
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
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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
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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

What Bond Investors Weren't Told About a Threat Facing Cinco Ranch.

The special purpose districts that have powered development in the Cinco Ranch area west of Houston repeatedly failed to disclose to bond investors the risk of severe flooding from the adjacent Barker Reservoir, a Houston Chronicle investigation found.

Hundreds of homes near the reservoir were flooded when Hurricane Harvey battered southeast Texas in late August. Many homeowners complained bitterly that they were never warned the reservoir could pour into their neighborhoods during an extreme storm.

Bond investors who placed bets on the long-term economic health of the Cinco Ranch area were not told about the danger, either – although it had been documented for years in Fort Bend County planning records and in reports by the U.S. Army Corps of Engineers, which operates the reservoir.

Continue reading.

The Houston Chronicle

By James Drew

November 24, 2017

SEC Charges Oyster Bay, New York, With Bond Fraud.

NEW YORK/WASHINGTON — The U.S. Securities and Exchange Commission on Tuesday charged Oyster Bay, New York and former town supervisor John Venditto with defrauding municipal bond investors by concealing side deals with a local restaurateur.

Prosecutors also added 21 new criminal charges, including securities and wire fraud, to an indictment against Venditto, who had originally been charged with corruption in October 2016, along with Nassau County Executive Edward Mangano.

That case revolved around dealings involving Mangano, Venditto and the restaurateur, identified in court papers as Harendra Singh, who was charged in a separate federal case in September 2015.

All have pleaded not guilty. Their lawyers did not immediately respond to requests for comment.

Venditto, 68, of Massapequa, invoked his constitutional right against self-incrimination and declined to testify to SEC staff, according to the SEC's civil complaint.

His criminal case is among the first alleging securities fraud in connection with municipal bond sales.

In what authorities have called the first case of that type, Christopher St. Lawrence, the elected supervisor of Ramapo, New York, was convicted on May 19 in connection with a baseball stadium financing.

The SEC said Oyster Bay and Venditto concealed from investors in 26 securities offerings from August 2010 to December 2015 how the town had agreed to indirectly guarantee four private loans worth more than $20 million to Singh.

According to the SEC, the decision “to go to such great lengths” to help Singh, identified as the “concessionaire” in its complaint, stemmed from his “long and close relationship” with town and county officials, involving gifts, bribes, kickbacks and political support.

The SEC said the guarantees would have been material to investors because of their potential financial impact, including a possible $16 million payout, or 16 percent of Oyster Bay’s operating budget, in 2013 in the event of a default.

Oyster Bay comprises 36 villages and hamlets, and has close to 300,000 people.

“Oyster Bay and its most senior elected official concealed from its municipal investors that the town had gone to great lengths and taken on financial risk in an unusual decision to assist a vendor,” Sanjay Wadhwa, senior associate director of the SEC’s office in New York, said in a statement.

Mangano, a Republican, will end eight years as Nassau County executive at the end of December.

He did not seek re-election, and along with Venditto faces a possible trial in January, court records show. Mangano’s wife Linda was also indicted.

The SEC case is SEC v Town of Oyster Bay, New York et al, U.S. District Court, Eastern District of New York, No. 17-06809. The criminal case is U.S. v. Mangano et al in the same court, No. 16-c--00540.

By REUTERS

NOV. 21, 2017, 3:36 P.M. E.S.T.

(Reporting by Jonathan Stempel and Mohammad Zargham; Editing by Tom Brown)

Long Island Town Charged With Securities Fraud.

SEC says Oyster Bay failed to tell bondholders about private loan deals

The Securities and Exchange Commission on Tuesday charged the Long Island town of Oyster Bay with defrauding bondholders by failing to tell them about four private loan deals.

The charges come during a multiyear push by the SEC to improve the information local governments give bondholders. Last year, 71 municipal borrowers from Minnesota to Hawaii agreed to stricter disclosure practices as part of an agreement with the SEC.

Tuesday’s SEC complaint alleges that Oyster Bay didn’t inform investors in the town’s bonds that it had agreed to indirectly guarantee $20 million in private loans to a local vendor who owned and operated restaurants at town facilities. The SEC also charged John Venditto, who served as Oyster

Bay's supervisor and treasurer from 1998 through January of this year, with defrauding the bondholders.

Though the terms of the four private loans could have forced Oyster Bay to make a $16 million payment on short notice, using up 16% of its operating budget, the town didn't disclose these loans to investors in bonds sold between August 2010 and December 2015, the SEC said.

"Oyster Bay and its most senior elected official concealed from its municipal investors that the town had gone to great lengths and taken on financial risk in an unusual decision to assist a vendor," Sanjay Wadhwa, Senior Associate Director of the SEC's New York Regional Office, said in a press release. "Investors were deprived of information they needed to understand the town's true financial condition as they made investment decisions." The terms of the loans were also concealed from some town finance officials, according to the complaint.

The town of Oyster Bay said in a submission to the SEC earlier this year that the town had been "victimized" and that new loan terms were inserted into the town's agreement with the vendor without the town board's knowledge. It noted that a 2016 indictment against Mr. Venditto alleges he accepted bribes from the vendor.

"It is paradoxical to claim that the town should have disclosed illegal agreements that were entered into in secret and were unknown to and concealed from the town board," Oyster Bay said in its response to a so-called Wells notice from the SEC informing the town of a pending enforcement action.

Town attorney Joseph Nocello said he didn't want to comment on pending litigation, especially litigation pertaining to a previous administration, except to say that the Wells submission contains the town's "expensive and formal" response to the charges.

An attorney representing Mr. Venditto in connection with the 2016 indictment didn't immediately respond to a request for comment. Mr. Venditto declined to testify before the SEC, invoking his Fifth Amendment right against self-incrimination, according to the complaint.

The SEC is asking the courts to appoint a monitor to oversee its disclosure practices for five years and prohibit Mr. Venditto, 68 years old, from being involved in bond sales. The SEC also wants Mr. Venditto and the town to pay monetary penalties, according to the complaint. It didn't say how much money.

The complaint was filed U.S. District Court for the Eastern District of New York. The U.S. Attorney's Office for the Eastern District of New York also filed securities fraud charges against Mr. Venditto Tuesday.

Government borrowers file information about their finances at the time they issue bonds and on a continuing basis while the bonds are outstanding. The records are posted on the Municipal Securities Rulemaking Board's website. Since 2014, the SEC has been involved in a campaign to improve disclosure in the municipal market.

The Wall Street Journal

By Heather Gillers

Nov. 22, 2017 1:35 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Wealthy N.Y. Town Sued by SEC Over Loan Aid for Restaurateur.

- **Restaurant owner lavished officials with cash, food, trips**
- **SEC says officials concealed financial risks from bondholders**

The city of Oyster Bay, New York, and its former supervisor were sued by the Securities and Exchange Commission 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 Long Island city defrauded bondholders by failing to reveal that it co-signed for $20 million of loans for the unidentified businessman, according to the SEC. The agency said Tuesday that the obligations should have been disclosed to investors, given that the loans could have eaten up nearly a fifth of its annual budget.

“Oyster Bay and its most senior elected official concealed from its municipal investors that the town had gone to great lengths and taken on financial risk in an unusual decision to assist a vendor,” Sanjay Wadhwa, senior associate director of the SEC’s New York office, said in a statement. “Investors were deprived of information they needed to understand the town’s true financial condition.”

In return for the loan guarantees, the SEC said the businessman provided city officials with free meals, cash and other gifts, including overseas trips to Italy, India, South Korea and Mexico.

The former Oyster Bay supervisor, John Venditto, pleaded not guilty after he was charged last year by federal prosecutors in a related corruption case along with the Nassau County Executive Edward Mangano and his wife, Linda, according to the New York Times. Venditto was named in a superseding indictment Tuesday that included charges of securities fraud, as well as bribery and obstruction of justice.

Marc Agnifilo, an attorney with Brafman & Associates who is representing Venditto, said his client denies the charges. “It doesn’t really change the complexion of the case at all,” Agnifilo said. “I don’t see any new facts of any note.”

Jonathan Pickhardt of Quinn Emanuel Urquhart & Sullivan, the defense attorney for the town listed on the SEC’s statement, did not immediately respond to an emailed request for comment and a phone message left with his assistant.

Debt issued by Oyster Bay, a collection of villages with some 300,000 residents and one-time home to President Theodore Roosevelt, had an AAA rating at the time of the guarantees, according to the SEC. That rating has since tumbled, with S&P Global Ratings dropping it to junk last year because of a history of running budget deficits.

Bloomberg

By Rebecca Spalding

November 21, 2017, 11:35 AM PST Updated on November 21, 2017, 12:37 PM PST

MSRB Release on Offering Practices Draws Frosty Reception From Some.

PHOENIX – Dealers and municipal advisors don't believe that the Municipal Securities Rulemaking Board's rules on primary offering practices require much of an overhaul and are concerned the MSRB may be proposing to exceed its authority, they told the board this week.

Various market participants voiced these thoughts in comments responding to the MSRB's September concept release seeking market input on numerous aspects of primary offering practices.

Concept releases are often precursors to proposed rules or rule changes. Market groups had initially said they were uncertain what the MSRB's goals might be. The concept release potentially affects Rules G-11 on primary offering practices and G-32 on disclosures in connection with primary offerings.

The dealers and muni advisors bound by the MSRB's rules told the board the proposals contained in the release aren't necessary or perhaps even within the board's authority. The board asked, for example, whether it should amend 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.
Leslie Norwood, a managing director, associate general counsel and co-head of municipal securities at the Securities Industry and Financial Markets Association, wrote that underwriters must abide by their agreements but that the MSRB should not create a new requirement.

"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," Norwood wrote, noting that SIFMA is concerned that such a rule would require "line drawing" to account for instances where a bonafide 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," Norwood wrote.

MAs took issue with the MSRB's question of whether it should require the submission of preliminary official statements to EMMA, which some issuers already submit 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, wrote National Association of Municipal Advisors executive director Susan Gaffney. Section 15B(d) of that law specifically denies the board the power to require that, Gaffney argued.

The National Federation of Municipal Analysts, however, said it supports requiring issuers to post the POS. The NFMA also threw its support behind another one of the concept release's proposals: requiring underwriters in an advance refunding deal to disclose within a shorter timeframe, and to all market participants at the same time, the CUSIPs refunded and the percentages.

"We believe the most effective and least costly solution to ensure that all investors have equal access to refunded CUSIP information is the disclosure of all credit and security information to EMMA at the same time, as soon as practicable," wrote NFMA chair Julie Egan and the group's industry practices & procedures chair Lisa Washburn.

SIFMA generally also said 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.

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 SOURCEMEDIA | MUNICIPAL | 11/16/17 07:15 PM EST

By Kyle Glazier

MSRB's Request for Comment on Retrospective Review of Primary Offering Practices.

The MSRB has released for comment its concept proposal on MSRB rules on primary offering practices. The BDA's letter suggests that existing MSRB rules adequately protect primary offering practices and the existing regulatory framework is sufficient, thus eliminating the need for new rules to govern primary offering practices. Public comments on the proposal are due Monday, November 13th.

BDA's comment letter can be found here.

Draft Letter Summary:

Rule G-11 Primary Offering Practices

- **Bona Fide Public Offering:** Argues against the need for the definition of, and a specific rule requiring, a bona fide public offering in all municipal securities offerings
- **Submission of Preliminary Official Statements to EMMA:** Urges the MSRB not to adopt a rule, with the exception of competitive bid offerings, requiring the posting of preliminary official statement to EMMA
- **Free-to-Trade Wire:** Urges the MSRB require all senior syndicate managers to send a free-t--trade wire, in addition to ensuring the timing to trade freely is as transparent as possible

Rule G-32 Disclosures in Connection with Primary Offerings

- **Disclosure of CUSIPs:** Urges MSRB require the senior syndicate manager or sole manger to disclose the CUSIPs refunded and the percentages thereof within a short period following the pricing of the refunding bonds, if available
- **Official Statements:** Recommends MSRB amend Rule G-32(c) to extend the requirement to make the official statement available to the senior managing underwriter or sole underwriter to non-dealer municipal advisors

Proposed Rule Summary:

MSRB's request seeks insight on evolving primary offering practices and whether current rules continue to operate effectively or whether changes to MSRB Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offering practices.

Concerning Rule G-11 on Primary Offering Practices

- Require underwriters to make a bona fide public offering
- Standardize the process for issuing a free-to-trade wire
- Require senior syndicate managers to provide more information to issuers
- Align the payment of group net sales credits with the payment of net designated sales credits
- Require retail (or institutional, as applicable) priority orders in negotiated sales to be allocated in full before allocating to lower priority orders, unless the syndicate manager has received permission from the issuer to allocate to lower priority orders

Concerning Rule G-32 on Disclosures in Connection with Primary Offering Practices

- Require underwriters in a refunding to disclose, within a shorter timeframe, to all market participants at the same time, the CUSIPs refunded and the percentages thereof
- Require the underwriter or municipal advisor to submit the preliminary official statement (POS) to EMMA, if one is availableRequire non-dealer municipal advisors that prepare certain official statements to make the official statement available to the underwriter after the issuer approves it for distribution
- Auto-populate into Form G-32 certain information that is submitted to DTCC's New Issue Information Dissemination Service (NIIDS) but is not currently required to be provided on Form G-32
- Request additional information on Form G-32 that is not currently provided to NIIDS

Bond Dealers of America

November 17, 2017

SIFMA Response to MSRB Concept Release on Primary Offering Practices.

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on a recently released concept proposal to solicit input from market participants on MSRB rules on primary offering practices. The concept proposal seeks input on evolving primary offering practices and whether the current rules continue to operate effectively or whether changes to MSRB Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offerings, may be warranted.

