminder: There's Still Time to Comment on the MSRB's Approach to Providing Compliance Support.

Read the Request for Comment.

FINRA Proposes Changes to the Securities Industry Essentials Examination.

To eliminate duplicative testing of general securities knowledge on the current representative-level qualification examination, FINRA has recently filed with the Securities and Exchange Commission a proposed rule change to restructure its representative-level qualification examination program. View the notice here.

When the rule proposal is officially filed with the SEC and published in the Federal Register a 21-day comment period will begin. The BDA will submit a comment letter and will reach out to membership about a comment letter draft.

The proposed rule change, which is set to become effective on October 1, 2018, will restructure the examination program so that all new representative-level applicants must pass both the Securities Industry Essentials (SIE) examination and a revised representative-level qualification examination, such as the revised General Securities Representative (Series 7) examination, appropriate to their job functions at the firm with which they are associating before their registrations can become effective.

The **implementation date of October 1, 2018**, is set to coincide with the implementation of the restructured representative-level examination program.

The rule change also proposes that the SIE be divided into the following four sections:

- Knowledge of Capital;
- Understanding Products and their Risks;
- Understanding Trading, Customer Accounts and Prohibited Activities; and
- Overview of the Regulatory Framework.

The number of questions on the SIE examination will be 75 scored multiple-choice questions and candidates will have one hour and 45 minutes to complete the examination.

The SIE content outline will be made available on FINRA's website no later than April 1, 2018.

February 1, 2018

U.S. SEC Probing Muni Bond Market Practices - California Treasurer.

WASHINGTON, Jan 25 (Reuters) – The U.S. securities regulator is investigating practices by some participants in the $3.8 trillion municipal securities market, the California treasurer's office said on Thursday.

The California State Treasurer's Office received an inquiry from the Securities and Exchange Commission, which is conducting an investigation into transactions in the municipal securities market, a spokesman for the office said.

The inquiry was not directed at any conduct of the treasurer's office, he confirmed.

The SEC declined to comment.

The investigation of the market, where states, cities, schools and others issue bonds, was first reported by Bloomberg.

It was not clear if the probe was nationwide.

The SEC began ramping up its oversight of the muni bond market in 2014, when it launched the Municipalities Continuing Disclosure Cooperation initiative.

The program offers favorable settlement terms to municipal bond underwriters and issuers that self-report material misstatements and omissions in offering documents.

The program has led to a slew of enforcement actions, with the SEC charging 71 municipal issuers for violations in municipal bond offerings in August 2016.

(Reporting by Michelle Price; Editing by Lisa Von Ahn)

Commentary: Reflections on the Municipal Market's Distinctive Regulatory Approach.

Oversight of the $3.8 trillion municipal securities market is grounded in the concept of "self-regulation." Under this long-standing model, the public and private sectors work together to protect investors' ability to participate in a critical capital market that supports infrastructure financing, economic development and job creation in communities around the country.

The self-regulatory organization (SRO) model capitalizes on the collective and specialized knowledge of market practitioners to develop rules of conduct that are subject to strong government oversight, and, importantly, provides the financial resources to maintain a robust regulatory regime. While the SRO model has been periodically reexamined, federal lawmakers have largely reaffirmed the benefits of self-regulatory oversight of the capital markets. The Municipal Securities Rulemaking Board, which was created by Congress in 1975 to regulate the municipal securities market, has distinctive characteristics that can provide an important perspective in the ongoing dialogue about self-regulation.

There are four key advantages of the MSRB's SRO model, outlined in a new report from the MSRB. First, Congress has given us clear marching orders, with our jurisdiction and mission well-defined in federal law. The MSRB is the only SRO specifically established by Congress, which authorized the MSRB to write rules of fair play for municipal securities dealers and municipal advisors, subject to oversight by the U.S. Securities and Exchange Commission. Congress enshrined in the federal securities laws the mission of the MSRB: "to protect investors, municipal entities, obligated persons, and the public interest, and to promote a fair and efficient market." This statutory mandate gives the MSRB clear direction about its purpose, authority and jurisdiction. We adhere to our mission with the greatest sense of responsibility to those we are charged to protect and to the integrity of the market.

Second, our governance structure and regular engagement with stakeholders allow us to leverage the diverse and specialized expertise our market requires. The 21 members of our Board of Directors have the knowledge and experience to address the complexities and needs of the municipal securities market. Board members lend insights from their time managing investment portfolios, overseeing and advising on bond issuance in city budget offices, structuring transactions at underwriting desks and everywhere important decisions are being made about municipal securities. While the Board has strong and diverse representation of the dealers and municipal advisors who must follow our rules, the majority of the Board represent the interests of those our rules are designed to protect—bond investors, issuers and the public. A majority-public Board minimizes the risk that regulated entities, particularly large firms, could dominate the Board and perhaps improperly influence rulemaking.

The Board's considerable experience and expertise allow the organization to design and develop practical rules that are specifically tailored to the municipal securities market. Further, the MSRB's commitment to economic analysis and a participatory rulemaking process ensures market participants and the public can provide input and data on the potential effects of MSRB rules as they are developed.

Third—and something that distinguishes us from many other financial market SROs—we don't run a securities exchange or answer to shareholders, and therefore have no profit motive. There is no centralized exchange marketplace for municipal securities because of the size and diversity of the market. Rather, the MSRB operates a free public platform—the Electronic Municipal Market Access (EMMA®) website—that centralizes previously diffuse municipal securities information and brings an entirely new level of transparency to the market.

The MSRB is completely self-funded and receives no taxpayer dollars. Our operations are funded primarily through fees on the entities we regulate. This reliance on industry for our revenues makes it even more important to hold ourselves to the highest standards of financial sustainability, corporate transparency and public accountability. In addition to publishing annual audited financial statements, we also now publish an annual budget summary, which demonstrates our strict financial management and illustrates how our resource allocation supports our mission-driven activities.

Fourth—and this is another distinction from our fellow SROs—we have no enforcement authority. Many SROs have the ability not only to write rules governing their members, but also to enforce those same rules. The MSRB has exclusive jurisdiction to write the rules for municipal market professionals, but we play a supporting role to other agencies when it comes to enforcement. This separation of rule-writing and rule-enforcement prevents dealers and municipal advisors, including MSRB Board members, from exerting any influence on the zealousness of enforcement of MSRB rules.

The SRO model leverages the benefits of the public and private sectors, with government providing oversight, and representatives of industry contributing insight into the practical realities of implementing regulatory objectives. The MSRB's distinctive SRO structure—defined in federal law, highly specialized, free of profit motive and without enforcement authority—effectively and efficiently achieves the benefits of self-regulation while mitigating the potential for conflicts of interest.

Our promise to the industry we regulate is to always remain open to dialogue about how we can do better. We are public and transparent about our regulatory agenda, releasing a list of regulatory discussion topics in advance of each quarterly Board meeting and publishing a summary of the Board's decisions immediately following each meeting. We participate in scores of market events each year, host dozens of educational webinars and regularly meet with trade groups to share information and respond to questions. We welcome the chance to contribute to an ongoing conversation about how to improve the execution of the MSRB's unique SRO model.

The Bond Buyer

By Lucy Hooper

January 22 2018

Lucy Hooper is Chair of the Municipal Securities Rulemaking Board's Board of Directors.

MSRB Request for Comment on Compliance Support.

SUMMARY

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) in response to request for public comment on its approach to enhancing compliance support, a long-term strategic priority for the organization. SIFMA appreciates the opportunity to address certain concerns and present our views on how the MSRB can contribute to resolving them: (1) the need for more published MSRB interpretive guidance, (2) the need for the MSRB and examiners to work together to articulate guidance on the recordkeeping that will be required to demonstrate compliance with MSRB rules, (3) the need to increase the usefulness of MSRB compliance resources, including enhancing the MSRB website, simplifying email subscriptions, and improving the accessibility and content of educational materials and events, and (4) the need for MSRB participation at relevant industry conferences.

See: [MSRB Notice 2017-22: Request for Comment on Compliance Support]

[Read SIFMA's Comments]

January 23, 2018

SEC Probing Muni Market, California Treasurer's Office Says.

- **Regulator looking at 'certain market practices' in muni deals**
- **Treasurer's office isn't subject of inquiry, office said**

The U.S. Securities and Exchange Commission is investigating "certain market practices" by participants in municipal securities transactions, according to the California treasurer's office, which received a request for information from the federal agency.

"The inquiry relates to a confidential investigation the SEC is conducting into certain market practices engaged in by participants in municipal securities transactions, and was not directed at any conduct of the treasurer's office," the treasurer's office said in a statement.

The disclosure was made in response to a public-records request. The treasurer's office declined to give further detail, saying that it didn't want to interfere with SEC enforcement proceedings. It is unclear if the inquiry is an industrywide probe or an investigation of just certain participants.

Bill Lockyer, who was California treasurer from 2007 until 2015 and attorney general before that, said his office didn't receive such an inquiry during his tenure. The SEC request could mean "they were asking to understand how some of the bond issuances were done and the role of the different participants" such as bond lawyers and financial advisers, Lockyer said in a telephone call Thursday.

Current Treasurer John Chiang's office received the first inquiry last April, said general counsel Mark Paxson.

Increased Scrutiny

Government officials from New York, Florida, Illinois, Arizona and Texas all said their states had not received any similar requests for information. Officials from New Jersey, Wisconsin, Oregon and Washington did not immediately respond to calls asking if they had received such requests from the SEC.

John Nester, a spokesman for the SEC, declined to comment.

The SEC, whose mission is to protect investors, over the past several years has stepped up scrutiny of the $3.8 trillion municipal bond market, a haven of buy-and-hold investors. Its Municipalities Continuing Disclosure Cooperation Initiative, which sought to prod governments into honoring their legal obligations to provide timely financial updates to investors, led to a wave of settlements since it started in 2014. The agency has also settled with governments such as New Jersey and Illinois for misleading statements in bond-offering documents.

The municipal bond market's regulator — the Municipal Securities Rulemaking Board — last year warned state and local government officials against disclosing material financial information to only a limited audience, such as bondholders or analysts.

While state and local government issuers are exempt from U.S. Securities and Exchange Commission rules prohibiting selective disclosure, they are subject to anti-fraud laws. Municipalities could face federal fraud liability if known material information is omitted from public disclosures, the MSRB said, and if an investor acts on improperly disclosed information it could amount to insider trading.

Last year, the Port Authority of New York and New Jersey agreed to pay U.S. regulators $400,000 for failing to disclose risks to investors in $2.3 billion of bonds that helped finance New Jersey roadway projects. In 2016, the SEC reached settlements with 71 state and local borrowers for lying to investors about their compliance with disclosure requirements when they sold bonds, as part of an SEC initiative to crack down on disclosure failures.

Enforcement actions often are targeted at individual market participants, such as a town on Long Island last year that was sued for failing to disclose that the municipality guaranteed loans for a local restaurant owner who allegedly lavished officials with cash, trips and other bribes.

The actions also can broad, such as the settlement by 14 underwriting firms in 2016 over disclosure practices. And in June 2015, the SEC alleged that 36 underwriters, including Wall Street's biggest banks such as Citigroup Inc., Goldman Sachs Group Inc., JPMorgan Chase & Co., sold bonds for municipalities that failed to make adequate financial disclosures to investors.

Bloomberg

By Romy Varghese

January 25, 2018, 9:35 AM PST Updated on January 25, 2018, 2:36 PM PST

— With assistance by Martin Z Braun, Zachary Hansen, and Joe Mysak

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MSRB Proposal Would Govern How Muni Advisors Advertise.

PHOENIX – The Municipal Securities Rulemaking Board is seeking approval for both a new rule restricting the advertising practices of municipal advisors and modifications to its existing rule governing broker-dealer advertising to bring it more in line with other regulators' rules.

The MSRB filed the proposals for the new Rule G-40 on advertising by municipal advisors and the amendments to Rule G-21 on advertising by municipal securities dealers with the Securities and Exchange Commission Thursday evening.

If the filing is approved by the SEC, it would establish a set of rules for muni advisor advertising that the National Association of Municipal Advisors said last year was not necessary because MSRB's Rule G-17 on fair dealing already covers these issues.

The MSRB first proposed the new rule and the G-21 amendments in February 2017 but has now asked the SEC to approve them nine months before they become effective.

G-40 would define an "advertisement" as "any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public," including such things as telemarketing scripts or press releases.

The rule prohibits advertising that is misleading, disallows projections of performance, and “must consider the nature of the audience to which the advertisement will be directed as well as provide details and explanations appropriate to the audience.”

Under the proposed rule, every advertisement must be approved in writing by a municipal advisor principal, and the advisor must keep updated records of all such advertisements.

“The proposed new standards for fairness and accuracy in municipal advisor advertising will augment the MSRB’s core regulatory framework intended to protect municipal entities and obligated persons,” said MSRB Executive Director Lynnette Kelly. “Under MSRB rules created to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, municipal advisors are subject to core standards of conduct, supervision obligations, regulations to address pay-to-play activities and professional qualification requirements.”

“Proposed Rule G-40 is well-tailored for municipal advisors and municipal advisor solicitors but is similar to advertising standards for dealers, which have been in place for nearly 40 years,” Kelly added.

Municipal advisors also are not permitted to use testimonials in their advertisements. The MSRB made some changes from its original request for comment, and now proposes to allow dealers to use testimonials under some circumstances.

The MSRB added clarifications to the proposals for both G-40 and G-21 that make clear that firms can’t omit material information from advertisements if omitting those facts or information would make the ad misleading.

The Securities Industry and Financial Markets Association said in a statement that while it appreciates the MSRB’s efforts to harmonize rules and level the playing field between broker-dealer firms and muni advisor firms, it is disappointed that some of its suggestions were not adopted in the MSRB’s final proposal.

“With respect to testimonials, although we appreciate the revisions to harmonize MSRB Rule G-21 with FINRA 2210(d)(6), we do not agree that such testimonials should be prohibited by municipal advisors,” said SIFMA managing director, associate general counsel, and co-head of munis Leslie Norwood. “SIFMA supports the principles in the rules that communication to the public must be fair and balanced, but those principles also should apply to the related regulatory burdens.”

The proposals are subject to SEC approval, including the SEC’s own public comment process. The SEC could choose to approve the proposals as submitted, or could decide they need some tweaking.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 01/19/18 07:06 PM EST

MSRB Seeks to Establish Advertising Rule for Municipal Advisors and Update Dealer Standards.

Washington, DC – Following a 2017 request for comment and further careful consideration of its advertising rule proposals, the Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a proposed new rule, MSRB Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities dealers.

"The proposed new standards for fairness and accuracy in municipal advisor advertising will augment the MSRB's core regulatory framework intended to protect municipal entities and obligated persons," said MSRB Executive Director Lynnette Kelly. Under MSRB rules created to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, municipal advisors are subject to core standards of conduct, supervision obligations, regulations to address pay-to-play activities and professional qualification requirements.

"Proposed Rule G-40 is well-tailored for municipal advisors and municipal advisor solicitors but is similar to advertising standards for dealers, which have been in place for nearly 40 years," Kelly said. Today's rule filing includes proposed updates to the MSRB's dealer advertising rule to promote regulatory consistency with certain advertising rules of other financial regulators.

To inform its approach to the development of proposed Rule G-40 and amended Rule G-21, the MSRB in February 2017 requested industry and public comment on topics including how municipal advisors use advertising and considerations for streamlining and modernizing dealer advertising regulations. Based on commenter feedback, the MSRB revised its draft amendments to Rule G-21 to permit testimonials in dealer advertisements under certain circumstances. Further, the MSRB clarified the definition of advertisement under proposed Rule G-40 for advertising by solicitor municipal advisors.

Both rules include language clarifying that dealers and municipal advisors cannot omit any material fact or qualification from an advertisement if the omission would cause the advertisement to be misleading. Both rules also include guidance that the determination of the number of persons receiving a response to a request for proposal or similar request is determined at the entity level, another change suggested by commenters.

The MSRB has requested an effective date of nine months for the proposed changes, if approved by the SEC following its public notice and comment process. View the filing.

Date: January 18, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Announces Topics to be Discussed at Board Meeting.

Read the Agenda.

SEC Accelerates Work on a 'Fiduciary' Standard.

The Securities and Exchange Commission is accelerating work on its own version of the "fiduciary rule," a regulation issued by the Labor Department that put restraints on brokers handling retirement accounts.

The SEC hopes to vote to propose its own rule by the second quarter of 2018. That would be a first step toward creating consistent standards across brokerage accounts since the Labor Department's rules only covered 401(k)s and individual retirement accounts.

The SEC has struggled for years to harmonize the rules brokers and investment advisers face when they serve retail clients. Consumer groups that backed the fiduciary rule are likely to oppose the SEC proposal if they believe it would give Wall Street an end-run around Labor's stricter approach.

SEC staff has held meetings in recent weeks with brokerage firms and trade groups regarding work on a '"fiduciary" standard. **BDA members will meet next week with SEC Chairman Jay Clayton and Commissioners Piwowar and Stein.**

The SEC proposal could emerge later than the spring of 2018 because the agency will add two new commissioners in the coming weeks. Both new commissioners, Robert Jackson and Hester Peirce, could want time to study the proposal.

Any SEC measure could affect future revisions to the Labor Department's rule affecting retirement accounts. Some want the Labor Department to exempt firms that comply with a new SEC standard from Labor's fiduciary rule. That would allow the SEC to again regulate all brokerage activity and wouldn't require the Labor Department to go through the cumbersome process of revising its regulation.

Already, under President Trump, the Labor Department has delayed parts of its fiduciary rule until July 2019, saying the rule has reduced choices for investors and imposed huge compliance problems for firms.

Bond Dealers of America

January 10, 2018

SEC Holds First Meeting of its Fixed Income Market Structure Advisory Committee.

The Securities and Exchange Commission held its first Fixed Income Market Structure Advisory Committee (FIMSAC) meeting on Thursday, January 11. The meeting was the first official activity for new SEC commissioners Hester Peirce and Robert Jackson, who were sworn in that morning.

The 23-member FIMSAC group, which was announced in November, includes several significant players, including three BDA members. Among the panelists was Kevin McPartland, head of market structure and technology research at Greenwich Associates, a key BDA partner.