Read the Comment Letter.

See also: Regulatory Notice

SEC Finds Widespread Compliance Failures Among Municipal Advisors.

Risk Alert details 'frequently observed deficiencies' in the areas of registration, books and records, and supervision

The Securities and Exchange Commission's exam division has released a report showing widespread compliance failures among municipal advisors.

In a Nov. 7 risk alert on observations from municipal exams, the agency's Office of Compliance Inspections and Examinations said it had conducted more than 110 exams of municipal advisors and evaluated their compliance with registration, statutory fiduciary standard of care, fair dealing, recordkeeping and supervision.

Examiners most frequently observed "deficiencies in the areas of registration, books and records, and supervision," the alert states, with some firms being referred to the enforcement division.

The report's key takeaway: "Municipal advisors should take steps to educate themselves regarding their compliance obligations," the SEC warned.

Lynnette Kelly, director of the Municipal Securities Rulemaking Board, which is overseen by the SEC, told ThinkAdvisor in an email message that MSRB "encourages the municipal advisory community to carefully consider the SEC's examination feedback."

"A robust compliance and enforcement regime is critical to ensuring the integrity of the municipal securities market," she said, adding that the MSRB has established "a strategic goal to provide compliance assistance to regulated entities."

Municipal advisors and municipal securities dealers, she continued, "will be seeing a significant increase in MSRB outreach events, educational opportunities and the release of various forms of compliance aids, all with the goal of facilitating compliance with MSRB rules."

Municipal advisors became subject to SEC registration and jurisdiction pursuant to the Dodd-Frank Act of 2010.

The risk alert "is the warning shot across the bow for municipal advisors," according to Cipperman Compliance Services. OCIE publishes examination findings and recommendations "as a foreshadowing of impending enforcement actions."

ThinkAdvisor

by Melanie Waddell

MSRB Seeks Input on Compliance Support.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on its approach to enhancing compliance support, a long-term strategic priority for the organization. The MSRB's request for comment invites regulated entities, other market stakeholders and the public to share their perspectives on how the MSRB can most effectively support understanding of

its rules.

“The MSRB deeply values the varied perspectives of regulated entities and other stakeholders who work together to preserve the integrity of the municipal securities market,” said MSRB Executive Director Lynnette Kelly. “Public input on our compliance support initiative is another way to help us prioritize and focus our efforts on the areas where additional compliance support would be most effective for the overall fairness and efficiency of the market.”

The MSRB recently established a Compliance Advisory Group to provide additional input to the Board of Directors on its compliance priorities, centralized its growing library of compliance resources into an online Compliance Center and published information on the types of compliance assistance provided by the MSRB.

Today’s request for comment seeks to further leverage the experience and perspectives of regulated entities and other stakeholders as the MSRB prioritizes, develops and delivers additional compliance support in the coming months. Comments should be submitted to the MSRB by December 22, 2017.

“Our commitment to obtaining stakeholder input will continue throughout the year as we communicate about existing regulatory requirements, host and participate in industry events, and provide compliance tools and educational webinars,” Kelly said.

Date: November 16, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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GASB: Understanding Costs and Benefits: Fiduciary Activities.

Read the GASB article.

MSRB Publishes Information on its Compliance and Market Leadership Activities.

Washington, DC – In support of its long-term strategic goals, the Municipal Securities Rulemaking Board (MSRB) plans to provide additional resources and tools for municipal securities dealers and municipal advisors to facilitate compliance with MSRB rules. In addition, the MSRB will continue to provide reports and commentary that promote dialogue about market practices, products or trends that can have an impact on the integrity of the municipal securities market. The MSRB today released two publications to clarify its approach to compliance and market leadership activities.

“As a self-regulatory organization, it is important that we effectively communicate the MSRB’s intent with respect to regulatory and market issues,” said MSRB Executive Director Lynnette Kelly. “Our compliance activities are focused squarely on MSRB regulations and will be informed by stakeholder engagement. We have formed an external advisory group and will be continuing to seek input from municipal securities dealers and municipal advisors to ensure that our resources and tools reflect that input.”

The MSRB's compliance support activities will include issuing interpretive guidance to clarify the application of an MSRB rule or creating a sample template, fact sheet or other compliance resource to serve as a reference for regulated entities. The MSRB also publishes annual compliance advisories to highlight considerations for municipal securities dealers and municipal advisors when assessing the effectiveness of their supervisory systems and compliance processes. Read more about the types of compliance information.

Consistent with the MSRB's obligation to protect investors, issuers and the public interest, the MSRB publishes— when the Board of Directors believes appropriate—market advisories, reports or other commentary to bring attention to issues in the municipal securities market that may have an impact on market integrity and fairness. The MSRB also contributes data and expertise to inform policy discussions on topics related to the municipal securities market. Read more about the MSRB's market leadership activities.

"It is the MSRB's responsibility to flag troubling market practices we believe are potentially harmful to investors or municipal entities, even if they fall outside of our rulemaking authority," Kelly said. "Our market leadership activities do not propose rulemaking but rather raise awareness of issues that could be detrimental to the integrity of the market and further encourage dialogue among market participants. We have been doing this for some time, one example being our advocacy for increased disclosure by municipal securities issuers of bank loans."

The MSRB will clearly label and identify new compliance and market leadership publications to communicate the intent of these publications and help the market participants make best use of the information.

Date: November 9, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB to Streamline Series 52 Exam.

On November 8, the MSRB announced plans to revise the Municipal Securities Representative Examination, or Series 52, into a "specialized knowledge exam." This change comes ahead of the Financial Industry Regulatory Authority's (FINRA) Securities Industry Essentials (SIE) exam, which will be released on October 1, 2018. The changes are intended to "streamline duplicative testing" and "reduce testing redundancies."

MSRB Regulatory Notice

GASB Proposes Clarifications to Guidance on Majority Equity Interests.

Norwalk, CT, November 9, 2017—The Governmental Accounting Standards Board (GASB) today proposed guidance that would clarify the accounting and financial reporting for a state or local government's majority equity interest in an organization that remains legally separate after acquisition.

A public hospital acquiring a rehabilitation center that remains legally separate from the hospital after acquisition is an example of the kind of situation the proposed guidance addresses.

Under guidance proposed in the Exposure Draft, *Accounting and Financial Reporting for Majority Equity Interests*, a government's majority equity interest in a legally separate organization would be reported as an investment if that equity interest meets the GASB's definition of an investment. Except in certain specific circumstances, a majority equity interest that meets the definition of an investment would be measured using the equity method.

For all other majority equity interests in a legally separate entity—those that do not meet the definition of an investment—a government would report the legally separate entity as a component unit.

The document also proposes guidance for remeasuring assets and liabilities of an acquired entity that remains legally separate to be consistent with existing standards that apply to acquisitions that do not remain legally separate.

The Exposure Draft is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review the proposal and provide comments by January 12, 2018.

NFMA Comment Letter on MSRB Regulatory Notice 2017-19.

The National Federation of Municipal Analysts responded to the MSRB's Regulatory Notice 2017-19, Request for Comment on a Concept Proposal Regarding Amendments to Primary Offering Practices of Brokers, Dealers and Municipal Securities Dealers, on November 9, 2017.

To read the NFMA comment, click here.

Markup Rule Deadline May Be Hard To Meet.

Municipal market participants may not be ready in time to implement a pending markup disclosure rule on which regulators place huge importance.

Amendments to Municipal Securities Rulemaking Board Rules G-15 on confirmation and G-30 on prices and commissions, which are to take effect on May 14, 2018, will require dealers to disclose their markups and markdowns on certain transactions in the confirmations they send retail customers — a sea change for the municipal market. MSRB executive director Lynnette Kelly has called the rule changes "a game changer." Both the MSRB and Financial Industry Regulatory Authority have put significant effort into providing firms with education about the rule changes.

But as the clock ticks down toward the compliance date, many in the industry worry they will not be able to put in place changes that will allow their automated systems to comply with the new requirements.

Under the rule changes, markup disclosures will have to be given as a total dollar amount and a percentage of the prevailing market price.

The amendments establish a "waterfall" of factors for determining the PMP. Dealers initially are to

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 can 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, firms can look at contemporaneous trades of similar securities. The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that can be used to determine if securities are similar. The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

While complicated, most dealers think that they can comply with the rule changes, whether internally or through a third-party vendor. But what many are far less sure about is whether they will be prepared, by May 14, to automate the process from transaction to delivering the customer a confirmation with a properly-disclosed markup or markdown. A number of dealer representatives made that point while speaking at an MSRB roundtable earlier this month.

"The clock is ticking on this year, and we don't have a solution in hand to automate the waterfall," Daren Colaiacovo, a director of retail trading at RBC Capital Markets said at the roundtable. "It's something we're taking very seriously."

Colaiacovo said that while several vendors are offering PMP calculation solutions for markup rule compliance, he is not aware that any firm has their solution in hand and is set to go.

Kristin Maher, head of fixed income services at Wells Fargo, said Wells has tested solutions with several vendors but is still working out how to automate their trades for compliance.

"How are we going to do this with a reasonable amount of resources dedicated to this?" she asked.

Dealer groups are reflecting the concerns of individual firms. They are pressing the MSRB and the Securities and Exchange Commission to extend the compliance date, possibly by several months.

"I think the industry is still getting ready," said Bond Dealers of America chief executive officer Mike Nicholas. "I think there's still a long way to go in terms of getting ready for this."

BDA has stressed the complexities of automating the waterfall process in past comments to the MSRB and SEC. Nicholas is concerned that the information firms end up providing on confirmations could wind up confusing customers.

"The last thing BDA members want is to create misleading information for retail investors," Nicholas said.

Securities Industry and Financial Markets Association managing director and co-head of municipal securities Michael Decker said SIFMA is having discussions about these concerns with individual firms and with the regulators.

"The markup and PMP rules are complex," Decker said. "In order to automate compliance, which is absolutely necessary for many firms, dealers will need to use sophisticated systems. Some firms are concerned that they will not have enough time to fully integrate and test their compliance systems by the deadline, especially if they're going to depend on third-party vendors whose timelines are out of dealers' control. SIFMA wants to ensure that the customer experience with the new confirm disclosure is a smooth as possible and we are actively discussing the obstacles to full readiness with our members and regulators."

Vendors say they are confident in their products, but that the real challenge is in integrating their systems with the systems of individual dealer firms to ensure a smooth automated process from start to finish.

Tony Miscimarra, a managing director at BondWave, said he is “guardedly” certain his firm’s product is set to go because it has done thousands of trial runs with data provided by clients and potential clients. But only a tiny slice of the industry is even in the integration process yet, he said.

“Even those that are on the curve or even ahead of the curve now have to face implementation challenges,” Miscimarra said.

TMC Bonds CEO Thomas Vales said that because TMC runs an alternative trading platform, the infrastructure for providing a PMP solution is basically already in place, but Vales also expressed that integration is a heavy lift.

“Everyone is focused on what they need to do at hand, and then the last piece is going to be trying to integrate it with everyone else,” Vales said.

Miscimarra said an extension granted by regulators wouldn’t surprise him, but warned that firms can’t simply punt the problem down the road if they get one.

“That would be a big mistake,” he said.

The Bond Buyer

By Kyle Glazier

November 07 2017, 3:08pm EST

Hold-to-Maturity CUSIP Exemption Tweaked in New Filing.

PHOENIX – The Municipal Securities Rulemaking Board has filed with the Securities and Exchange Commission an amendment to its proposal to require dealers and muni advisors to obtain CUSIP numbers in private placement deals, tweaking an exemption to reflect typical muni bond structures.

The change to the proposal, which was filed Wednesday after being telegraphed as coming in the briefing on the board’s quarterly meeting late last month, is directly responsive to the concerns of some market participants.

The broader proposal amends the MSRB’s Rule G-34 on CUSIP numbers to make clear that dealers must acquire CUSIPS when orchestrating private placements. CUSIP numbers are six and nine sets of numbers and letters that identify an issuer and each maturity of a municipal issuance. The MSRB said when it proposed the Rule G-34 change that it has always considered it a requirement for dealers to acquire CUSIPS when acting as placement agents. The rule change would clarify that, but dealers have contended that such a requirement would be new.

The proposal also would require that non-dealer municipal advisors be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering.

Among the issues raised by comment letters to the MSRB and SEC was an exception to the requirement that said CUSIP numbers are not needed for direct purchases by banks, their non-

dealer control affiliates and consortiums, where the dealer or municipal advisor reasonably believes the purchaser's intent is to hold the securities to maturity. Issuers and dealers alike had raised concerns that investors would be hesitant to certify that they planned to hold "to maturity," since muni bonds often have much earlier call dates.

Under the revision filed with the SEC, titled Amendment No. 1, that exception now reads that a dealer or MA "may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender."

The MSRB's filing also creates an exception for direct purchases by municipal entities that are not established for the purpose of secondary market trading, such as state revolving funds and bond banks. The Securities Industry and Financial Markets Association responded favorably to the MSRB's changes, though still believes the MSRB should have eliminated references to a time frame for the intergovernmental exemption.

"SIFMA is pleased the MSRB has submitted Amendment No. 1 to its proposed rule change to MSRB Rule G-34," said Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at the dealer group. "The expansion of the exception, which now includes certain intergovernmental purchases of securities, clarifies that these securities that are never intended to be traded in the secondary market do not need to incur the expense of obtaining a CUSIP number. We also appreciate the clarifying language with respect to the intent of the purchasing entity, although we believe the MSRB should have also eliminated the time frame with respect to the purchaser's intent."

The MSRB also announced today that it is revising its Series 52 exam for municipal securities representatives into a specialized knowledge exam in advance of the Oct. 1, 2018 release of the Financial Industry Regulatory Authority's Securities Industry Essentials examination.