The commissioners and panel members touched on concerns about the bond markets generally but focused this first discussion primarily on liquidity in the corporate bond market. SEC Chairman Jay Clayton did note that the municipal market is "large and vital" and has experienced significant growth in recent years. He called munis critical for U.S. infrastructure.

Bond dealers have expressed worry that regulations designed to keep banks solvent in the wake of the 2007-2008 financial crisis have de-incentivized banks to be buyers of bonds. On the municipal side, this has been a key factor in the industry's push to classify munis as high-quality liquid assets for purposes of federal banking rules.

FIMSAC is chaired by Michael Heaney, non-executive director at Legal & General Investment Management America, and includes many corporate bond and muni experts. Some market participants have speculated that the committee could eventually lead to more efforts to harmonize muni and corporate bond rule.

Bond Dealers of America

January 16, 2018

Primary Offering Practices, Strategic Plan Among Topics at MSRB Meeting.

WASHINGTON — The Municipal Securities Rulemaking Board will consider various topics at its meeting next week, including the market comments it received on whether new rules or guidance are needed on primary offering practices.

The board, which will meet Jan. 24 and 25, also said it will discuss the use of discretion in customer accounts and the potential of consolidating requirements in existing MSRB rules, as well as establishing limited, new requirements for greater consistency with similar rules of other regulators.

Another topic to be considered, according to an MSRB notice, is a proposed rule filing to update certain provisions of its professional qualification standards in its Rule G-3 so that they are in line with similar standards of other regulators.

The board will also review its multi-year strategy, its progress on efforts to facilitate understanding of and compliance with regulatory obligations, and its policy on interpretive guidance.

The MSRB published a concept proposal in September asking for input on numerous aspects of primary offering practices, which are covered by its Rule G-11. Also, the board's Rule G-32 covers the disclosure that must be made in connection with primary offerings.

But dealer and municipal advisor groups responded that they didn't think the board needed wholesale changes in its rules on primary offering practices and even questioned the MSRB's authority for certain suggested changes.

The board asked, for example, whether it should amend its Rule G-11 to require members of syndicates to make a bona fide public offering of the bonds allocated to them at the public offering price.

Syndicate members sometimes agree to this in documents signed before the sale, but do not always follow through on it.

The Securities Industry and Financial Markets Association told the MSRB that underwriters must abide by their agreements and said no new requirement should be created.

"SIFMA strongly believes that the issuer has the right to determine whether it wants its new issue to be sold in a bona fide public offering or by some other means," SIFMA said in its comments.

The dealer group said it was concerned that such a rule would require "line drawing" to account for instances where a bona fide public offering would be inappropriate, such as in a private placement or limited offering.

“Any such line-drawing raises the considerable risk of regulations driving market decisions rather than the intentions of the party or free market forces,” SIFMA wrote in its comments to the board.

SIFMA also said that it doesn’t see a need for a new MSRB requirement for the senior syndicate manager to inform all other syndicate members simultaneously when a bond purchase agreement is executed, and explicitly state that, in negotiated sales, retail or institutional priority orders must be allocated up to the amount of priority set by the issuer before being allocated to lower priority orders.

The National Association of Municipal Advisors took issue with the MSRB’s question of whether it should require the submission of preliminary official statements to EMMA. Some issuers already submit POS’ to EMMA voluntarily.

“We believe that the MSRB lacks the statutory authority to create such a rule for either municipal advisors or broker/dealers and that such a requirement would violate the Securities Exchange Act” of 1934,” NAMA said in comments.

Not all of the comments were negative.

Robert Doty, the president and proprietor of muni bond consulting company AGFS told the board that it should amend G-32 to require a dealer that sells any offered municipal securities to a customer to disclose all of its compensation in a negotiated offering that is dependent upon the completion of either specific stages in an offering or the entire offering.

Doty noted that undisclosed compensation based on specific stages of the transaction were key pieces of a 2016 Securities and Exchange Commission enforcement action against the Rhode Island Economic Development Corporation and Wells Fargo (WFC), in which the commission alleged a conflict of interest that should have been disclosed to bond investors.

The MSRB can choose to ask for additional market comments, propose rules or rule changes for further comment, file proposals with the SEC, or take no further action.

By Lynn Hume

BY SOURCEMEDIA | MUNICIPAL | 01/17/18 07:13 PM EST

MSRB Publishes 2017 Annual Report and Audited Financial Statements.

Washington, DC – As the municipal securities market’s self-regulatory organization (SRO), the Municipal Securities Rulemaking Board (MSRB) publishes an annual report highlighting the previous year’s initiatives in support of a fair and efficient market, as well as information about the organization’s financial position. The MSRB’s 2017 Annual Report emphasizes the organization’s commitment to an inclusive, transparent approach to safeguarding market integrity.

“The success of the MSRB – and the integrity of our market – depends on the expertise and insight of market participants who represent investors, communities that issue bonds and the financial professionals who serve them,” said Board Chair Lucy Hooper. “The MSRB’s SRO model leverages the benefits of the public and private sectors, with government providing a clear statutory mandate and strong oversight, and industry practitioners contributing insight into the practical realities of developing and implementing regulatory objectives.”

The annual report describes the MSRB's regulatory initiatives throughout 2017, which include the development of extensive written guidance to assist municipal securities dealers in preparing to comply with mark-up disclosure regulations, and the implementation of the Municipal Advisor Representative Qualification Examination (Series 50 exam).

The annual report also details the continuing evolution of the MSRB's Electronic Municipal Market Access (EMMA®) website, which was enhanced with new tools and resources, including municipal market yield curves and indices, a new issue calendar and enhanced trade statistics in 2017. Additionally, the annual report reviews the MSRB's efforts to support understanding of the municipal securities market through objective, authoritative education, such as the growing catalog of interactive, online MuniEdPro® courses geared toward municipal market professionals seeking continuing education.

The MSRB annual report presents financial highlights for the fiscal year, as well as full audited financial statements. "The MSRB is dedicated to managing resources responsibly and maintaining sufficient reserves to operate without interruption, regardless of market conditions," said MSRB Executive Director Lynnette Kelly. "The MSRB intends to continue its diligent financial stewardship while evaluating ways to diversify its funding sources in the year ahead."

Read the report.

Date: January 11, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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California Municipalities' Debt Disclosures Contrast With Climate Warnings.

Exxon Mobil cites investor documents in legal battle over risks

California communities demanding oil companies protect them from rising sea levels weren't as sure about their vulnerability to climate change when they sold debt to investors, according to court filings and bond documents.

Seven local governments in California are suing Exxon Mobil Corp. and other major oil producers for court orders forcing those companies to cover the costs of sea walls and other infrastructure projects meant to fortify low-lying areas.

Now Exxon, one of the defendants, is launching a new counterattack by highlighting past bond disclosures in which its government critics suggested they couldn't predict whether and when sea levels would rise. The company filed court papers in Texas on Monday seeking to force government officials to answer questions under oath about those statements.

The underlying lawsuits are part of an aggressive strategy to hold fossil-fuel companies responsible for climate-change costs that the plaintiffs estimate could run to billions of dollars. Local officials are arguing that Exxon, BP PLC and other companies knew or should have known about the potential impacts of burning oil and gas but instead tried to sow public doubt about the science behind global warming.

The companies dispute those allegations, casting the lawsuits as an abusive campaign by California law-enforcement officials to target political opponents through the legal system and stifle debate on climate change. Scientists have linked rising sea levels to fossil-fuel emissions and warming global temperatures.

“The idea that oil companies might sue public servants personally in an attempt to intimidate them from protecting their communities and environment is abhorrent but consistent with their prior behavior,” San Mateo County counsel John Beiers said. “We will not be intimidated.”

The cities of Oakland, San Francisco, Santa Cruz and Imperial Beach are also plaintiffs as are Santa Cruz County and Marin County.

The legal battle is intensifying while awareness grows among investors about the potential credit risk to U.S. municipalities from future changes in world-wide temperatures. In November, Moody’s Investors Service flagged environmental disruptions as a “growing negative credit factor” for coastal municipalities and said it would adjust its ratings methodology to take climate change into account.

Moody’s didn’t issue any credit downgrades but warned local governments to start dealing with climate risks or else possibly lose their access to low-cost financing.

Exxon’s Monday filing in Tarrant County, Texas, laid out what it said was a disconnect between the claims in those lawsuits and what the municipalities told their bond investors about their exposure to climate risks.

San Francisco’s lawsuit said it faced “imminent risk of catastrophic storm surge flooding,” while a general obligation bond offering last year said the city “is unable to predict whether sea-level or rise or other impacts of climate change…will occur.”

Santa Cruz County said in its complaint it was experiencing more frequent and extreme droughts, precipitation events, heat waves and wildfires, and faced a 98% chance of a “devastating” three-foot flood by 2050. Yet a bond offering last year mentioned only “unpredictable climatic conditions, such as flood, droughts and destructive storms” as a risk factor.

“Each of the municipalities warned that imminent sea level rise presented a substantial threat to its jurisdiction and laid blame for this purported injury at the feet of energy companies,” Exxon said. “Notwithstanding their claims of imminent, allegedly near-certain harm, none of the municipalities disclosed to investors such risks in their respective bond offerings.”

Santa Cruz city attorney Anthony P. Condotti said the evidence linking climate risks to fossil-fuel industry practices “has no bearing on any bond offering documents issued previously.”

The lawsuits against Exxon, BP, Chevron Corp. , ConocoPhillips and Royal Dutch Shell PLC allege the companies are a “public nuisance” and ask courts to force them to create a fund for local governments to pay for climate change-related infrastructure.

The lawsuits have drawn comparisons to U.S. states’ legal campaign against tobacco manufacturers in the 1990s, which netted multibillion-dollar settlements to offset the public costs of smoking-related disease.

In 2015, New York Attorney General Eric Schneiderman began an investigation into Exxon Mobil that was joined by Massachusetts Attorney General Maura Healey. Mr. Schneiderman, a Democrat, has alleged that Exxon misled investors about how it accounts for the impact of climate change on its business.

Exxon has alleged the investigation is part of a conspiracy by activists and oil antagonists to smear the company. A number of Republican lawmakers and attorneys general have sought to join Exxon's effort to fight the probe and have also sought to investigate Mr. Schneiderman.

The Wall Street Journal

By Andrew Scurria

Updated Jan. 8, 2018 10:32 p.m. ET

—Alejandro Lazo and Bradley Olson contributed to this article.

Have California Munis Misled Investors And Bond Insurers About Climate Risk?

Summary

- Last summer, seven California cities and counties sued 17 oil and gas energy producers claiming that they have created a public nuisance and have caused climate change related damage.
- Given the severity and specificity of the claimed harm and damages sought, it is peculiar that the disclosures in the plaintiff's municipal and city bond issuance documents are very limited.
- There is little doubt that these suits have been the result of the dissatisfaction some states feel towards federal environmental and energy policies.

Last summer, seven California cities and counties sued 17 oil and gas energy producers claiming that they have created a public nuisance and have caused climate change related damage that has increased sea levels in California and exposed the plaintiff governments to massive damages from natural disasters. Exxon Mobil (XOM) has now filed a petition, in District Court, to depose a number of people in the matter.

This is the latest in a series of lawsuits brought by California, Massachusetts, Vermont, and New York and a small number of other cooperating state and local governments against auto, utility, and energy-producing businesses.

Given the severity and specificity of the claimed harm and damages sought, it is peculiar that the disclosures in the plaintiff's municipal and city bond issuance documents make very limited disclosures of any climate change risks. As a result, it appears these suits will either (A) create new economic risks and hazards for bond investors and, in the case of 'wrapped' deals, the bond insurers that wrap those California municipal debts or (B) provide the investors and bond insurers with the information with which to claim they have been defrauded by those municipalities.

Ironically, as a result of the subprime mortgage crisis, many of the same California counties that brought these latest environmental lawsuits filed suits against the five largest municipal bond insurers for "forcing" local governments to needlessly buy bond insurance in order to get higher credit ratings and issue debt with lower interest rates.

Analysis

We have compiled a full analysis of each municipal bond issued within each plaintiff geography and all relevant details. In the coming days, we will quantify the wrapped versus unwrapped exposures and, in the case of an insured transaction, the bond guarantor. In 2016 and 2017 alone, these issuers sold bonds with over $25.36 billion of principal amount.

Have the tables turned?

The lawsuits against Chevron (CVX), Exxon Mobil, BP (BP), Shell Oil (RDS.A) (RDS.B) and over a dozen other firms now may provide the bond insurers and investors with a cause of action against the California plaintiffs in this case for failure to disclose, in bond deals, what it claims are massive environmental risks and damages to those counties and cities.

While the lawsuits claim significant harms to those cities and counties, those harms were not disclosed in the hundreds of bond issuances by those governments. In fact, while the plaintiffs in the suits claim grave and specific harms, their bond filings were largely silent on those risks and harms. As The Wall Street Journal highlighted in a headline today: "California Municipalities' Debt Disclosures Contrast With Climate Warnings." As a result, the issuers were almost certainly able to benefit from lower issuance costs that they would have been had they disclosed the risk to investors and, in the case of bonds that were wrapped by bond insurers, they likely paid lower insurance premiums than they would have had they fully disclosed the risks to the insurers.

As example, the City of Oakland claimed, in the lawsuits massive fossil-fuel production causes a gravely dangerous rate of global warming and ongoing and increasingly severe sea level rise harms to Oakland and that by 2050, a hundred year flood will occur every 2.3 years. These claims are in stark contrast to Oakland's disclosures in its bond disclosures in this they state:

> "The City is unable to predict when seismic events, fires or other natural events, such as sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City or the local economy."

Similarly, San Francisco, another plaintiff, claims it is planning to fortify its Seawall in an effort to protect itself from rising sea levels and that the short-term costs of doing so will be more than $500 million with long-term upgrade costs of $5 billion. In San Francisco's bond disclosures, it has stated:

> "The City is unable to predict whether sea-level rise or other impacts of climate change or flooding from a major storm will occur, when they may occur, and if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City and the local economy."

Similar inconsistencies exist between the claimed harms and bond disclosures of Marin County, San Mateo County, the City of Imperial Beach, the County and City of Santa Cruz (the other plaintiffs in the lawsuits).

If one looks at the history of state, municipal and local lawsuits against various parties for damages related to their contribution to climate change, it becomes clear that these suits are actually targeting environmental federal policies through legal actions against federally regulated entities.

Background

In 2004, eight states, three land trusts, and the City of New York filed two coordinated lawsuits against five power generation companies, including American Electric Power (NYSE:AEP). The cases were consolidated as Connecticut v. Am. Elec. Power Co., 406 F. Supp. 2d 265 (S.D.N.Y. 2005). The plaintiffs alleged the pollution created by the defendants generation of power led to global warming and constituted a public nuisance under federal common law.

In 2006, California Attorney General filed another related lawsuit, this time against the six-largest U.S. automakers. The suit alleged the automakers' emissions contributed to global warming and that the State had suffered property and other damage as a result.

In 2011, the Supreme Court ruled against the plaintiffs, and for the industry, in the AEP suit. In the Opinion of the Court, Justice Ginsberg stated: "[W]hen Congress addresses a question previously governed by a decision rested on federal common law," the Court has explained,

"the need for such an unusual exercise of law-making by federal courts disappears… We hold that the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants. Massachusetts made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act. 549 U. S., at 528-529. And we think it equally plain that the Act "speaks directly" to emissions of carbon dioxide from the defendants' plants."

The current suit by five California municipal governments is filed as tort complaints against Exxon Mobil and 17 other energy companies accusing them of harms associated with rising sea levels. While we believe the chances of success by the plaintiffs are remote, the risks they create for all parties are meaningful and worth watching.

Politics

While each of these suits targets different business interests commonly associated with climate change and global warming risks there is little doubt that these suits have been the result of the dissatisfaction some states feel towards federal environmental and energy policies. As example, in explaining the basis for the AEP lawsuit, one of the strategists behind it stated,

"the cases were brought in response to the lack of response from the George W. Bush Administration to the climate change crisis. Specifically, the public nuisance lawsuit, seeking only injunctive relief, was filed after the Administration announced it would not support amendment of the Clean Air Act to impose new emissions limits on C02, and after the White House disavowed the Kyoto Protocol".

Seeking Alpha

Josh Rosner

Jan. 9, 2018

Post-Trade Group Working to Further Shorten U.S. Settlement Cycle.

NEW YORK (Reuters) – The post-trade processor for U.S. stocks, as well as corporate and municipal bonds, said it is taking steps to further cut the time it takes to settle trades in a bid to reduce risk in the financial system and free up more capital.

The U.S. financial services industry moved to a two-day settlement cycle, which refers to the time an investor's order is executed to when cash and ownership of the security must be exchanged, from three days in September. Three-day settlement had been in place since 1995.

The move reduced capital requirements for financial firms by 25 percent, or $1.36 billion, in part because it meant trading margins did not need to be held as long, according to the Depository Trust and Clearing Corporation.

Now the DTCC, an industry-owned organization that processes nearly all U.S. securities transactions, plans to cut another full market day of risk from the settlement cycle by settling trades in the morning, pre-market open, instead of later in the afternoon, said Mike McClain, head of equity clearing at the DTCC.

The move, planned for early next year, will not require any changes by industry participants and will again reduce capital requirements for trading firms, McClain said in an interview. He said the DTCC is working on a study to determine the exact amount of savings to the industry.

The idea of shortening the settlement cycle gained steam during the 2007-09 global financial crisis as a way for firms to limit the risk associated with the person or firm on the other side of a trade defaulting.

Currently, traders can choose to have their orders settled in a single day, but it can be difficult to find the other side of a trade that is also seeking faster settlement. Such trades make up less than one percent of the 56 million trades the DTCC processes on an average day.

In an effort to make it easier to match buyers and sellers who want expedited settlement, the DTCC is also in talks with two alternative trading system (ATS) operators about helping to create exchange-like trading venues that would only accept orders for single day settlement, McClain said.

He declined to name the ATS operators because the talks are ongoing, but said at least one of the trading venues could have the changes in place this year.

Reporting by John McCrank; Editing by Susan Thomas

JANUARY 12, 2018

MSRB Reminds Dealers of Existing Guidance on Filtering of Bids and Offers.