"The MSRB worked collaboratively with FINRA during development of the SIE examination to streamline duplicative testing of general knowledge that has traditionally been covered across several representative-level examinations," the MSRB said in a notice. "The MSRB supports the goal to reduce testing redundancies for securities industry professionals and expand opportunities for prospective securities professionals. To that end, the MSRB anticipates filing a proposed rule change with the SEC in early 2018 to require the SIE as a prerequisite to registration as a Municipal Securities Representative, Municipal Securities Sales Limited Representative and Limited Representative-Investment Company and Variable Contracts Product Representative."

By Kyle Glazier

SOURCEMEDIA | MUNICIPAL | 11/08/17 07:22 PM EST

MSRB Files Amendment to Proposal on Obtaining CUSIP Numbers.

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) on November 8 an amendment to its proposed changes to MSRB Rule G-34, on obtaining CUSIP numbers. The amendment modifies the principles-based exception for certain sales of municipal securities.

“SIFMA is pleased the MSRB has submitted Amendment No. 1 to its proposed rule change to MSRB Rule G-34. The expansion of the exception, which now includes certain intergovernmental purchases of securities– clarifies that these securities that are never intended to be traded in the secondary market do not need to incur the expense of obtaining a CUSIP number,” said Leslie Norwood, a managing director and co-head of SIFMA’s municipal division. “We also appreciate the clarifying language with respect to the intent of the purchasing entity, although we believe the MSRB should have also eliminated the time frame with respect to the purchaser’s intent.”

MSRB Filing

SIFMA Letter to SEC (Oct. 2017)

MSRB Provides New FAQ for Municipal Advisors on Continuing Education Requirements.

The Municipal Securities Rulemaking Board (MSRB) is providing a new compliance resource for municipal advisors about continuing education program requirements established by MSRB Rule G-3, on professional qualifications.

These answers to frequently asked questions (FAQs) address questions raised by participants during the MSRB’s October 12, 2017 webinar, which is available on-demand here.

The FAQs and additional compliance resources for all regulated entities are available in the MSRB’s online Compliance Center.

MSRB Releases New Data on Inter-Dealer Electronic Trading of Municipal Bonds.

Washington, DC – New data from the Municipal Securities Rulemaking Board (MSRB) reflect steady and robust use of alternative trading systems (ATSs) by municipal security dealers. The MSRB, which collects municipal securities pricing and other data, released statistics today showing that over the last year, an average of approximately 59 percent of trades between dealers—and 29 percent of par volume traded—were executed on an ATS.

About 90 percent of ATS trades were conducted on transactions of $100,000 or less, an amount that is typically a proxy for retail-sized transaction. When looking at all retail-sized trades in the municipal market, about 25 percent were conducted on ATSs. The data are based on mandatory information reported to the MSRB by municipal securities dealers and are the first official statistics on electronic trading of municipal bonds. Read the MSRB’s Fact Sheet on Inter-Dealer Municipal Trading.

“Our data provide the market’s first view of the extent to which ATSs are used in the muni market,” said John Bagley, Chief Market Structure Officer at the MSRB. “These platforms, which disseminate quotes and expand access to bond inventories, can help improve liquidity and market efficiency. They can also help dealers obtain the best pricing for investors.”

Municipal securities are traded in an over-the-counter dealer market and not on a central exchange.

Dealers, acting as intermediaries for investors, trade in one of three ways: on ATSs, through broker's brokers and directly with each other. Data reported to the MSRB show that approximately:

- 59 percent of inter-dealer trades are executed on an ATS
- 34 percent of inter-dealer municipal trades are conducted directly between dealers
- 7 percent of inter-dealer trades occur through a broker's broker, also known as a voice broker

Cumulatively, municipal inter-dealer trades accounted for 39 percent of all trades and 20 percent of all par traded in the market over the prior 12 months. The remaining are purchases and sales between dealers and customers.

Unlike electronic brokerage platforms available to individual investors, an ATS can be used only by dealers and institutional investors. ATSs provide electronic access to available municipal securities, price transparency and support liquidity.

"Federal Reserve data show that dealer inventories of municipal securities declined about 50 percent over the last decade," Bagley said. "ATSs and broker's brokers can provide a way for dealers to access bids and offers from a wide range of market participants."

The MSRB began collecting information to identify which municipal bond transactions occur on an ATS in July 2016 to determine the extent to which they are used in the market. Historically, dealers have identified in their reported trades when they use a broker's broker. Today, ATS trades, along with broker's brokers trades, are flagged publicly on the MSRB's Electronic Municipal Market Access (EMMA®) website, enhancing transparency about the use of digital municipal bond trading. The MSRB will continue to publish data on inter-dealer trading and ATS trades in the municipal market on an annual basis.

The MSRB regularly publishes municipal market statistics, including market-wide trading activity on a quarterly basis, and an annual Fact Book available here. The MSRB's market statistics on the EMMA website cover trading activity of municipal securities, new municipal issuance and continuing disclosure submissions.

Date: November 9, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Announces Members of Compliance Advisory Group.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its Compliance Advisory Group, which will provide expertise and input to the MSRB Board of Directors to help inform the organization's long-term strategic goal to facilitate industry understanding of and compliance with MSRB rules.

"With the foundational rules for municipal advisors now in place and a landmark new investor protection rule taking effect next year, the MSRB is increasing our commitment to assisting regulated entities with understanding their rules of conduct and developing effective compliance procedures," said Board Chair Lucy Hooper.

“We are bringing together a well-respected group of compliance-oriented senior executives from diverse regulated firms whose insights will help us prioritize the areas where the industry may benefit from further guidance or tools that support compliance.”

Members of the Compliance Advisory Group are:

- Steven Apfelbacher, President, Ehlers & Associates
- Curt de Crinis, Managing Director, C.M. de Crinis & Co., Inc.
- Robert Fippinger, Retired
- Joey Frebes, Senior Vice President, KeyBanc Capital Markets
- Jennifer Hash, Compliance Manager, Zions Bank Capital Markets/Zions Public Finance, Inc.
- Steve Heaney, Director of Public Finance, Stifel, Nicolaus & Company, Inc.
- Ben Juergens, Executive Director in the Legal and Compliance Division, Morgan Stanley
- Leo Karwejna, Managing Director & Chief Compliance Officer, PFM
- Tionna Pooler, President, Independent Public Advisors, LLC

The Compliance Advisory Group will meet periodically throughout Fiscal Year 2018 to discuss potential regulatory topics that may warrant additional compliance assistance, such as enhanced outreach and engagement, new guidance and resources, and improved digital communications for regulated entities.

Date: October 31, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Publishes Vision and Principles for Evolving EMMA.

Washington, DC – As part of a long-term strategic focus to further evolve the Electronic Municipal Market Access (EMMA®) website, the Municipal Securities Rulemaking Board (MSRB) today published a renewed vision for EMMA that reflects its broad market utility and the ongoing information needs of all market stakeholders.

The MSRB established the EMMA website nearly a decade ago to provide retail investors with centralized, online and free access to real-time municipal securities transaction prices and disclosure documents.

“Given the broader market’s strong adoption of EMMA as an industry utility, we believe a vision statement that captures the interests of not only retail investors but also municipal entities, dealers, municipal advisors, institutional investors and the public is important for future development,” said MSRB Executive Director Lynnette Kelly.

The MSRB also has developed a set of guiding principles for EMMA to inform priorities for future enhancements.

EMMA Vision Statement
Promoting transparency in the municipal securities market is part of the mission of the Municipal Securities Rulemaking Board (MSRB). Our Electronic Municipal Market Access (EMMA®) website is designed to support a transparent market and serve the evolving information and decision-making

needs of market participants and the public. EMMA provides free data, disclosures and interactive tools that promote a fair and efficient municipal securities market. Enhancing the availability of pricing-related market data by creating a Central Transparency Platform (CTP) on EMMA and helping market participants comply with regulatory obligations are future-state goals.

EMMA Guiding Principles

- *Promote fair municipal security transactions and support investment and issuance decisions by making comprehensive pricing and disclosure information readily available at no cost;*
- *Facilitate efficient access to and submission of municipal market data, disclosures and information through an interface that is intuitive and dynamic;*
- *Prioritize potential enhancements based on the public interest, cost, benefit and size of target audience; and*
- *Ensure that data storage and delivery are reliable and secure without sacrificing availability.*

"By establishing these guiding principles, we can ensure our investment in EMMA advances market transparency and appropriately balances costs, benefits and the public interest," Kelly said.

In Fiscal Year 2018, the MSRB plans to make noticeable improvements that were informed by a year-long series of focus groups and input from a diverse range of market participants, including:

- Additional third-party data providers and other enhancements
- Improved presentation of information about 1 million individual securities
- Enhancements to EMMA's homepage navigation
- Streamlined login for users with both MyEMMA and MSRB Gateway accounts
- Transition to searchable database of political contribution disclosures

Date: November 1, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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U.S. SEC Close to Forming Group to Scrutinize the Bond Market.

NEW YORK (Reuters) – The U.S. Securities and Exchange Commission has taken the first step in formally establishing an advisory committee to scrutinize the rules of the fixed income market and advise on potential reforms, according to a regulatory filing.

The Fixed Income Market Structure Advisory Committee (FIMSAC) will have a two-year mandate and will likely meet four times a year, with subcommittees potentially meeting more often, the regulator said in the filing, dated Thursday, Oct. 26.

In July, SEC Chairman Jay Clayton brought up the idea of a committee to advise the regulator on the bond market. It was his first major address after joining the agency.

Issues the committee may look at include pre-trade transparency, the complexities of the municipal bond market, and bond market liquidity, SEC Commissioner Michael Piwowar said on Thursday in prepared remarks at a market structure conference.

“There are enough issues within that topic alone to keep the committee members busy for some time,” he said of the liquidity issue. “Including the impact of bond ETFs on liquidity in the underlying securities, the evolving role of the buy-side in the provision of liquidity, and the impact of regulatory and monetary policy decisions on fixed income markets,” he said.

The new committee will have up to 21 voting members that will be appointed by the SEC and will represent a cross-section of the fixed income industry, the filing said. Non-voting members may also be named.

The committee can be established 15 days after the SEC filing is published in the federal registry.

The SEC has had a similar committee in place to advise it on the equity markets since February 2015> That panel, composed of industry experts and academics, has made recommendations to the regulator on a wide range of issues, including regulation of trading venues, market volatility, and broker-dealer order handling practices.

by John McCrank

October 27, 2017

MSRB Holds Quarterly Board Meeting October 2017

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting October 25-26, 2017, where it discussed regulatory and market transparency initiatives aimed at protecting investors and promoting a fair and efficient municipal securities market.

The Board also met with leadership of the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA), hosting SEC Chairman Jay Clayton and Office of Municipal Securities’ Acting Director Rebecca Olsen, and separately, FINRA’s President and CEO Robert Cook and Senior Director of Fixed Income Regulation Cynthia Friedlander. The regulators discussed oversight of the municipal securities market and coordination on cross-market initiatives.

The Board discussed several topics related to its strategic initiatives to support regulatory compliance and further evolve the MSRB’s Electronic Municipal Market Access (EMMA®) website into an essential municipal market utility.

To enhance its engagement with external parties, the Board is taking two key steps. First, to ensure that the MSRB’s compliance support activities leverage the experience and perspectives of regulated entities and other stakeholders, the Board approved publishing a request for comment to solicit public input on how the MSRB can best assist municipal securities dealers and municipal advisors in understanding, implementing and complying with current MSRB rules. In addition, the MSRB is establishing a compliance advisory group that will provide expertise and input to the Board to help inform the organization’s long-term strategic goal to facilitate industry understanding of and compliance with MSRB rules.

“We are committed to incorporating external input from regulated entities and other market participants at every stage of our compliance support activities to ensure they are informed by the diverse perspectives and needs of all stakeholders,” said MSRB Executive Director Lynnette Kelly.

The Board also discussed the MSRB's ongoing work to further evolve the EMMA website into an industry-leading platform that meets the needs of market participants and established guiding principles for future functionality and improving the overall user experience of the website.

The MSRB has been engaged in a year-long series of focus groups that included retail investors, issuers, broker-dealers, municipal advisors, dissemination agents and others to inform its approach. "Nearly 10 years after creating EMMA, we are rethinking and reexamining its future," said Kelly. "Our principles will guide decisions about that path."

At its meeting, the Board discussed several ongoing rulemaking initiatives and, as a result of industry input and MSRB outreach to commenters and other market stakeholders, decided to suspend one proposal, and amend two others.

Minimum Denominations

The Board agreed to suspend rulemaking efforts on its earlier initiative to amend the MSRB rule on minimum denominations of municipal securities transactions and to instead prepare a report addressing the policy issues faced by diverse market participants. The rule generally prohibits dealers from effecting customer transactions below the minimum denominations set by the bond issuer. The MSRB sought comment twice in 2016 on whether additional exceptions would be consistent with the rule's investor protection intent and enhance liquidity for investors that hold positions below the minimum denomination. The MSRB filed a proposed rule change with the SEC in January 2017 but withdrew it in May in light of ongoing concerns expressed in public comments. To continue to evaluate the issue, the Board directed MSRB staff to meet with a diverse group of market participants, with a particular effort to include the views of issuers of municipal securities.

"Our intensive outreach and subsequent analysis helped the Board determine that, given the conflicting views around core issues, the best option for the market is to maintain the existing rule, publish our outreach findings and promote education for all deal team members about the role and effects of minimum denominations in bond documents," said MSRB Executive Director Lynnette Kelly. "The MSRB is grateful to the many groups and individuals who responded to our outreach efforts and shared their thoughtful input on the minimum denominations issue."