Washington, DC – In light of developments in the use of alternative trading systems (ATSs) and the role of broker's brokers in the municipal securities market, the Municipal Securities Rulemaking Board (MSRB) today reminded municipal securities dealers about their regulatory responsibilities related to filtering out bids on an ATS and offers from certain dealers when they transact municipal securities. The MSRB recognizes that the practice of filtering, which may also occur when a selling dealer directs a broker's broker to limit the audience for a bid-wanted, may serve a legitimate purpose. However, as the MSRB noted in a recent letter to the Securities and Exchange Commission's Investor Advocate, in some cases the practice of filtering could have a negative impact on retail investors, free competition and market efficiency.

"In support of our mission to protect investors, the MSRB monitors market practices such as filtering that may have an adverse impact on retail investors," said MSRB Executive Director

Lynnette Kelly. “Certain credit, legal, regulatory and other legitimate issues can justify filtering by dealers. But since the practice has the potential to negatively affect prices received by retail investors, we think it’s important to remind dealers of their regulatory obligations.”

Today’s regulatory reminder is intended to serve as a compliance resource to assist dealers in assessing their policies and procedures governing when and how to use, review and change filters to ensure compliance with existing regulatory obligations. This reminder does not create new legal or regulatory requirements, but rather summarizes existing guidance for dealers issued in 2012 on MSRB Rule G-43, on broker’s brokers, and MSRB Rule G-30, on prices and commissions, as well as implementation guidance provided in 2015 about MSRB Rule G-18, on best execution, that addressed filtering.

“Dealers have had almost two years to implement and comply with the best-execution rule, which has been an examination priority for enforcement agencies,” Kelly said. “Given the developments in the use of ATSs, it makes sense to remind dealers of the guidance about the appropriate use of filters to help support their compliance with the best-ex rule.”

Read the regulatory reminder.

Date: January 3, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Seeks Board of Directors Applicants.

The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization that oversees the $3.8 trillion municipal securities market, is accepting applications for its governing board. The Board of Directors sets the strategic direction of the organization, makes policy and regulatory decisions, authorizes market transparency initiatives and oversees MSRB operations. Read the press release.   Read the notice.

Detroit Boosts Disclosure in Effort to Build Investor Confidence.

As the city of Detroit works to rebuild its investor relationships, it got good credit news in the form of a one-notch upgrade from a second rating agency in as many months.

The ratings remain deep in junk-bond territory.

S&P Global Ratings upgraded the city’s issuer credit rating to B-plus from B Dec. 21. The outlook is stable. Moody’s Investors Service upgraded Detroit to B1 from B2 in October.

The S&P upgrade follows the city’s soft launch of a new web portal to improve investor access to its financial data and bond offerings.

“The road to recovery is a long one and I think that Detroit is doing the right things,” said Stephen Winterstein, managing director and chief municipal fixed income strategist at Wilmington Trust

Investment Advisors, Inc. “I am really optimistic about what they have been doing in terms of disclosure and the investor website is definitely a move in the right direction.”

Winterstein said that for municipal bond investors the notion of transparency and the ability of local governments to be quick to respond with timely disclosure has become increasingly important.

Government Finance Officers Association best practices recommend that governmental bond issuers consider developing an investor relations program. The centerpiece of such a program is a commitment to provide full and comprehensive disclosure of annual financial, operating, and other significant information in a timely manner consistent with federal, state and local laws.

Detroit’s site is provided through BondLink, an investor relations and disclosure platform for municipal bond issuers.

“We were impressed with the platform and thought it was a good way to increase market understanding of the City’s debt issues that are outstanding,” said John Naglick, Detroit’s chief deputy chief financial officer and finance director. “We did not do it with any particular bond issue in mind, just found that it fits with our desire to be more transparent.”

The city has been slowly returned to the market, but only with paper carrying investment-grade state aid backing.

Since exiting bankruptcy in December 2014 Detroit has tapped the public bond market twice: in August 2015 with $245 million of local government loan program revenue bonds and in August 2016 with a $615 million general obligation/distributable state aid backed bond sale. Both deals were issued through the Michigan Finance Authority.

The 2015 debt was enhanced with a statutory lien and intercept feature on the city’s income taxes, which landed an A rating from S&P Global Ratings. The city also privately placed $125 million to pay for projects aimed at revitalizing the city’s neighborhood commercial corridors.

Naglick said that the city is also close to deciding on the underwriting team for a request for proposals it launched in October to find banks to lead a tender offer and refunding of its unsecured financial recovery bonds with the aim of lowering its costs and easing a future escalation of debt service.

“Disclosure can be the canary in the coal mine,” said Colin MacNaught, CEO & co-founder of BondLink. “If a credit gets distressed, often-times they stop disclosing, or their disclosure is stale. If you have an investor website, you can provide current information on a timely basis, in a very user-friendly format. I think what Detroit’s doing is a big positive step as they rebuild market access.”

Detroit’s investor website lists financial team members, the latest financial reports on the city and district, ratings information, offering documents, and links to information on the Municipal Securities Rulemaking Board’s EMMA website.

“The city is doing a very good job managing the things that are within their control,” said Tom Schuette, co-head of investment research and strategy at Gurtin Municipal Bond Management. “The City’s BondLink disclosure efforts coupled with the recent adoption of a formalized and realistic strategy to handle accelerating pension payments in future years are signs of a management team that appears committed to both prudent, forward-looking fiscal policies as well as going the extra mile in terms of transparency with the investor community. “

S&P, in its upgrade, cited positive momentum the city is building with regard to stabilizing its operations and being better prepared to address future significant increases in pension contributions.

“We believe the city’s financial position is now more transparent compared with recent years, as is Detroit’s long-term financial strategy, which relies on fairly conservative growth assumptions,” S&P said. “We also believe that the city has a stronger capacity to service its debt obligations than in years past.”

In its October upgrade, Moody’s assigned a positive outlook to reflect the possibility of further upward movement if current economic and financial trends persist and enhance the city’s capacity to fund long-term liabilities.

The city’s ratings are the highest since March 2012, before its July 2013 bankruptcy filing. Schuette said the upgrades should help Detroit’s market access and support the city’s assertion that its credit quality is improving.

In December, Moody’s also raised the city’s assigned new Aa2 enhanced ratings to bonds issued by the Michigan Finance Authority and secured by various liens on distributable state aid to the city. All bonds secured by a pledge of the city’s DSA fall under this program. The outlook on the program rating is stable.

Previously, Moody’s (MCO) assigned different underlying ratings to bonds secured by separate liens on Detroit’s DSA. Bonds with a first lien on DSA were rated Aa2. Bonds with second, third and fourth liens were rated Aa3, A1 and A2, respectively. Moody’s (MCO) has withdrawn these underlying ratings and assigned new Aa2 enhanced ratings to all bonds, regardless of lien.

Naglick said the upgrades further reward the purchase decision of holders of the City’s bonds that were issued as part of the 2016 refunding in the summer of 2016.

Schuette said the DSA upgrade should not really change the market’s view of the outstanding bonds.

“There are still different liens to the DSA backed bonds, and the state’s support for some of the liens is still subject to appropriation risk,” said Schuette. “This is why we believe investors need to make sure they understand what they are buying and what risks they are taking on as we do not believe that all of these bonds share the same risk characteristics. If you’re not doing your homework and just relying on the ratings or an assumption that enhancement mechanics will work when you need them then you may be setting yourself up for surprises down the road.”

Positive developments shouldn’t obscure the fact that city’s credit rating remains deep in junk territory and vulnerable to another recession, say market participants.

“We still believe Detroit faces a long path that will require years of prudent decision making from management and the avoidance of major economic shocks before its debt makes sense for investors looking for high-quality municipal exposure.” Schuette said. “The city still has an abundance of extremely high-risk characteristics and speculative-grade qualities that investors should be very cognizant of and understand what they are taking on.”

Detroit’s post-bankruptcy finances have improved to the point where the city may be able to exit state oversight this year. The city has presented deficit-free budgets for two consecutive years and is on the path that would allow it to exit Financial Review Commission oversight. Although the city ended fiscal 2016 with a $63 million surplus its general fund revenues came in lower than anticipated owing to lower than expected intergovernmental aid. The city’s four-year forecast shows an annual growth rate of only about 1%.

The plan to address pension obligations is aimed at shoring up the city's long-term fiscal health. Detroit developed a long-term funding model with the help of actuarial consultant Cheiron, obtained City Council approval for changes to the pension funding ordinance that established the Retiree Protection Trust Fund, and deposited $105 million into this IRS Section 115 Trust. This fund will grow to over $335 million by 2024 and will provide a buffer to increased contributions beginning then.

Mayor Mike Duggan claimed during his 2016 State of the City speech that consultants who advised the city through bankruptcy had miscalculated the pension deficit by $490 million.

By Nora Colomer

BY SOURCEMEDIA | CORPORATE | 01/02/18 07:05 PM EST

MSRB January Monthly Update.

Read about the MSRB's focus on the year ahead, including tax reform and compliance support in the January Monthly Update.

Outlook 2018: SEC's Top Muni Cop Lists Enforcement Priorities.

PHOENIX – The Securities and Exchange Commission's municipal market enforcement activities in the coming year will focus on offering and disclosure fraud, broker-dealer abuses, municipal adviser misconduct and breaches of fiduciary duty, public corruption, and pay-to-play abuses.

LeeAnn Gaunt, chief of the SEC Enforcement Division's Public Finance Abuse Unit, cited these priorities when asked about them by The Bond Buyer.

"Our enforcement priorities are a direct reflection of our continuing focus on protecting investors, including the many retail investors who invest in the municipal securities market," said Gaunt.

Securities lawyers and regulators interviewed by The Bond Buyer said they expect the focus on muni enforcement actions to be on wrongdoing that harms investors. Several sources said they expected to see less of an emphasis on technical errors or smaller transgressions.

John Grugan, a partner at Ballard Spahr in Philadelphia, said he expects to see the SEC pivot away from the "broken windows" enforcement approach that characterized the commission during Mary Jo White's tenure as chair between April 2013 and January 2017.

White explained the "broken windows" concept in a speech in 2013, saying it's important to punish small transgressions to send a message that lawlessness of any kind will not be tolerated.

Current chair Jay Clayton replaced her in May. Grugan said he expects the SEC's emphasis going forward to be on fewer, but higher quality, enforcement cases.

"I think that they intend to look at if there are systemic issues that allow investors to be taken advantage of," he said.

Grugan pointed to the Municipalities Continuing Disclosure Cooperation initiative, an effort that wrapped up in late 2016. The MCDC program offered issuers and underwriters reduced settlement terms for self-reporting instances in which issuer's offering documents were not truthful about their continuing disclosure history.

Some lawyers criticized the MCDC for focusing heavily on "foot faults," Grugan said, adding that it doesn't seem as if the SEC is making a concerted effort to go after more issuers and underwriters for similar conduct.

"I think that their focus is receding and it is returning to the types of cases that they historically have brought," said Grugan, such as misuses of funds, rather than the "technical violations" of the MCDC.

"By no means is the SEC retreating from enforcement, I just think their priorities are changing," he said.

Paul Maco, a partner at Bracewell in Washington DC, also said he believes the enforcement division has moved on.

"One thing that might be fading into the shadows, if not going away, is the 'broken windows' concept," he said.

"I think the focus will be continued on serious disclosure problems," he added. "Where there are serious concerns, you'll see them looking for serious remedies."

Clayton's testimony before Congress earlier this year indicated that he is interested in punishing individual bad actors so market participants should not be surprised to see a continued emphasis on enforcement actions against individuals in the coming year, Maco said.

Ernie Lanza, a senior counsel at Clark Hill in Washington, said the SEC is placing more and more emphasis on data-driven enforcement, using the analytical tools at its disposal to guide its actions. Lanza said he sees a slowdown in SEC enforcement, but that it will still make its presence felt.

"There's always going to be a baseline level of enforcement," Lanza said.

Robert Doty, the president and proprietor of municipal bond consulting firm AGFS in Annapolis, Md., said the new SEC chairman has not yet tipped its hand on a particular focus.

The commission had been operating for months with only three commissioners: Clayton, Michael Piwowar, and Kara Stein. The first two are Republicans and Stein is a Democrat. The Senate has only just confirmed on Dec. 21 George Mason University senior research fellow Hester Peirce, a Republican, and lawyer Robert Jackson, a Democrat, to fill the other two slots. After their swearing in, the two will likely need a little time to get up to speed.

"We don't know what will happen as the new commissioners sink their teeth into things," Doty said.

Doty said he doesn't think enforcement will be "as surprising" in 2018 as it was the past year, but that he thinks there is a particular area where there could be a focus.

"Municipal advisor enforcement is a story to watch," he said.

Muni advisors have spent much of the past several years adjusting to being regulated under an entirely new regime arising out of the Dodd-Frank Act. For MAs who are not also broker-dealers it has been their first experience being regulated at all.

The Municipal Securities Rulemaking Board's Rule G-42 on the duties of non-solicitor municipal advisors only became effective in June 2016. There is a sense among the MA community that the SEC and the Financial Industry Regulatory Authority, which also enforces MSRB rules, spent 2017 getting a sense of the MA space and exploring the effects of those rules.

Doty said that in his view, the SEC has been very patient in advising the MA community with respect to regulatory compliance. "At some point that approach may give way to a more strict approach, especially where more egregious violations are found," Doty said.

Doty added that the fiduciary duty owed by municipal advisors to issuers and other municipal entity clients could be a source of enforcement actions in the new year. The fiduciary duty is a strict standard requiring MAs to put the interests of their clients above their own. Doty said that while many MAs understand the fiduciary duty and act accordingly, he believes many MAs may not fully understand the weight of being a fiduciary.

"That will probably give some room for enforcement against municipal advisors," he said.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 12/26/17 07:21 PM EST

Lawsuit Claims Houston Misled Voters on $1B Pension Bonds.

Ex-housing official claims Nov. 7 ballot omitted key facts

Mayor Sylvester Turner misled voters into approving a $1 billion pension bond referendum last month, a new lawsuit alleges, claiming that city officials plan to use the bonds' passage to sidestep a voter-approved limit on the property tax revenue Houston can collect.

Turner's office flatly denied that reading of the Proposition A ballot language, calling the wording "boilerplate" and saying the city has not and will not sidestep the revenue cap as a result of the vote on the mayor's landmark pension reform package or any of the prior bond issuances that included the same phrasing.

A local businessman and former Houston housing department director, James Noteware, sued the city Friday in state district court, contesting the Nov. 7 election on the grounds that the ballot language was "materially misleading."

The full language, rather than the summary listed for voters on the ballot, stated that the taxes levied to repay the bonds would not be "limited by any provision of the city home rule charter limiting or otherwise restricting the city's combined ad valorem tax rates or combined revenues from all city operations."

The suit claims that phrasing means the taxes levied to pay for the bonds will be exempted from the 13-year-old revenue cap, which limits the annual growth of property tax revenue to the combined rates of inflation and population growth, or 4.5 percent, whichever is lower.

"Omitting the fact that the proposition created a billion-dollar exception to default limits on the city’s taxing authority renders the proposition materially misleading and void,” the suit states.

“If the intent is to have more flexibility to raise property tax revenues, they should have just come right out and asked for it,” Noteware said Monday.

Turner’s spokesman, Alan Bernstein, said that is not the city’s intent. Moreover, he said, the city charter requires Houston to pay its debts first before allocating any funds to operations.

‘Baseless bombs’

“The suit is factually and legally baseless and from a taxpayer policy viewpoint completely illogical, as disrupting the pension reform will cost taxpayers more money,” Bernstein said. “There was never any intent to avoid the revenue cap nor are there any facts indicating that we would. It is easy to throw baseless bombs. The price of doing so for the plaintiff and his lawyer is far less than the harm he is trying to inflict on taxpayers.”

The language in question simply is intended to assure potential bondholders that the city will meet its obligations, Bernstein said.

Benefit cuts at stake

Regardless of whether Turner intends to step outside the revenue cap, Noteware’s attorney, Jerad Najvar, said, the phrasing of the ballot language would let a future mayor do so.

“I see why the mayor is saying, ‘Don’t worry, we’re never going to use this,’ but nonetheless it’s there,” Najvar said Monday. “If this election was valid, then this builds in the authority that the city did not have before to go around that revenue limitation. If the election is going to be challenged, it has to be done right now.”

Noteware said he views the pension reform package as inadequate and would not be concerned if his lawsuit winds up scuttling the deal.

The legislation that enacted the reforms requires the city to send the bond proceeds to the police and municipal pension funds this spring. If it does not, up to $1.8 billion of the $2.8 billion in benefit cuts in the reform package will be rescinded, adding tens of millions of dollars in costs to the city budget overnight.

The pension bonds are scheduled to be sold this week in New York; Bernstein said as of Monday it did not appear that process would be disrupted by the lawsuit.

Najvar said selling the bonds when a judge may decide Houston lacks the authority to do so would be “the height of irresponsibility.”

Voters tweaked the revenue limitation in 2006, allowing the city to raise an additional $90 million for public safety spending, but Houston exhausted that breathing room in 2014. With property values continuing to rise, the city has trimmed its tax rate each fall since then to avoid collecting more revenue than allowed.

City officials tweaked the cap in 2015 and 2016, invoking flooding disaster declarations to collect a combined $22 million in those two years on top of what the revenue limit otherwise would have dictated, in keeping with an exception clause in the cap’s wording. City Council voted down Turner’s attempt to do so again this fall after Hurricane Harvey.

Meant as incentive

The bonds are part of Turner’s landmark pension reform plan, which recalculates the city’s payments to erase a debt of more than $8 billion debt over three decades, cuts benefits by $2.8 billion and includes a mechanism to cap Houston’s future pension costs.

Turner offered to issue the $1 billion in bonds as an incentive to get the police and municipal pension systems to agree to another round of benefit cuts and to bolster both plans’ funding levels. The police plan would get $750 million of the bonds and the municipal fund would get $250 million.

Courts twice ruled the city had used misleading ballot language under Turner’s predecessor, Annise Parker, in connection with elections in 2010 and 2015.

The Houston Chronicle

By Mike Morris

December 18, 2017

[MSRB to Amend Requirements for Obtaining CUSIP Numbers.]()

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission to amend [MSRB Rule G-34](), on obtaining CUSIP numbers. The amended rule, effective June 14, 2018, reflects the MSRB’s long-standing interpretation that municipal securities dealers acting as placement agents in private placements of municipal securities, including direct purchase transactions, must obtain a CUSIP number.