Obtaining CUSIP Numbers

In response to comment letters received by the SEC on proposed amendments to MSRB Rule G-34, on obtaining CUSIP numbers, the Board agreed to amend its proposal currently pending before the SEC. The amendment will modify the proposed principles-based exception for sales of municipal securities directly purchased and intended to be held by banks to more accurately reflect that the bonds may be subject to a mandatory tender or other redemption prior to maturity.

Similarly, the Board agreed to extend the principles-based exception to apply to purchases of new issue municipal securities by municipal entities that are not established for the purpose of secondary market trading, such as state revolving funds and bond banks. "The CUSIP proposal has also benefited from multiple rounds of industry and public comments," Kelly said. "The result is an appropriately tailored rule proposal that is workable and promotes a fair and efficient municipal securities market."

529 College Savings Plans/ABLE Programs Additional Data Elements

The third rulemaking initiative that the Board addressed at its meeting was a proposal to revise MSRB Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities,

including the collection of additional data about investment options offered in ABLE (Achieving a Better Life Experience Act) programs and 529 college savings plans. Rule G-45 supports the MSRB's collection of reliable and consistent data about these types of "municipal fund securities" in support of its regulatory oversight. The Board discussed input received on what commenters considered to be the relatively more burdensome aspects of the proposed amendments and, in response, will modify the proposal before filing it for approval with the SEC.

Date: October 30, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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NSAA Responds to AICPA Exposure Draft.

The National State Auditors Association recently responded to the AICPA's Professional Ethics Executive Committee's exposure draft, *State and Local Government Entities (formerly Entities Included in State and Local Government Financial Statements)*. NSAA members generally agree with the proposed interpretation and other guidance.

The response was developed by NSAA's Audit Standards and Reporting Committee, chaired by Randy Roberts, senior technical director with Arizona's Office of the Auditor General.

View the complete response letter.

Tuesday, October 24, 2017

FAF: From the President's Desk.

SO, HOW ARE WE DOING?

Regular followers of the FASB, GASB, or FAF know that stakeholder outreach is woven into our DNA. Our primary mission is to serve investors and other users of financial reports, and we best fulfill that mission through extensive conversations with a diverse group of stakeholders who:

- Make investment or resource allocation decisions
- Prepare, audit, or review financial statements
- Conduct academic research into accounting theory and practice, or
- Care about accounting standards for any other reason.

The standard-setting Boards have these interactions to help identify whether the benefit of a new approach in an accounting standard justifies the costs stakeholders will incur to provide it. Naturally, these are rich—and critical—conversations, but periodically it helps to have a different kind of dialogue: do our stakeholders think we are doing our jobs well, and how can we improve?

STAKEHOLDER SURVEY

Earlier this year we had that dialogue. It took the form of a survey that we sent out to thousands of

stakeholders. More than 1,600 responded, providing a rich trove of data representing the views of a strong cross-section of our stakeholder groups. To those of you reading this column who participated in the survey, thank you!

This was no idle exercise. The survey results were a major topic of conversation for both standard-setting Boards as well as the FAF Board of Trustees. We also briefed the results to the FASB and GASB technical staffs, as well as the members of our key advisory groups: the Financial Accounting Standards Advisory Council (FASAC) and Governmental Accounting Standards Advisory Council (GASAC).

Some of the feedback was encouraging. When asked the simple question, "what is your overall opinion of the FASB/GASB?" both Boards earned high scores. Notably, these results were higher than the scores earned on comparable surveys conducted in 2006. This positive trend suggests better alignment between the work that the Boards are doing and what stakeholders are seeking.

Drilling down, we wanted to learn whether stakeholders think the Boards consistently model the values we consider vital to success: Integrity, Independence, Objectivity, Transparency, Leadership, and Inclusiveness. While both Boards earned similarly good scores for all six, it was notable that Integrity stood out as materially stronger than all the other values. The Boards work hard to maintain this reputation among stakeholders, and it is gratifying to see that reflected in the survey feedback.

WHAT'S MOST IMPORTANT?

The survey put stakeholders through a rigorous series of questions designed to tease out what they value most from the FASB and GASB. From this exercise, three key needs emerged. Stakeholders want the Boards to:

- Create standards that provide useful information to investors and other users of financial reports
- Create standards that improve accounting and financial reporting for organizations
- Write standards that are clear and unambiguous.

Addressing these needs was already an important priority for the FASB and GASB, even before the stakeholder survey. Both Boards were encouraged to see that the very highest scores in the survey (across all categories of questions) came from investors and other users of financial statements. This is an important data point that suggests the Boards are fulfilling their mission for investors and other financial statement users to find standards and financial reporting useful.

Both Boards also want to deliver standards that improve accounting and financial reporting. The recent FASB agenda consultation is an example of the FASB co-collaborating with stakeholders to identify the areas of financial reporting most ripe for improvement. Likewise, GASB's ambitious early-stage work on the Financial Reporting Model addresses a unique opportunity to enhance public sector financial reporting.

Taking opportunities to make standards more simple, clear, and unambiguous is a high priority for the FASB and GASB. The FASB's recently issued standard for hedge accounting is one example of an effort to simplify standards, as is a proposed change to accounting for share-based payments to nonemployees, and several smaller projects. GASB's Financial Reporting Model project also hopes to identify targeted opportunities to simplify reporting for state and local governments.

OTHER INSIGHTS

Survey respondents also expressed interest in having the Boards increase their efforts to educate

stakeholders about how to implement new standards. While a major education initiative is not on the horizon (there are many existing sources of education and training already available to the profession), the Boards have stepped up outreach efforts through Transition Resource Groups, webinars, Implementation Guides, and plain-English resources. Board members and senior staff also hit the road to speak directly to stakeholders at meetings and conferences, and reached a combined audience of 80,000 FASB and GASB stakeholders in 2016 alone.

Lastly, the survey touched on the Financial Accounting Foundation. While the FAF is less well-known to stakeholders, those who are familiar with its roles and functions give high scores for overseeing and protecting the integrity and independence of the standard-setting process.

AN INSPIRATION AND A CHALLENGE

Conducting this survey and digesting its results have been eye-opening experiences for our organization. As closely as our Boards interact with stakeholders across the country, we don't often reframe our conversation to larger questions of Board attributes and performance. The results of this survey are both an inspiration and a challenge: how can we build upon our strengths as an organization, and at the same time engage with stakeholders to improve in the ways they deem most important?

We are grateful to our stakeholders for inspiring our work and for challenging us to do even better.

I welcome your comments on this or any other topic. Please write to me at presidentsdesk@f-a-f.org.

BY TERRI POLLEY, FAF PRESIDENT AND CHIEF EXECUTIVE OFFICER

FALL 2017

FINANCIAL ACCOUNTING FOUNDATION

Amendments to the FINRA Code of Arbitration Procedure for Customer Disputes to Expand the Options Available to Customers if a Firm or Associated Person Is or Becomes Inactive.

Summary

When respondents are no longer in business, recovery of arbitration awards against them often is unavailing. Accordingly, FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes (Code) to expand a customer's options to withdraw an arbitration claim if a firm or an associated person becomes inactive before a claim is filed or during a pending arbitration. In addition, the proposed amendments would allow customers to amend pleadings, postpone hearings and receive a refund of filing fees under these situations.

The text of the proposed amendments can be found here.

Questions concerning this Notice should be directed to:

- Kenneth L. Andrichik, Senior Vice President and Chief Counsel, Office of Dispute Resolution, at (212) 858-3915;
- Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104; or

- Mignon McLemore, Assistant Chief Counsel, Office of Dispute Resolution, at (202) 728-8151.

Comment Period Expires: December 18, 2017

MSRB Letter to SEC Investor Advocate.

MSRB issues letter to SEC Investor Advocate highlights muni market practices that may affect retail investors.

MSRB Announces Board Meeting Topics.

MSRB announces topics to be discussed at Board meeting on October 25-26, 2017.

MSRB FY18 Budget Summary.

Read about the MSRB's mission-driven goals and projected revenues and spending in the FY18 budget summary.

Explore the MSRB's New Compliance Center.

Municipal advisors and municipal securities dealers can now get easier access to rule summaries, compliance advisories and other educational material about municipal market regulations in a new online Compliance Center on MSRB.org. The Municipal Securities Rulemaking Board (MSRB) today launched a series of website enhancements to elevate the prominence and accessibility of compliance information.

The website enhancements support the MSRB's long-term strategic goal to facilitate industry understanding of and compliance with MSRB rules. The MSRB will continue to add new resources to the Compliance Center to support regulated entities' ability to comply with new and existing standards of conduct.

GASB Survey on Note Disclosure Requirements.

The Governmental Accounting Standards Board (GASB) is conducting a survey of users of state and local government financial information regarding certain note disclosure requirements. The survey is part of a GASB research effort to evaluate the effectiveness of those note disclosures. The survey, including background, objective and instructions, can be accessed here. The deadline for completing the survey is Friday, November 17, 2017.

As someone who needs financial information about state and local governments, your views are vital

to the GASB's efforts to improve financial accounting and reporting. If you have any questions about this survey, please contact Pam Dolan at 203-956-3473 or pdolan@gasb.org.

Treasury Issues Priority Guidance Plan for Municipal Bonds.

WASHINGTON — The Treasury Department's priority plan for the 12 months after July 1, 2017 contains rules or guidance on private activity bonds, remedial actions, and bond reissuance.

The 2017-2018 Priority Guidance Plan, published on Friday, covers the period through June 30, 2018 and contains several muni bond regulatory projects that were on the previous 2016-1917 plan, including the public notice and approval rules for private activity bonds under TEFRA (the Tax Equity and Fiscal Responsibility Act of 1982).

The TEFRA rules were proposed on Sept. 28. Muni issuers were allowed to opt to immediately use them between the day they were proposed and their effective date, which still must be determined. Otherwise the rules will be prospectively effective when finalized. Treasury and the IRS have asked for comments on the proposed rules and requests for a public hearing to be submitted to them by Dec. 27 of this year.

The plan also includes another item on the previous 2016-2017 plan — actions that issuers can take to remediate certain tax law or rule violations for tax-advantaged bonds, which include tax-exempt, taxable direct-pay, and taxable tax-credit bonds.

Bond reissuance rules remain on the list from the previous plan. Treasury and the IRS have released several guidance documents on reissuance, which is when the terms of bond issues have been materially changed such that they are considered to be new bonds subject to the latest tax laws and rule. The agencies have been working on a project to modernize and possibly consolidate this guidance.

The plan appears to contain one new item not listed in last year's plan — guidance on private activity bonds. But it does not elaborate on the kind of guidance envisioned.

Also listed on the 2017-2018 pan is guidance on the overpayment of arbitrage that had been rebated. That guidance was in Revenue Procedure 2017-50, which was published on Aug. 25, 2017 and took effect at that time. It extended the deadline for issuers that file claims for recovery of excess arbitrage they inadvertently rebated to the federal guidance.

By Lynn Hume

SOURCEMEDIA | MUNICIPAL | 10/23/17 07:02 PM EDT

SIFMA Submits Comments to SEC on MSRB Clarification of Rule G-34(a)(i) on the Use of CUSIPs.

On October 10, SIFMA submitted comments to the Securities and Exchange Commission (SEC) in response to the Municipal Securities Rulemaking Board's (MSRB) proposed rule filing SR-MSR--2017-06, which would amend MSRB Rule G-34, on CUSIP numbers, new issue and market

information.

SIFMA urged the SEC to institute disapproval proceedings regarding the Proposal in its current form, because the amendment, as filed, is unduly restrictive for market participants and lacks clarity in material respects. If approved, the rule would codify the MSRB's interpretation that municipal securities dealers are required to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases. Additionally, if approved, non-dealer municipal advisors advising on competitive offerings would be required, like dealer municipal advisors under the current rule, to apply for CUSIP numbers.

"SIFMA questions the expressed rationale for the MSRB's proposed rulemaking, as the sole purpose for the original proposal to adopt Rule G-34 was merely to facilitate clearance and settlement of municipal securities; not to define the term 'underwriter'," said SIFMA managing director and associate general counsel Leslie Norwood.

SIFMA Comment Letter

MSRB Filing

Dealers, Issuers, Advisors Call for Changes to CUSIP Proposal.

PHOENIX – Municipal market participants are asking the Securities and Exchange Commission to reject at least parts of a Municipal Securities Rulemaking Board proposal to codify that dealers are required to obtain CUSIP numbers for new issue securities sold in private placement transactions.

Trade groups representing dealers, municipal advisors, issuers, banks, and individual firms weighed in on the proposal in comment letters to the SEC this week.

CUSIP numbers are used to identify securities, and one is assigned to each maturity of a municipal issuance. The MSRB said when it proposed the change to its Rule G-34 that it has always considered it a requirement for dealers to acquire CUSIPS when acting as placement agents, and is trying to clarify that.

Dealers have contended that such a requirement is new.

The MSRB is also proposing to require that non-dealer municipal advisors be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering. Although the MSRB made some tweaks to the proposal during its own comment process, commenters still told the SEC that they see serious problems with it.

The Securities Industry and Financial Markets Association asked the SEC not to approve the proposal, which SIFMA believes would expand G-34 beyond its intent, since dealers acting as placement agents do not "acquire" securities as underwriters do. Dealers have always interpreted G-34 as not requiring CUSIPs if a dealer does not acquire a new issue in a transaction that is not a distribution.

"SIFMA questions the expressed rationale for the MSRB's proposed rulemaking, as the sole purpose for the original proposal to adopt Rule G-34 was merely to facilitate clearance and settlement of

municipal securities; not to define the term 'underwriter,'" wrote SIFMA managing director and associate general counsel Leslie Norwood.

Norwood also told the Bond Buyer that SIFMA would like the SEC to confirm that there would be no retroactive enforcement of this rule change for transactions that already occurred.

Some commenters told the SEC that they see problems with the proposal's exception to the CUSIP requirement. Under the exception, CUSIP numbers are not needed for direct purchases by banks, their non-dealer control affiliates and consortiums, where the dealer or municipal advisor reasonably believes the purchaser's intent is to hold the securities to maturity. SIFMA, the National Association of Municipal Advisors, Government Finance Officers Association, and American Bankers Association all characterized that language as impractical. Munis may have 20- or 30-year maturities commenters pointed out, and usually feature a much earlier call provision.

"We are concerned that the investor will not express present intent to hold the securities 'until maturity' as required by the proposal, and therefore will be deterred from purchasing the security," wrote Emily Brock, director of the GFOA's Federal Liaison Center.

"The terms 'reasonably believe' and 'is likely' are very open to different interpretations and should be further clarified within the rule to allow for MAs and underwriters to use the same standard in all transactions," wrote Susan Gaffney, executive director of NAMA.

Cristeena Naser, vice president and senior counsel at the American Bankers Association's Center for Securities, Trust & Investment, told the SEC it should consider an alternate wording to the exception language that the ABA had discussed with the MSRB.

"The language ABA proffered for the exception included a representation that the municipal securities are being purchased for the purchaser's own account, with no present intent to sell or distribute the municipal securities," wrote Naser. "This language reflects the realities of direct purchase transactions and, critically, that there is no intent that the securities will enter the public market."

The GFOA said in its letter that the SEC should heed the ABA's suggestion. Both the GFOA and SIFMA also commented that the SEC should expand the exception to include purchases by local governments and not just banks.

Muni advisors told the SEC that they object to being required to obtain CUSIPs, a task they view as outside the role of an MA.

"NAMA's position is that no MAs – broker/dealer or independent – should be responsible for securing CUSIPs in competitive deals," Gaffney wrote. "Rather, the underwriter should be the party responsible for obtaining CUSIPs, as they assist with the selling and trading of securities."

Steve Apfelbacher, president of muni advisory firm Ehlers and a former MSRB board member, told the SEC that the proposal would be asking MAs to act outside their roles, potentially inviting controversy as to whether they would be operating in some cases as unlicensed broker-dealers.

"Requiring the municipal advisor to have a conversation with the purchasing entity about the intent of the purchasing entity is a conversation that crosses the line and is an underwriter activity," Apfelbacher wrote. "Once that line is crossed, why are other transaction related conversations between the purchaser and municipal advisor not allowed?"

The SEC could choose to approve the MSRB proposal as written, or it could reject it. If the SEC does

not approve the proposal, the MSRB could choose to make changes to it and re-submit it.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 10/12/17 07:25 PM EDT

MSRB Seeks to Collect Additional Fee Information About ABLE Programs and 529 College Savings Plans.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a proposed rule change to amend MSRB Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities. The MSRB seeks to collect additional information about the transactional fees primarily assessed by programs established under the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE), as well as any variance in account maintenance fee based on the residency of the account owner.

The proposed rule change would require underwriters to ABLE programs as well as underwriters to 529 college savings plans to submit additional fee information, as applicable, beginning with the reporting period ending June 30, 2018. The reporting period ending June 30, 2018 is the first reporting period that underwriters to ABLE programs are required to submit data to the MSRB on Form G-45.

View the filing.

Commentary: Questions Remain as Bond Market Prepares for Markup Disclosure Rule.

As broker-dealers prepare for bond markup rules slated to take effect by May 2018, questions remain about the implications for the fixed income industry as well as how broker-dealers will report trading disclosures to customers.

While few would argue the benefits of having a more transparent, easy-to-use mechanism in place to provide more information to the marketplace, broker-dealers are now tasked with devising a systemic, robust way of determining prices for securities, including values for hard-to-price, illiquid bonds. Yet, guidance from the Financial Industry Regulatory Authority and Municipal Securities Rulemaking Board has been vague, especially with respect to illiquid bonds.

The regulations approved by the Securities and Exchange Commission require dealers to disclose markups and markdowns on fixed income transactions for securities held for no longer than a day. This disclosure, which is calculated from the bond's prevailing market price and expressed as a total dollar amount and percentage amount, is the culmination of a decades-long attempt to bring more transparency to a market where trades are largely conducted via telephone and prices are somewhat nebulous.

The new rules are designed to narrow the mark-up differential between what retail and institutional investors pay for similar trades. Regulators have long supported this oversight, claiming that retail fixed income customers almost never compare prices between dealers. In contrast to other types of

securities, no central marketplace for bond quotes currently exists. As a result, rule makers argue that customers are in the dark regarding the often wide disparities between quotes provided by various broker-dealers. In fact, retail investors sometimes pay more than 2% in markup, while institutional investors only pay about 0.05%. While much of the higher markup for smaller retail trades factors in spreading the high cost of sourcing bonds over less principal, proponents of the regulations claim there is room to narrow the gap between retail and institutional trades.

While retail investors should certainly benefit from increased transparency, not everyone is sanguine about the prospects for these new regulations. Critics argue that investors already have access to price information through the FINRA and MSRB websites, and that markups are a fair way to generate income, just as traditional retail stores selling consumer goods have done for years.

In addition to adhering to the new regulations and navigating the challenge of implementing these new systems, broker-dealers are faced with a number of significant questions. Can markups be done manually? If fully automated, can they accurately tabulate prices for illiquid bonds?

Broker-dealers will now have to disclose markups on all trades for which they have an offsetting transaction that day, including those that do not fall under the category of riskless principal transactions. Transactions that fall outside of the “riskless principal” categorization occur when firms enter into trades that are undertaken as principal but then receive a client order for the same bond during the same day. In this scenario, firms are now required to disclose the markup, however there is often not an interdealer print from which to source the market price. As a result, the firm must resort to waterfall analysis – analyzing “comparable” bonds to determine the market price. This step is difficult to automate, and can provide unreliable data.

Waterfall analysis begins with an examination of trades in a specific bond. For illiquid bonds, data from other trades may not exist, and in this case broker-dealers are directed to use the pricing of “comparable” bonds in their analysis. This presents a significant challenge, as finding “comparable” bonds is much more of an art than a science, and again this process is difficult to automate.

Even more questions about the markup disclosure rule remain. Could these regulations meant to help retail investors cause some firms to stop servicing them because of the increased cost of compliance? How will commission be affected? Will broker-dealers be forced into a basis point model? How can these new systems be implemented within the next 12 months?

While questions certainly remain, markup disclosure rules are sure to change how retail investors and broker-dealers alike participate in the fixed-income market.

The Bond Buyer

By Mark Davies

October 16 2017, 11:38am EDT

Mark Davies is co-founder and chief executive office S3, which provides customized analytics tools that provide transparency into those factors impacting best execution.

FAST Act Modernization and Simplification of Regulation S-K.

FAST Act Modernization and Simplification of Regulation S-K.

MSRB Provides Continuing Education Planning Tool for Municipal Advisors.

To assist municipal advisor firms in complying with continuing education (CE) requirements, the Municipal Securities Rulemaking Board (MSRB) is providing a sample needs analysis checklist and training plan template. The fillable checklist and template is intended to help municipal advisor firms evaluate and prioritize their firm's specific training needs and develop a plan for delivering appropriate training. View the *Developing a CE Needs Analysis and Written Training Plan* document here.

CE requirements for municipal advisor firms are outlined in MSRB Rule G-3 and effective January 1, 2018. The MSRB will host an educational webinar about the CE requirements on **Thursday, October 12, 2017 at 3:00 p.m. Eastern Time.** Register now.

The MSRB plans to provide additional webinars and resources throughout the year as part of its long-term goal to facilitate understanding of and compliance with MSRB rules.

MSRB Releases New MuniEdPro® Courses on Best Execution and Gift-Giving.

The Municipal Securities Rulemaking Board (MSRB) today made available two new online courses for municipal market participants, adding courses covering MSRB rules on best execution and gift-giving to the MuniEdPro® catalog.

One course, **Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance: MSRB Rule G-20**, 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.

The other course, **Best Execution of Transactions in Municipal Securities: MSRB Rule G-18**, demonstrates how municipal securities dealers handle and execute customer transactions in municipal securities, and how to ascertain the best market by applying reasonable diligence and evaluating market conditions.

At the end of the course the learner will be able to:

- Describe fundamental best-execution obligations under Rule G-18;
- Identify considerations for determining best execution;
- Navigate scenarios that challenge the learner to apply a process to achieve best-execution; and
- Understand transaction obligations to Sophisticated Municipal Market Professionals (SMMPs).

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 from October 1 to 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.

BDA's 2016-17 Federal Regulatory and Legislative Priorities and Accomplishments.

The following issue list highlights the BDA regulatory and legislative priorities over the past twelve months and the noted accomplishments achieved through direct Hill and regulator lobbying and by utilizing the BDA membership through meetings in Washington, DC and at BDA roundtables and conferences throughout the year. Thanks to your time and efforts, the BDA continues to expand our presence and impact and thus adds more value than ever to all member firms. Please don't hesitate to contact me with any questions or comments.

Tax Reform and the Municipal Bond Tax-Exemption

After steady focus by the BDA over 8+ years, and while various tax reform proposals have been released by Congressional leaders and the administration, the tax-exemption remains out of scope and off the table – for now. Through direct federal advocacy with state and local government organizations, issuer groups and middle-market broker dealers, the BDA-led Municipal Bonds for America (MBFA) Coalition continues to be the leading voice in Washington to protect the tax-exemption for municipal bonds. The BDA and MBFA coalition will continue to ensure that the tax-exemption remains intact during the legislative process in tax reform this fall and into 2018.

FINRA Rule 4210

BDA was successful in getting FINRA and SEC to file a last-minute amendment to the rule in June 2016 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 does expand the universe of counterparties and trades where the transfer of margin will typically not apply. In May 2016, BDA submitted amendment language at the SEC's request that would have exempted all transactions, including transactions over $10 million, if those trades settled on the next good settlement date. While, this advocacy didn't result in the exact change BDA wanted, getting the $10 million exemption limit is a result of direct BDA advocacy at the SEC, especially. BDA had two fly-ins at the SEC to discuss this rule with Trading and Markets and the accomplishment is the higher "gross open position limit". More recently, BDA was supportive of a delayed effective date and lobbied FINRA directly for the delay, which is a significant and valuable delay for BDA member firms who would have been challenged severely by a December 2017 effective date.

Retail Confirmation Disclosure Rules

As a result of direct engagement, including two joint meetings with MSRB and FINRA and a direct BDA Board Meeting with Robert Cook and Bob Colby at FINRA, Robert Cook specifically sought a BDA amendment recommendation for improving the rule. This proposed amendment was then subsequently sent to SEC for a discussion with Trading and Markets. The accomplishment is in the value of direct engagement in a member-engaged process that delivered a serious policy proposal to

the regulators at their request.

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 conference call with BDA members. The accomplishment is that BDA advocacy resulted in the rule being withdrawn. BDA educated 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.

DOL Fiduciary Duty

While the rule and exemptions are extremely burdensome, 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 excluded a series of assets including municipal bonds, UITs, CDs, and mortgage securities. While municipal bonds are still excluded from the Principal Trading Exemption (PTE), the other assets are not, and the list of assets that can be recommended to retirement investors under the Best Interest Contract Exemption is now unlimited.

Review and Withdrawal of IRS Political Subdivision Rule

The IRS political subdivision rule was proposed in 2016. BDA opposed the proposal. Due to market participant feedback the rule was not approved during the Obama Presidency. The Trump Administration review IRS rule proposals in 2016 and identified the political subdivision rule as a particularly burdensome rule. BDA and MBFA wrote to the IRS confirming that the rule was burdensome, unnecessary, and would harm economic growth. Currently, the proposal is identified as a rule that should be rescinded and this is very likely to occur in the fall of 2017. IRS repeatedly identified the comments of market participants as a reason why it identified this rule as particularly burdensome.

MSRB States Intent to not File Bank Loan Disclosure Concept Release

Although BDA is a proponent of bank loan disclosure, it opposed the MSRB’s concept release on bank loan disclosure. That proposal would have required MAs to be the party responsible for making the disclosure. BDA said it would be preferable to have an amendment to 15c2-12 which would make certain bank loans subject to material event notices. The MSRB stated that due to the comments it received it would not turn the concept release into a rule filing.

SEC Proposes Amendment to 15c2-12 for Bank Loan Disclosure

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, 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, BDA has engaged in direct advocacy with the SEC prior to and after the rule proposal on the subject of bank loans.

High Quality Liquid Asset (HQLA) Legislation/Regulation

Working in tandem with state, local, and issuer groups 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 in the new banking liquidity rule. Additionally, BDA has urged federal banking regulators to amend the rule to allow municipal securities to be defined as Level 2A assets. Legislation to define municipal securities as HQLA (either as 2A or 2B) has bipartisan support and is discussed as a bill with a real chance to pass into law during this current session of Congress.

Potential

SEC Fixed Income Market Structure Committee

In August, BDA recommended four candidates (Craig Noble, Brad Winges, Horace Carter, Mike Marz) for the SEC's Fixed Income Market Structure Advisory Committee. Since that time, we have contacted each SEC Commissioner and the Office of Municipal Securities.