Additionally, the amendments extend to non-dealer municipal advisors the requirement that a municipal advisor obtain a CUSIP number when advising on a competitive transaction in municipal securities.

“Clarifying who must obtain CUSIP numbers for which types of transactions aligns the rule with current market practices,” said MSRB Executive Director Lynnette Kelly. “In the case of private placements, our goal is to provide greater transparency of transaction details if the securities do later trade in the secondary market.”

As a result of multiple periods of public comment, the final rule amendments incorporate a principles-based exception from the requirement to obtain CUSIP numbers when the dealer (or municipal advisor in a competitive sale) reasonably believes the purchaser’s present intent is to hold the municipal securities to maturity or earlier redemption or mandatory tender. To rely on the exception, the purchaser may be a bank, control affiliate of a bank or consortium of these entities, or a municipal entity that meets certain criteria under the rule (e.g., a state revolving fund or bond bank).

“Ultimately, the MSRB’s participatory rulemaking process has resulted in an appropriately tailored rule that supports market transparency while accommodating those instances when there is little risk of a security later trading in the secondary market,” Kelly said.

Date: December 15, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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FAF Trustees Name New Members to the GASAC.

Norwalk, CT—December 15, 2017 — The Board of Trustees of the Financial Accounting Foundation (FAF) today announced the appointment of five new members of the Governmental Accounting Standards Advisory Council (GASAC).

In addition to the new appointees, the FAF Trustees reappointed eight GASAC members—including appointing current GASAC member Alan Skelton as vice chairman.

The GASAC advises the Governmental Accounting Standards Board (GASB) on strategic and technical issues, project priorities, and other matters that affect standards setting. The GASAC provides the GASB with diverse perspectives from individuals with varied business, governmental, and professional backgrounds.

"We are pleased to welcome our new GASAC members, and look forward to their input on important accounting and financial reporting issues," said GASB Chairman David A. Vaudt. "We also thank our departing members for volunteering their time and providing their insights to help the GASB improve financial reporting for all of our stakeholders."

The new GASAC members will serve two-year terms beginning January 1, 2018, and are eligible to be reappointed for up to two additional consecutive terms. They are:

- **Peggy Arrivas**, Associate Vice President and System-Wide Controller, University of California
- **Thad Calabrese**, Associate Professor, Robert F. Wagner Graduate School of Public Service, New York University
- **Paul Kwiatkoski**, Managing Director, Kroll Bond Rating Agency
- **Angus Maciver**, Director, Montana Legislative Audit Division
- **Terry Patton**, Distinguished Professor of Accounting, Dillard College of Business Administration, Midwestern State University.

Four members will depart from GASAC on December 31, 2017: Vice Chairman Jacqueline Reck, Daniel Smith, Stephen Klein, and Charles Tegen.

For a full listing of current Council members, visit the GASAC webpage.

About the Financial Accounting Foundation

Established in 1972, the Financial Accounting Foundation (FAF) is the independent, private-sector, not-for-profit organization based in Norwalk, Connecticut responsible for the oversight, administration, financing, and appointment of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB). The FASB and GASB establish and improve financial accounting and reporting standards—known as Generally Accepted Accounting Principles, or GAAP—for public and private companies, not-for-profit organizations, and state and local governments in the United States. For more information, visit www.accountingfoundation.org.

About the Governmental Accounting Standards Board

Established in 1984, the GASB is the independent, private-sector organization, based in Norwalk, Connecticut, that establishes financial accounting and reporting standards for U.S. state and local governments that follow GAAP. These standards are recognized as authoritative by state and local governments, state Boards of Accountancy, and the American Institute of CPAs (AICPA). The GASB develops and issues financial accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to taxpayers, public officials, investors, and others who use financial reports. The Financial Accounting Foundation (FAF) supports and oversees the GASB. For more information, visit www.gasb.org.

Ex-New York Town Official Sentenced to Two-And-Half Years for Bond Fraud.

NEW YORK — A former elected official of a New York City suburb was sentenced to 2-1/2 years in prison on Wednesday following his conviction in what U.S. prosecutors have called the first criminal securities fraud case brought over municipal bonds.

Christopher St. Lawrence, who was supervisor of Ramapo, New York, was sentenced by U.S. District Judge Cathy Seibel in White Plains, New York, federal prosecutors announced. St. Lawrence, 67, was found guilty by jurors in May of securities fraud, wire fraud and conspiracy.

Michael Burke, a lawyer for St. Lawrence, could not immediately be reached for comment.

Prosecutors charged St. Lawrence in April 2016 along with Aaron Troodler, former executive director of the town-owned Ramapo Local Development Corp.

Prosecutors said Ramapo and the corporation sold more than $150 million of bonds while Troodler and St. Lawrence concealed the town's deteriorating finances, putting millions of dollars in fake receivables on its books.

The town's financial woes were largely due to a $58 million minor league ballpark project, prosecutors said. The park is home to the Rockland Boulders.

Ramapo residents had rejected a plan to guarantee bonds used to finance the park in a 2010 referendum, and St. Lawrence told residents that no public money would be used for the project. However, Ramapo ended up paying more than half the cost, according to prosecutors.

Troodler pleaded guilty in March.

In May 2016, after the charges were filed, Moody's Investors Service downgraded the town's outstanding bonds two notches to A3, still in the investment-grade category. In February, Moody's withdrew its rating because the town did not file audited financial statements.

The town, which is 28 miles (45 km) northwest of New York City and had 126,595 residents as of the 2010 U.S. census, has said it significantly reduced its debt, and cut its exposure to the development corporation by 62 percent as of Dec. 31, 2016.

The criminal case followed U.S. regulators' push in recent years to crack down on fraud in the U.S. municipal bond market through civil actions.

The latest such case came earlier this month when the U.S. Securities and Exchange Commission charged Oyster Bay, New York, and former town supervisor John Venditto with defrauding municipal bond investors by concealing side deals with a local restaurateur.

Marc Agnifilo, a lawyer for Venditto, declined to comment on that case. Venditto previously pleaded not guilty in a related criminal case.

By REUTERS

DEC. 13, 2017, 5:39 P.M. E.S.T.

(Reporting By Brendan Pierson in New York; Editing by Jonathan Oatis)

MSRB Amends Form G-45 to Collect Additional Fee Data about ABLE Programs and 529 College Savings Plans.

The Securities and Exchange Commission (SEC) recently approved the Municipal Securities Rulemaking Board's (MSRB) amendment to Form G-45, under MSRB Rule G-45, about reporting information on municipal fund securities. The amended form will collect additional data regarding transactional fees assessed by ABLE programs and 529 college savings plans. The amendments will be effective as of June 30, 2018.

Approval Notice

SEC Approves Change to 529, ABLE Reporting.

PHOENIX – The Securities and Exchange Commission has granted approval to a Municipal Securities Rulemaking Board proposal to refine the data it collects regarding the investment options offered in certain municipal fund securities.

The MSRB announced late last week that the SEC had approved the proposal, which would amend electronic Form G-45 under MSRB Rule G-45 on reporting of information on municipal fund securities. The change will result in the board collecting two new data points about investment options in 529 college savings plans as well as Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) programs.

The form amendments will become effective on June 30, 2018.

The MSRB went out for industry comment with the proposal in August, and at that time it was more ambitious. The original proposal would have asked underwriters to provide data about four facets of these funds: program management fees, investment option closing dates, benchmark return percentages, and performance by asset class.

However, the MSRB decided at its quarterly board meeting in October to send the SEC a more limited proposal to collect information only about the program management fees and investment option closing dates. Industry feedback indicated that providing the other data would have been too burdensome.

Even with the more limited proposal that was approved by the SEC, Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association, said that SIFMA was disappointed. SIFMA had told the commission that reporting additional information would be burdensome, and that underwriters should be allowed to provide on form G-45 a link to the program documents because much of the information being sought is disclosed there.

"SIFMA is disappointed that its comments from the industry were dismissed, Norwood said. "SIFMA and its members continue to believe that this rule change makes the underwriters of ABLE plans responsible for information not within their direct custody and control, increases costs for ABLE plan investors and increases the gap in the regulatory paradigm for direct sold plans versus dealer sold plans."

The MSRB first began collecting data about college savings plans in 2015 and will begin collecting data about ABLE programs in 2018. The data the MSRB collects is not publicly-available.

The board has said it is making this change to allow it to make a more effective "apples-to-apples" comparison between college savings and ABLE plans administered by different underwriters. As of right now they don't all report information the same way. For example, while underwriters are required to report their program management fees, some underwriters lump this amount in with other expenses and make it difficult to identify the management fee itself. There are also differences in ABLE fees based on state residency, the MSRB found.

The board will be collecting information on many other fees charged by plan administrators, such as fees for opening accounts or for foreign transactions.

"The MSRB and other regulatory authorities may use this data to analyze 529 college savings plans and ABLE programs, monitor their growth rate, size and investment options, and compare 529 college savings plans and ABLE programs based on fees, costs and performance," the board said in its notice announcing SEC approval.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 12/11/17 07:10 PM EST

Surge in Private Muni Issuance Leaves Disclosure Black Hole.