Municipal Bonds for America (MBFA)

In 2016, the MBFA Coalition went through extensive transformation structurally to enhance its advocacy efforts in Washington and beyond. The Coalition instituted formal bylaws, which helped to improve how the coalition operates and functions. Additionally, the Executive Committee was refreshed with new and impassioned leaders, while maintaining the incoming president of the U.S. Conference of Mayors, Steve Benjamin as our Executive Chair. These actions have proved to be valuable as the Coalition continues to receive record turnout and Congressional participation through its Muni Bonds 101 seminars on Capitol Hill, meets with staff members of influence at the White House, and continues to develop and maintain its relationship with members of Congress to preserve the tax-exempt status of municipal bonds. The MBFA completed a data project in 2016 that focuses on key members of Congress on the House Ways & Means and Senate Finance Committees, which demonstrates "by the numbers," the benefits of the municipal tax-exemption in the respective district or state of the member. The MBFA also led an effort in February 2017 that saw 385 organizations and individuals sign 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 begin deliberation on comprehensive tax reform.

Op-Eds

The BDA and MBFA continue to advocate for the value of municipal bonds and the importance they add to American society through various forms, including op-eds. For example: In September 2017, BDA Board Chair Tom Dannenberg was featured in Crain's Chicago Business, commenting on the disbanded White House Advisory Council on Infrastructure and touting the essential role of municipal bonds in financing our nations growth, which drives our economy. Also, in September 2017, MBFA Executive Chair Steve Benjamin, mayor of Columbia, SC, was featured in an article in The Hill that focused on how those faced with the devastation left behind by Hurricanes Harvey and Irma can look to the traditional bond market to rebuild stronger, smarter, and more resilient communities. In November 2016, BDA CEO Mike Nicholas contributed to an op-ed in The Hill, which highlighted the importance of tax-exempt bonds as a viable solution for project finance and was written in response to the piece, "Bonds are Taxes," that argued local governments have the capacity to pay for needed projects out of current tax revenues.

Bond Dealers of America

October 2, 2017

NFMA Summary: GASB 87, New Governmental Lease Accounting Standards.

The National Federation of Municipal Analysts has a committee to review releases and new standards from the Governmental Accounting Standards Board. They have prepared a summary of changes related to GASB 87, New Governmental Lease Accounting Standards.

To download this summary, click here.

House OKs Bill To Equalize Muni Bonds In Liquidity Rules.

Law360, Washington (October 3, 2017, 6:41 PM EDT) — The U.S. House of Representatives passed a bipartisan bill Tuesday that would spread a Federal Reserve rule on the treatment of municipal securities across the financial industry.

Rep. Luke Messer's Municipal Finance Support Act of 2017, which passed on a voice vote Tuesday, would mandate that banks treat otherwise qualified municipal debt as part of their calculations of high-qualified liquid assets under the liquidity coverage rule. That corrects what Messer, R-Ind., called an unintended effect of the liquidity coverage rule that raised borrowing costs for municipalities and put domestic municipal securities against similar foreign municipal securities.

"Frankly, they messed up," Messer said, referring to a prohibition on the treatment of municipal securities as high quality liquid assets.

Messer and others said the legislation is needed to correct a problem with the calculation of the liquidity coverage ratio, a measure of assets that can be easily converted into cash should a financial institution face a sudden cash crunch.

The original liquidity coverage ratio rules by the Fed and other agencies did not allow banks to include municipal securities in their measures of high-quality liquid assets over concerns that those securities would not be as easily sold as corporate debt, Treasury securities or other assets that were included.

After an outcry from municipalities, legislators and others, the Fed revisited the issue in 2016. Its final rule allowed all the banks it regulates with $50 billion or more in assets, plus any nonbank firms designated as systemically important financial institutions, to include debt issued by local governments in their calculations.

The Federal Reserve's final rule is similar to Messer's bill, but the Office for the Comptroller of the Currency and the Federal Deposit Insurance Corporation did not issue updates to their 2014 rule since the Fed changed its high-qualified liquid asset calculations. The bill passed by the House Tuesday would require the regulating agencies to treat all municipal securities that would otherwise meet the rule's HQLA qualifications the same as other financial instruments.

Rep. Bill Huizenga, R-Mich., and others said the continued exclusion of municipal securities from the liquidity coverage calculation would hurt municipalities because their otherwise high-quality securities would be less attractive to financial institutions.

"Excluding municipal securities from treatment as HQLAs will result in higher borrowing costs for

municipalities in times of financial strain for state and local governments," Huizenga said.

Rep. Maxine Waters, D-Calif., one of the Democratic backers of the bill, noted that not every town across the country would benefit from the change, but "for those who do, I think it is important for us to recognize that when we have the opportunity to come together to make borrowing easier for municipalities."

Waters noted that the bill would correct a regulatory split for municipal securities, where the governing law would change depending on the institution.

Messer's bill, which had Republican and Democratic backing, would also require that the Federal Reserve, the FDIC and the comptroller of the currency all issue new regulations to handle the change.

Under the new rule, qualifying municipal securities would have to be treated as at least Level 2B liquid assets, which corresponds to as much of a 50 percent "haircut" on the asset's face value in the calculation.

A similar bill is being considered by the U.S. Senate Banking Committee.

By Michael Macagnone

–Additional reporting by Evan Weinberger. Editing by Jill Coffey.

SEC Continues Public Finance Enforcement Agenda Two Recent Cases Filed: Orrick

Just in the last weeks of August, the Public Finance Abuse Unit of the Enforcement Division of the Securities and Exchange Commission (SEC) announced settlements of securities fraud actions involving a city, an underwriter, a municipal advisor and four individuals. The first case concerned inaccurate descriptions by a city of its prior compliance with continuing disclosure undertakings. This was the second instance of SEC enforcement following closure of the voluntary reporting program known as the Municipalities Continuing Disclosure Cooperation Initiative (MCDC).**[i]** The other case was brought against a financial advisory firm for violation of the Dodd-Frank Act obligation that municipal advisors owe a fiduciary duty to their municipal clients. This is one of the first cases to explore the meaning of fiduciary duty for municipal advisors.**[ii]**

I. Beaumont, CA Finance Authority and O'Connor & Company Securities, Inc. and Anthony Michael Wetherbee (August 23, 2017)

Beaumont, CA (a small city between Los Angeles and Palm Springs) created a joint powers authority (the Beaumont Financing Authority, or BFA) to issue bonds on behalf of a Community Facilities District (CFD) to fund infrastructure for housing developments. The CFD signed numerous Continuing Disclosure Agreements (CDAs) in connection with the BFA's bonds requiring annual reports on many aspects of the developments such as tax delinquencies, description of facilities financed, fund balances, etc. During a period from 1995 to 2015, Alan Kapanicas was Beaumont's City Manager and Executive Director of the BFA, and was responsible for overseeing all of the bond issuances and CDA reporting.

Between 2012 and 2013, five bond issuances by the BFA were solely underwritten by a small firm,

O'Connor & Company Securities, Inc. (O'Connor). According to the SEC, each of the Official Statements (OS's) in these five issues contained a misstatement about the CFD's compliance with its CDAs. The OS's reported one late filing of an annual report, and stated that except for this occurrence, the CFD had not failed to meet its continuing disclosure obligations. The SEC stated that, in fact, the OS's failed to disclose many other late filings, up to 117 days, and that every annual report was missing one or more elements of information required by the CDA.

Had the BFA and the underwriter reported these instances under MCDC, they would have been subject to certain pre-arranged sanctions. Now, the sanctions were more severe:

1. Beaumont Financing Authority entered a cease and desist order, neither admitting nor denying the SEC's charges, in an administrative proceeding based on violations of Section 17(a)(2) and (3) of the Securities Act of 1933 (a charge based on negligent, rather than purposely intentional, action to make a material misstatement of facts to investors). There was no monetary penalty, although compliance with the settlement terms will cost the City some money. The BFA is required to establish policies and procedures and training for securities law and CDA compliance, and for accounting and record-keeping for bond proceeds. BFA is also required to bring all existing CDA filings up to date if not in compliance. These sanctions are similar to but a little more detailed than those applied in the 71 MCDC issuer settlements. A new requirement for BFA (which previously applied to underwriters under MCDC but not issuers) is to engage an independent consultant to provide a review and recommendations to the BFA on the matters subject to new policies and procedures. BFA must comply with such independent consultant's recommendations, subject to appeal to the SEC. As with the MCDC settlements, BFA must disclose this settlement in its OS's for five years.

This action reinforces the importance for all issuers to make sure that they have policies and procedures in place to comply with their continuing disclosure agreements.

2. Alan Kapanicas was sued in Federal District Court based on the facts described above, alleging violations of Sections 17(a)(2) and (3). The SEC only released the Complaint in the action, but its press release indicated that, without admitting or denying the charges, Kapanicas agreed to the entry of permanent injunctions against violating Sections 17(a)(2) and (3) and against participating in any offering of municipal securities. He also agreed to pay a civil fine of $37,500.

This post-MCDC action is significant in that no individual officials were included in any of the 71 issuer settlements. This is consistent with recent SEC policy in which individual officials are included in virtually every new enforcement action involving issuers, and who are usually required to pay some civil fine. Also, as noted above, the sanctions against the issuer entity were somewhat more severe and costly than the issuer would have faced if it had reported under MCDC.

3. O'Connor and its lead underwriter, Anthony Wetherbee, settled administrative proceedings brought under Sections 17(a)(2) and (3), several MSRB Rules, and a section of the 1934 Act which prohibits licensed dealers from violating MSRB Rules. Without admitting or denying the SEC's charges, which were based on failure of adequate diligence in determining if the BFA's description of its CDA compliance was accurate, the following sanctions were imposed:

A. O'Connor is required to engage an independent consultant to review its policies and procedures, and comply with its recommendations. This is similar to the MCDC settlements. O'Connor agreed to a cease and desist order, was censured and was required to pay a civil fine of $150,000, which is larger than it would have paid under MCDC.

B. Weatherbee agreed to cease and desist from violating Section 17(a)(2) or (3), and is barred for 6

months from association with any municipal dealer, any investment company, or participating in any issuance of penny stocks. He also has to pay a civil fine of $15,000. None of the 72 underwriter settlements in MCDC included any individuals.

II. Municipal Financial Services, Inc.; Rick A. Smith; and Jon G. Wolff (August 24, 2017)

The SEC brought an administrative action against Municipal Financial Services, Inc. (MFS), a registered municipal advisor (MA) based in Oklahoma, and two of its principals, Smith and Wolff. MFS was hired by an unidentified city in 2011 (City) to act as its MA and to be responsible for preparing the City's OS's for bond offerings, reviewing and commenting on all legal documents for bond issuances, and for assisting the City in compliance with its CDAs.

The City had three bond issues from 2005, 2008 and 2012 which all required annual reports to be filed within 180 days of the end of its fiscal year. In a 2013 bond issue, the City's bond counsel (a sole practitioner now retired) wrote a CDA providing for a 360 day deadline to file its CDAs, and which purported to amend the three prior CDAs to move to a 360-day reporting deadline.

The SEC alleged that MFS violated its fiduciary duty to the City by failing to advise the City that moving to the new 360-day reporting deadline violated the provisions of the 2005, 2008 and 2012 CDAs and that it did not advise the City until three years later to notify bondholders of those prior issues that the CDA deadline had been changed. These actions (carried out by Smith and Wolff) violated Section 15B(c)(1) of the 1934 Act which requires MAs to act in a fiduciary capacity with their clients, and to use reasonable care to avoid misleading clients.**[iii]**

MFS was censured, agreed to cease and desist from further violations of Section 15B(c)(1), and paid a civil fine of $50,000. MFS was also ordered to establish written policies and procedures and periodic training on the fiduciary obligations owed to municipal clients. Smith and Wolff each agreed to pay a civil fine of $8,000.

There are a couple of interesting points in this case. One is that the SEC pointed out that based on advice given in a 1995 letter to the National Association of Bond Lawyers, it is very difficult for an issuer to unilaterally amend a CDA. The SEC strongly implied (although it did not say expressly) that this City's retroactive amendment of its 2005, 2008 and 2012 CDAs was improper, substantively as well as procedurally, since the City's bond counsel did not follow the provisions in those CDAs to make an amendment. Essentially, MFS was sanctioned for failing to tell the City that it could not make such amendments.

Another point to note is that this case was based on the fact that MFS's failure to properly advise the City was serious because investors in the three older bond issues were harmed by not getting their CDAs in the time frame originally promised to them. One commentator raised the question of whether the SEC was trying to do another "round-about" regulation by suggesting that an MA owed a duty to investors, but others point out that since in this case MFS had an express contractual duty to the City to help it with CDA compliance, the outcome was not surprising.

by Roger Davis, Robert Feyer, and Alison Radecki

September 27, 2017

Orrick, Herrington & Sutcliffe LLP

[i] Under MCDC, issuers and underwriters were given the opportunity to voluntarily report to the SEC instances in which the issuer erroneously stated in an Official Statement that it had materially complied with all of its obligations under continuing disclosure agreements for the past five years.

The SEC offered a pre-arranged suite of sanctions, relatively mild, for those who participated in the program, but promised harsher penalties for those who did not. Ultimately the SEC settled with 72 underwriting firms and 71 issuers under the MCDC program.

[ii] For more background on the SEC's municipal enforcement activities, please access the recent Orrick – Bond Buyer Webinar.

[iii] This action was based solely on the statutory provision enacted by the Dodd-Frank Act. Subsequent to the time covered by this action, the Municipal Securities Rulemaking Board enacted Rule G-42 which spells out in more detail the duties and responsibilities of municipal advisors to their clients.

Changes to MSRB Fees for Municipal Advisors.

In support of our ongoing efforts to more fairly and equitably assess fees among regulated entities, the Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) amendments to MSRB Rule A-11, on assessments for municipal advisor professionals, to increase the annual municipal advisor professional fee to $500 from $300.

The municipal advisor professional fee will be assessed based on the number of associated persons for whom the firm has filed a Form MA-I with the SEC as of January 31 of each year and who are qualified as a municipal advisor representative in accordance with MSRB Rule G-3. The first invoice at the new fee level will be sent to firms in April 2018 for payment by April 30, 2018.

In 2015, the MSRB conducted a holistic review of the organization's funding sources, which is informing efforts to more equitably assess fees among regulated entities. When the first changes stemming from that review were approved in 2015, we did not increase the municipal advisor professional fee to allow municipal advisors time to adapt to regulation post Dodd-Frank. We noted at the time that we would revisit the amount of the fee, considering the substantial costs associated with developing and maintaining a regulatory regime for municipal advisors.

We believe the fee assessment of $500 per municipal advisor professional is an important step toward supporting the organization's long-term financial sustainability and ability to fulfill its Congressionally mandated mission to protect the integrity of the $3.8 trillion municipal securities market. Going forward, we will continue to periodically reevaluate all fees to strive to fairly and equitably allocate fees across the entities that fall under the organization's regulatory mandate.

View the regulatory notice.

View the rule filing.

SIFMA Seeks Volcker Rule Exemption for Tender Option Bonds.

SIFMA called for the exemption of tender option bonds from Volcker rule restrictions in a comment letter to the Office of the Comptroller of the Currency on revisions to the post-crisis financial regulation. "Treating these TOBs and other similar financing vehicles as covered funds is inconsistent with the statute and ultimately results in higher financing costs for US businesses,"

SIFMA wrote.

Read SIFMA's comment letter.

MSRB: Issuers Shouldn't Choose Underwriter's Counsel.

PHOENIX – Issuers should not be the ones selecting underwriter's counsel in bond transactions because the practice, while common, gives rise to serious conflict of interest concerns, the Municipal Securities Rulemaking Board said Thursday.

The MSRB noted that the practice of issuers either selecting or influencing the selection of underwriter's counsel for a transaction remains widespread, despite long-held concerns previously raised by the board. The MSRB was worried about the issue as far back as 1997. In 1998, it issued a notice stating that there were "demonstrated problems regarding the practice" and that underwriters must feel free to select their own lawyers in transactions.

"This practice gives rise to actual or potential conflicts of interest in the counsel's representation of the underwriter, and calls into question counsel's ability to carry out its responsibilities with the necessary degree of independence from the issuer, to act with undivided loyalty and to be free from conflicting allegiances in providing legal counsel to the underwriter," the MSRB said in the advisory notice it released Thursday. "Issuer designation of counsel also may compromise an underwriter's ability to retain counsel that has the requisite expertise and experience with the federal securities laws, and the resources needed to assist the underwriter in fulfilling its due diligence responsibilities."

The Government Finance Officers Association's current best practices on underwriter selection do not address whether issuers should avoid designating the underwriter's counsel, but note that issuers and their municipal advisors inherently sit on the opposite side of the deal table from underwriters.

"The MSRB is responding to the continuation of this practice with this market advisory to restate its concerns that investors may be harmed in a variety of ways in any offering process that does not properly utilize the review, guidance and counseling of an independent, competent and appropriately critical underwriter's counsel," the advisory concluded.

"To minimize conflicts of interest and to reduce any influence by an issuer that may call into question the qualifications or independence of the underwriter's counsel, the MSRB suggests that an issuer refrain from involving itself in the underwriter's selection of counsel or that an issuer's involvement in such process be minimal and limited to concerns regarding competency, conflicts of interest and the avoidance of excessive costs."

By Kyle Glazier

SOURCEMEDIA | MUNICIPAL | 07/27/17 07:08 PM EDT

Lawyers Critical of MSRB Guidance.

CARLSBAD,CALIF. – The Municipal Securities Rulemaking Board should be focusing its time and resources on being more efficient, rather than commenting on issues over which it has no authority, lawyers said Monday.

Their comments came during a panel discussion on market disclosure and pricing transparency at The Bond Buyer's California Public Finance Conference.

The panel discussion turned to recent MSRB activities and the board's associate general counsel Margaret "Peggy" Blake was among the speakers.

Her fellow panelists took some issue with the MSRB's recent issuance of a notice aimed at issuers, urging them not to selectively disclose information only to certain investors. While the MSRB does have a federal mandate to protect issuers, it has no authority to regulate their activities.

The notice, published on Sept. 13, warned that issuers face the potential for fraud charges if known material information is omitted from required public disclosures. Information generally has been deemed to be material under case law if there is a substantial likelihood that it would be considered important by a reasonable investor making an investment decision.

Dave Sanchez, a senior counsel at Norton Rose Fulbright, said he applauded the MSRB for its efforts to evaluate the efficiency of its current rulebook, a project the board began this year after finally finishing a lengthy list of federally-mandated rulemaking.

But Sanchez added that the board shouldn't be collecting fees from regulated broker-dealers and municipal advisors and then spending time and money talking about issuer behavior rather than undertaking the comprehensive review of its rules that the board has underway.

"If you have a kitchen renovation in progress, you shouldn't be out mowing the neighbor's yard," Sanchez said.

Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association reacted to that statement with an "Amen."

The directive coming down from the Trump administration emphasizes evaluating current rules for ways to make them more efficient, she said, adding, SIFMA supports those efforts.
"We applaud any push toward efficiency," said Norwood.

Bill Oliver, the industry and media liaison for the National Federation of Municipal Analysts, expressed a less forceful opinion of the MSRB notice. But he noted that warning issuers against disclosure can have negative impacts.

"Anytime you tell people they should be careful about what they tell investors, it always leads to less information," he said.

Blake said that the MSRB's notice was merely guidance and in no way prescriptive, and had actually been well-received.

"Believe it or not, we have gotten a lot of positive feedback," she said.

Panelists also discussed other disclosure issues, including the SEC's proposal to amend its Rule 15c2-12 in a way that would require issuers to file material event notices to EMMA when they incur a material financial obligation such as a bank loan, as well as when debt becomes subject to certain

provisions such as one that calls for an acceleration of payments.

Norwood reiterated dealer concerns that such information is sometimes difficult for underwriters to find, leaving them potentially liable if they underwrite bonds with shoddy disclosure.
Oliver said such information clearly needs to be disclosed.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/27/17 07:06 PM EDT

FINRA Proposed Rule Change - Section 13 of Schedule A.

Proposed Rule Change to Amend Section 13 of Schedule A to the FINRA By-Laws Relating to the Review Charges for Communications Filed with or Submitted to FINRA

Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Section 13 of Schedule A to the FINRA By-Laws ("Section 13") governing the review charges for communications filed with or submitted to FINRA's Advertising Regulation Department (the "Department") to account for upcoming technological changes that will allow websites to be filed in native format.

Text of Proposed Rule Change.

The Path Forward on HQLA.

PHOENIX- Legislation defining readily tradeable, investment-grade municipal securities as high quality liquid assets under federal banking rules may have a window to move forward fairly soon, according to market groups watching developments on Capitol Hill.

The Municipal Finance Support Act of 2017, H.R. 1624, sponsored by Rep. Luke Messer, R-Ind., was reported out of the House Committee on Financial Services Sept. 12 after receiving unanimous support in late July.

The bill is a response to rules adopted by the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corp. in 2014. 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 ease their rules as well.

Messer's bill has been amended to require the regulators to treat munis that are investment grade and actively traded in the secondary market as level 2B HQLA, the same level as mortgage backed

securities, down from its original requirement that they be treated as level 2A securities on the same level as sovereign debt.

This change reconciles it with a Senate bill, S. 828, sponsored by Sen Mike Rounds, R-S.D. The House approved legislation making some munis 2A assets last year, but it never advanced in the Senate.

“The House is expected to act on the bill soon,” the National Association of State Treasurers said in a legislative update posted for members Sept. 17. “The House bill as reported out of committee now conforms with the Senate 2B legislation, which increases the likelihood that the bill could be signed into law.”

The NAST update said that S. 828, currently awaiting action by the Senate Banking Committee, is considered likely to come up when the committee next takes action on several financial services-related bills.

“A unanimous vote in support could clear the way for the bill to be ‘hotlined,’ a Senate procedure that would allow for expedited consideration and passage,” the NAST update said.

The question now remains when and if the House will act on the bill now that it is awaiting floor action. It could be considered as a stand-alone bill, or it could end up being attached to a larger bill, such as tax reform legislation.

Emily Brock, director of the Government Finance Officers Association’s federal liaison center, said her sense is that lawmakers might be inclined to deal with bipartisan legislation like Messer’s bill before the anticipated difficulty of a tax reform showdown. Brock said that when GFOA last met with legislators on this issue, the energy was very positive.
“This is a light lift,” she said.

The House’s agenda is ultimately determined by House Speaker Paul Ryan, R-Wisc., and other Republican leaders.

The Bond Buyer

By Kyle Glazier

09/18/17

BDA Comment Letter to the DOL: Supporting an Extended Transition Period

The DOL published a proposed rule to extend the transition period for the Department of Labor Fiduciary Duty Rule. The proposal would delay the applicability dates for the Best Interest Contract Exemption and the Principal Trading Exemption until July 1, 2019.

BDA Comment Letter

BDA submitted a comment letter on Friday, September 15th. The letter can be read here. The letter references and echoes the letter BDA sent to the DOL on August 7th. Both letters support an extended transition period.

BDA urges the DOL to continue its review per the directive of the February 2017 Presidential Memorandum and to coordinate with the SEC on a harmonized best interest standard of care for all retail investment accounts.

Bond Dealers of America

September 18, 2017

MSRB Announces Results of Qualifying Examination for Municipal Advisors.

Washington, DC – More than 3,000 individuals at 505 municipal advisor firms across the country are now qualified to provide advisory services to state and local governments and other clients following implementation of the first mandatory qualifying examination for municipal advisor professionals, the Municipal Securities Rulemaking Board (MSRB) announced today.

"Municipal advisors play an important role in the municipal securities market as trusted experts whose advice can have a profound impact on the financial health of state governments, local communities and other municipal entities," said MSRB Executive Director Lynnette Kelly. "The MSRB's exam is designed to ensure that only those individuals who can demonstrate their knowledge of regulatory standards of conduct and current market practices can hold themselves out as municipal advisor professionals."

Effective September 12, 2017, the MSRB's Municipal Advisor Representative Qualification Examination (Series 50 exam) is a required baseline test of competency for professionals who provide advice on the issuance of municipal securities or use of municipal financial products.

Continue reading.

Date: September 21, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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Commentary: Key Takeaways from the SEC's Post-MCDC, Beaumont Cease and Desist Order.

While many would prefer the SEC's MCDC Initiative be a distant memory, on August 23, the SEC's Chief of the Enforcement Division's Public Finance Abuse Unit reminded issuers and underwriters alike that "[i]ssuers and underwriters will continue to be held accountable when they fail to provide investors with an accurate picture of past compliance with continuing disclosure obligations." SEC Press Release, Muni Bond Issuer and Underwriter Charged With Disclosure Failure, 8/23/2017.

In an Order Instituting Cease and Desist Proceedings, Making Findings and Imposing Sanctions and a Cease and Desist Order ("Order"), the SEC followed through on its commitment to focus on market participants that had not voluntarily self-reported under the MCDC initiative. The SEC's press release highlighted that the Municipal Finance Authority in Beaumont, California ("Beaumont"), its

then-executive director and the underwriting firm behind certain offerings had settled charges that Beaumont had made false statements about compliance with continuing disclosure obligations and the underwriter failed to conduct reasonable diligence.

This Order (and the O'Connor Order demonstrate that the SEC is not done focusing on disclosure by issuers and diligence by underwriters and that the penalties for parties that did not voluntarily self-report under MCDC will be more severe.

In its Legal Discussion, the Order set forth the legal basis for holding the issuer accountable and, as emphasized below, noted that "negligence is sufficient to establish violations." The Order provided, in part: Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2). Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities … directly or indirectly … to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988). Order at para. 17. Emphasis Supplied.

The SEC held the issuer, the City Manager and the underwriter accountable and, in each instance, imposed "undertakings" well beyond what was required of those that submitted and settled with the SEC under its MCDC initiative.

For issuers and their officials, there are several takeaways from these Orders that are beyond what was required by those that voluntarily submitted and were subject to Orders under the MCDC initiative:

- Imposition of undertakings that require, amongst other things, the retention of an independent consultant and to follow the recommendations of the consultant.
- An individual being held accountable — $37,500 fine and barred from participating in any future muni bond offerings (as cited in the SEC Press Release).

There is another message that shouldn't be overlooked. Accountability seemingly begins and ends with the issuer and underwriter even where, as in Beaumont, a dissemination agent was engaged by the issuer. A review of outstanding Official Statements shows Beaumont engaged a dissemination agent. While the Order does not discuss the role of the dissemination agent, it does highlight missed and late filings, the failure of the district to properly disclose the same and the fact that the Executive Director was responsible for reviewing and approving the content of the OS.

While many dissemination agents do a fine job filing on behalf of the obligated party, the mere fact that an obligated party uses a dissemination agent does not absolve it from having policies, procedures and practices to ensure obligations are met and, where not met, properly discussed. Over-reliance on a dissemination agent can be fraught with risk. The parties cannot simply point to a dissemination agent as being responsible to fulfill its legally required obligations.

What's an issuer and obligated party to do? As highlighted in our May 25, 2017 commentary and below, the MCDC Issuer Cease and Desist Orders ("MCDC Orders") and the GFOA's August 24, 2016 Alert to Members ("GFOA Alert") provide excellent starting points. In addition, the

engagement of an *independent third party* to review CDA obligations and actual filings can be a critical part of your policies, procedures and practices. Having the party responsible for making the filings (be they an employee of the obligated party or a dissemination agent) conduct such a review puts that party in the awkward position of self-reporting their own failures where a filing is late or missed and, as some have opined, might be considered a conflict of interest.