CHICAGO (Reuters) – Potential U.S. tax law changes are spurring so many municipal debt issuers to come to market before year-end that a number of deals are being expedited through private debt sales, creating a disclosure gap that leaves investors in the dark.

While private muni deals have existed for years, legislation in the U.S. Congress to end tax breaks for private activity and advance refunding bonds starting in 2018 has ballooned the volume of these transactions.

States, cities, schools, hospitals and other issuers sold $15.2 billion of debt in the market the week of Nov. 26, $21.33 billion last week, and will sell an estimated $22.88 billion this week, according to Thomson Reuters data.

But billions of dollars of additional debt is being sold outside of the market through private transactions.

Unlike publicly sold debt, these deals are not subject to mandatory disclosure. Unless privately sold debt and its terms and conditions are voluntarily disclosed, the issuer's current and prospective investors may not know it exists.

The debt could have a "detrimental impact" on how investors view an issuer's credit quality, according to Richard Ciccarone, president and CEO of Merritt Research Services, which provides data and research on muni bonds.

"We don't know what we should know," he said.

The Municipal Securities Rulemaking Board (MSRB), the self regulator of the $3.8 trillion market, has been advocating for bank loans and other private deals to be disclosed on its EMMA website. This is where information about publicly sold deals, including pricing, trading data and issuer financial reports and material events, is posted.

"If you were a bondholder wouldn't you want to know the debt profile of the issuer?" said MSRB Executive Director Lynnette Kelly, adding that private transactions could contain priority of payment and other provisions that trump those of an issuer's public debt.

"Those are exactly the reasons and many more the MSRB board chose to speak out on this issue," she said.

Voluntary disclosure of these deals has been "pretty minimal," according to Kelly.

John Bonow, CEO of Public Financial Management, a municipal finance advisory firm, estimated last week that the amount of bonds currently being directly purchased by banks or temporarily sold to underwriters in lieu of a public offering could equal the amount of public debt transactions in the market.

On Thursday, the Illinois Finance Authority, a big conduit issuer of private activity bonds for nonprofit hospitals, colleges and other entities, approved nearly $1.2 billion of bonds in seven deals, with $625.5 million of that debt bypassing the market and headed straight to banks.

A proposed rule pending before the U.S. Securities and Exchange Commission since March, would make private debt and loan transactions subject to the MSRB's disclosure requirement.

"There's been a fair amount of push back because it's so broad," said Roger Davis, a partner in the San Francisco office of bond counsel Orrick, noting the rule could capture ordinary governmental functions.

by Karen Pierog

Reporting By Karen Pierog; Editing by Daniel Bases and Andrew Hay

DECEMBER 15, 2017

MSRB Amends Form G-45 to Collect Additional Fee Data about ABLE Programs and 529 College Savings Plans.

The Municipal Securities Rulemaking Board (MSRB) received approval today from the Securities and Exchange Commission (SEC) to amend Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities. The MSRB amended Form G-45 to collect data about transactional fees primarily assessed by programs established to implement Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) programs. In addition, amended Form G-45 will require an underwriter to disclose any variance in the account maintenance fee due to the residency of the account owner. The amendments, effective June 30, 2018, will help the MSRB receive more reliable, complete and accurate information about ABLE programs and 529 college savings plans.

Read the approval notice.

To facilitate compliance with these changes, the MSRB will be making both amended Form G-45 and an updated Form G-45 manual available, and will make future announcements regarding those materials.

SIFMA Submits Letter Responding to MSRB Amendment No. 1 with SEC Clarification of MSRB Rule G-34(a)(i) on the Use of CUSIPs.

On December 1, SIFMA submitted comments to the Securities and Exchange Commission (SEC) on proposed amendments to MSRB Rule G-34, on obtaining CUSIP numbers, which aim to clarify existing requirements and improve market consistency. SIFMA reiterated its concerns about the scope of the exception and urged the SEC to institute disapproval proceedings regarding the Proposal in its current form.

SIFMA Comment Letter

MSRB Compliance Newsletter.

It's here! The MSRB's first Compliance Corner newsletter for municipal bond dealers and municipal advisors has all the latest compliance resources, upcoming compliance dates and more.

NFMA Municipal Analysts Bulletin.

The NFMA's newsletter, the Municipal Analysts Bulletin, is posted.

To read the newsletter, click here: Vol. 27, No. 3.

MSRB Extends Comment Deadline on Request for Comment on Providing Compliance Support.

The Municipal Securities Rulemaking Board (MSRB) today announced that it is extending the deadline for public comment on its approach to compliance support to February 9, 2018.

“The MSRB recognizes that in light of the current focus on Congressional tax reform proposals and year-end schedules, additional time will enable our stakeholders to provide more thoughtful and comprehensive responses on how the MSRB can deliver the most impactful compliance support,” said MSRB Executive Director Lynnette Kelly. “The purpose of the request for comment is to jumpstart a long-term dialogue with stakeholders on how the MSRB can most effectively facilitate compliance. We welcome preliminary input to help us begin to focus our efforts.”

The MSRB first announced its long-term strategic focus on compliance in June 2017 and has since established a Compliance Advisory Group, launched an online Compliance Center and developed a series of virtual compliance workshops, among other activities to support understanding of MSRB rules.

“Continued input from stakeholders is essential to assisting the MSRB in prioritizing, developing and delivering compliance resources that are responsive to the market’s needs,” Kelly said.

Read the request for comment.

Refresh Your Knowledge of MSRB Gift-Giving Restrictions.

This holiday season, make sure you are aware of limitations on gifts or gratuities in relation to municipal securities or municipal advisory activities by exploring the Municipal Securities Rulemaking Board’s MuniEdPro® course, Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance: MSRB Rule G-20.

The course uses common scenarios to illustrate compliance with limitations and exclusions on the value of gifts and gratuities that regulated entities and their associated persons can give to officials of a bond issuer. The course also addresses restrictions related to expenses of issuance.

At the end of the course, the learner will be able to:

- Explain the requirements of Rule G-20;
- Understand exclusions from the $100 limit per year, per person; and
- Describe the recordkeeping requirements under MSRB Rule G-8 that apply to dealers and municipal advisors under Rule G-20.

Dealer and municipal advisor firms: enhance your firm’s compliance program by offering your municipal finance professionals access to all MuniEdPro® courses at the discounted rate of $100 per person. The discounted rate, which is available through December 31, 2017, is a $270 value per person, saving firms over 60 percent on the course catalog.

For more information about MuniEdPro® or to inquire about subscription options, contact Ritta McLaughlin at rmclaughlin@msrb.org or 202-838-1306.

Ramapo Agrees with SEC to Clean up Bond Finances.

The town of Ramapo and its local development corporation have consented to an SEC agreement to clean up how they issue municipal bonds.

Though they did not explicitly admit wrongdoing, by agreeing not to violate U.S. Securities and Exchange Commission laws they tacitly acknowledged they had done so.

The SEC civil case coincides with federal criminal charges filed last year against town officials for concealing financial problems and lying to bond investors.

Christopher St. Lawrence, former town supervisor, was found guilty after a four-week spring trial of conspiracy, securities fraud and wire fraud. Nachman Aaron Troodler, a former town attorney, pleaded guilty to fraud.

They fabricated Ramapo's financial reports to help sell municipal bonds, according to court documents, and to help pay for Provident Bank Park, a minor league baseball stadium.

Taxpayers had rejected a proposal to finance the stadium in 2010, and St. Lawrence pledged that it would be built with private funds. But in 2011 the development corporation issued a $25 million bond for construction, and the town ended up paying more than half of the $58 million project.

The stadium is now known as Palisades Credit Union Park and is the home of the Rockland Boulders.

For six years, Ramapo reported general fund balances ranging from $1.4 million to $4.1 million. But the fund was actually running deficits of $249,000 to $13.9 million.

General fund balances were distorted with phony receivables, concealed liabilities and improper fund transfers.

St. Lawrence, for instance, claimed that Ramapo was going to get $3.1 million in Federal Emergency Management Agency reimbursements for expenses from Hurricane Irene, even though no claims had been submitted.

The town had guaranteed bond payments, so fake fund balances made the bonds appear less risky. Investors also were told that revenues from the stadium and a housing project would cover the bonds' principal and interest.

The SEC said St. Lawrence lied to investors to conceal the town's deteriorating finances and to disguise the inability of the development corporation to make payments from its own money.

Federal Judge Cathy Seibel issued a judgment on Nov. 17 that requires Ramapo and its development agency to hire a court-approved independent consultant to review financial procedures and controls. The consultant may employ accountants, attorneys, forensic experts or business advisers to assist with the review.

The consultant will recommend improvements and Ramapo must adopt changes.

The town and its agency must also hire an independent auditing firm to examine financial statements for 2017 through 2019.

If they decide to issue new bonds in the next three years, they must hire an independent counsel who will investigate the accuracy and completeness of disclosure documents.

In three years, they must certify that they have complied with all requirements of the judgment.

The criminal sentencing hearing for St. Lawrence of Wesley Hills, began on Monday and will continue tomorrow. Troodler of Bala Cynwyd, Pennsylvania, is scheduled to be sentenced on Dec.

12.

westfaironline.com

By Bill Heltzel – November 28, 2017