The MCDC Orders, in part, require issuers to:

- Comply with existing continuing disclosure undertakings, including updating past delinquent filings and;
- Establish policies and procedures and periodic training regarding continuing disclosure obligations within 180 days.

The GFOA Alert provided "essential practices" that, combined with the SEC Orders, can serve as best practices for Issuers. It provides, in part:

- Understanding and discussing the issuer's policies and procedures on disclosure.
- Knowing who within the issuer is filing what, when and where.
- Knowing what the issuer has promised to do in its continuing disclosure agreement.
- Being aware of what the issuer has posted on EMMA.
- Recognize that each official statement must include a statement about whether the issuer failed to materially comply with previous commitments within the past five years.

As issuers and obligated parties digest the Beaumont Order in conjunction with the MCDC Orders and their obligations under 17(a)(2), it is prudent they contemplate a Disclosure Management policy and practice to ensure an understanding of filing obligations, an understanding of what has or has not been filed properly and a process to be alerted of current filing obligations. Any Disclosure Management policy and practice should include an independent review to confirm filings are done properly.

The Bond Buyer

by Gregg Bienstock

September 05 2017, 2:11pm EDT

Gregg Bienstock is chief executive officer and co-founder of Lumesis Inc.

MSRB Solicits Input on Retrospective Review of Primary Offering Practices.

Washington, DC – As part of its ongoing commitment to reviewing existing rules in light of an evolving municipal marketplace, the Municipal Securities Rulemaking Board (MSRB) today published a concept proposal to solicit input from market participants on MSRB rules on primary offering practices.

"Issuing a concept proposal is an important way for the MSRB to collect information that helps us understand the varied perspectives of municipal market participants and determine whether there are in fact issues to be addressed, either by advancing a rule proposal or considering alternative approaches such as providing guidance," said MSRB Executive Director Lynnette Kelly.

Today's concept proposal seeks insight on evolving primary offering practices and whether the current rules continue to operate effectively or whether changes to MSRB Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offerings, may be warranted.

"After a series of very helpful informal discussions with a diverse range of market participants, the MSRB came away with several questions that we want to put to the market more generally," Kelly said. "Our goal is to learn what, if any, regulatory proposals, guidance or educational resources may be beneficial to enhance the fairness and transparency of the primary offering process for municipal bond investors, issuers and syndicate members."

Comments on the MSRB's concept proposal should be submitted no later than November 13, 2017. View the concept proposal.

Date: September 14, 2017

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NFMA Comment: GASB Proposed Statement No. 3-30, Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements.

The National Federation of Municipal Advisors has responded to the Governmental Accounting Standards Board's Invitation to Comment: Proposed Statement No. 3-30, Certain Disclosures Related to Debt, Including Direct Borrowings and Direct Placements.

To read the letter, click here.

Bond Dealers of America Advocacy: 3rd Qtr – 2017

Read the BDA Advocacy Priorities.

September 5, 2017

MCDC Architect Chan Makes Muni Enforcement Predictions.

PHOENIX – The Securities and Exchange Commission and Department of Justice are primed to prosecute high-ranking public officials, bond lawyers, and other non-traditional targets of municipal bond enforcement cases, according to a former SEC enforcement division lawyer.

That is the prediction of Peter Chan, a lawyer in the Chicago office of Morgan Lewis who spent some 20 years with the SEC, including as chief muni enforcer in the commission's Chicago regional office.

Chan was the architect of the SEC's Municipalities Continuing Disclosure Cooperation initiative,

which incentivized issuers and dealers to self-report instances in which issuers made misleading statements about their past compliance with continuing disclosure agreements.

In a lengthy interview with The Bond Buyer, Chan said he believes there has been no slowing of momentum for muni enforcement since MCDC's end and that regulators may become even more aggressive going forward.

"I think it is quite safe to say that there continues to be consensus and momentum on SEC enforcement of the municipal securities market," Chan said.

While some market participants had wondered if the commission's attitude might shift with the departure of former chair Mary Jo White, known as an aggressive criminal prosecutor, Chan said that it appears new SEC chair Jay Clayton is on board with the enforcement division's agenda and with projects like the MCDC initiative.

"Reading the tea leaves, he does not have any problem with the initiative," Chan said.

Republicans like Clayton have been historically receptive to the idea of holding individuals accountable, Chan said, which is in line with what the SEC has been trying to shift towards for several years in either charging firm or issuer officials or explaining why it declined to do so.

"If entities commit fraud that means individuals commit fraud," Chan said. "There will be a focus on that."

The SEC has sharpened the tools it uses to hold individuals to account. The commission can charge individuals for "causing" others to violate securities laws, and it can also use the doctrine of "control person liability," which the SEC deployed to charge the mayor of Allen Park, Mich. in November 2014. Control person liability comes from section 20(a) of the Securities Exchange Act of 1934 and provides that an individual may be liable for the securities law violations of persons over whom they exercise control.

"The Public Finance Abuse Unit can use that to go up the chain," Chan said. "Not only will they focus on individuals, they will look into how far up they can go. They're not going to want to go after just a low tier bureaucrat."

The SEC has charged a number of public officials over the years, but that has rarely extended to the upper floors of city hall.

The commission will not seek to charge an individual that way every time, Chan said, but will always be asking the question of whether it should be and taking a "holistic" view of every case.

"They basically ask a very holistic question: who are the people who contributed to the disclosure problems?"

Chan said he has observed an increasing willingness of the SEC to go after "gatekeepers" such as auditors in other markets, and expects that trend to carry over to the muni market. The SEC last year charged a New York-based audit firm and one of its senior partners in connection with municipal bond offerings by the town of Ramapo, N.Y. Bond lawyers might increasingly become targets of prosecution in some instances, too, Chan warned.

Last month, when the SEC charged Oklahoma-based municipal advisor Municipal Finance Services with breaching its fiduciary duty, the order mentioned that one offending continuing disclosure document was produced by bond a bond lawyer "who is now retired and no longer practicing law."

Chan said that could be read as a justification from the SEC as to why it was not pursuing charges against the lawyer, though it could have been contemplating them.

“I thought that was a bit of a hint,” Chan said. The SEC also charged the founder and president of the firm as well as its vice president.

When it comes to battling public corruption, the DOJ might be looking to increasingly take a page out of the SEC’s playbook, Chan added. While courts have ruled that traditional criminal public corruption charges require evidence of a quid pro quo, the securities laws, which can also be the basis of criminal charges, do not.

Prosecutors merely have to show that an official withheld a material fact, including a conflict of interest. Prosecutors could make the case that an official should have disclosed a gift from, or financial relationship with, a party to a bond transaction, Chan said.

“The DOJ is going to get pretty interested in using federal securities law to go after public corruption,” Chan said.

As for his own creation, the now-complete MCDC, Chan said he believes the SEC is likely to view it as a “resetting of the table.” The program created a major market dialogue and forced issuers to confront their past errors, and the SEC will likely expect that their message was received, Chan said.

“I don’t think the SEC will be very receptive to issuers claiming a lack of sophistication,” he said, adding that disclosure violations taking place after the MCDC’s 2014 reporting period are likely going to see harsh sanctions.

The MCDC may be a major intelligence tool for the enforcement division going forward, because so many deals were reported. The SEC has computer analytical tools to allow it to sift through that data and find things it might not otherwise have discovered, he said. The commission has used big data analytics in other markets and the public finance unit has those tools now as well.

“The are likely applying that same type of big data analytics to the treasure trove of data they received,” Chan said.

The Bond Buyer

By Kyle Glazier

Published September 08 2017, 1□37pm EDT

SIFMA Submits Comments to SEC on Proposed New MSRB Fee for Dealers Underwriting 529 Plans.

On August 25, SIFMA submitted comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board’s (MSRB) proposed rule change to assess an underwriting fee on dealers that are underwriters of 529 college savings plans. SIFMA and its members strongly urged the SEC to institute disapproval proceedings regarding the filing in its current form, and does not believe the proposed fees as currently structured are appropriate, as they would stifle competition.

SIFMA Comment Letter

Commentary: Don’t Be Selective About Disclosure.

A fair and efficient municipal marketplace depends on a shared commitment of all participants to disclose information fairly, equitably and in the public domain.

Bond issuers, for their part, support market integrity by disclosing certain important information to investors throughout the life of a bond. This information helps investors and others make informed decisions. Selective disclosure—an often-unintentional sharing of material, nonpublic information to a select group of investors—creates an information imbalance, giving certain market stakeholders access to more information than others.

As the regulatory agency responsible for preserving market integrity, the Municipal Securities Rulemaking Board encourages issuers to make important current information available to all. Our Electronic Municipal Market Access (EMMA®) website is the official nationwide repository for free public access to material information about municipal securities. It provides the means for full and fair municipal bond disclosure, and a simple means for issuers to address any inadvertent selective disclosure.

Federal regulations prohibit selective disclosure by public companies. Regulation FD —for “Fair Disclosure”—prohibits public companies from making intentionally selective disclosures and requires prompt public disclosure following any inadvertent selective disclosure. Issuers of municipal bonds are not subject to any similar regulations but can support market integrity by ensuring that all market stakeholders receive the same information at the same time. Adding a voluntary filing on EMMA is a simple step to ensure that information that may have been shared in a private setting is promptly available to the public at large.

Selective disclosure often occurs unintentionally. Municipal officials who stick around at the end of a town hall meeting with a few constituents and casually mention additional information about bond projects not raised during the public meeting could be inadvertently making selective disclosure. It also can happen when issuers or members of their deal team host roadshows, investor conferences and one-on-one investor calls or meetings. These events themselves are not inherently problematic, but they can become so if the information shared is material to all bondholders and not made public.

Selective disclosure in the municipal market can be more troubling in instances of credit distress, when some stakeholders’ interests may be at odds.

Take, for example, Puerto Rico, which is confronting an ongoing debt crisis with many competing interests at stake. In August 2014, the Puerto Rico Power Authority (PREPA) pledged to provide monthly cash reports, vendor agreements, budgets, and other information to owners and insurers controlling over 60 percent of its outstanding revenue bond debt. In exchange, the participating creditors that received confidential information were required to sign confidentiality agreements and waived their rights to sue PREPA for a period of time. Other stakeholders were not part of this arrangement, putting them at an information disadvantage.

The MSRB recommends that municipal bond issuers carefully manage their response to both intentional and accidental instances of selective disclosure. Issuers may open themselves up to federal fraud charges if they make material omissions or misstatements in their public disclosures. If something was material enough to mention in private, it may well have merited public disclosure.

Some market observers may fear that increasing regulatory attention on selective disclosure could cause issuers to choose to limit their contact with bondholders and ultimately provide less information to the marketplace. Fortunately, the experience of the corporate market under Regulation FD shows that corporations have become more transparent in the wake of greater regulatory focus on selective disclosure rather than less. Academic studies have tracked an increase in the frequency of companies providing earnings forecasts and continuing to hold conference calls, on an open basis, that were previously closed.

The MSRB provides resources to facilitate timely and complete disclosure of material information to bondholders by issuers on its EMMA website. Among the free tools available on EMMA are an email reminder service for recurring financial disclosures, customized issuer homepages to collect and display all disclosures from an issuer in a single page, and a dedicated submission process for voluntary disclosure of information about bank loans and other debt.

The MSRB also offers direct assistance to state and local government issuers to advance their knowledge on disclosure best practices through in-person educational events, webinars and an online education center.

When it comes to municipal market disclosure, it's better to be inclusive than selective.

The Bond Buyer

By Lynnette Kelly

Published September 13 2017, 9:50am EDT

Lynnette Kelly is executive director of the Municipal Securities Rulemaking Board.

MSRB Publishes Market Advisory on Selective Disclosure.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a market advisory to increase awareness among issuers of the importance of disclosing material information fairly, equitably and in the public domain. The practice of "selective disclosure" creates an information imbalance that favors a limited group of bondholders, which may include analysts for investment banking firms, investment advisers or institutional investors, who are given access to material information that others do not have.

"Issuers of municipal securities and their financial professionals share a responsibility to protect the integrity of the municipal market by making full and fair disclosures to all investors," said MSRB Executive Director Lynnette Kelly. "When selective disclosure occurs – often inadvertently – certain investors can be disadvantaged. The MSRB is a resource for issuers and their financial professionals seeking to implement practices to ensure that all investors and stakeholders have equal access to the same material information from the issuer in a timely manner."

Question-and-answer sessions during investor conference calls and invitation-only meetings with analysts are common scenarios in which selective disclosure could arise, according to the MSRB advisory. "These types of events are not inherently problematic," says Kelly. "However, issuers should make it a practice to consider whether material nonpublic information was shared in these circumstances and take steps to make that information public promptly after the event," Kelly said.

Selective disclosure, while not unique to the municipal market, is specifically prohibited in the corporate market under Securities and Exchange Commission Regulation Fair Disclosure (FD). Municipal issuers are not subject to Regulation FD, but the MSRB's advisory cautions about the potential for federal fraud liability if, for example, known material information is omitted from required public disclosures. Further, if an investor were to make a trade based on improperly disclosed material nonpublic information, that could constitute insider trading.

The MSRB joins other municipal market participants in drawing attention to the practice of selective disclosure, including the Securities and Exchange Commission's Office of Municipal Securities, the National Federation of Municipal Analysts and the Government Finance Officers Association.

Read the MSRB's market advisory.

Date: September 13, 2017

Contact: Jennifer A. Galloway
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MSRB Addresses Selective Disclosure: Mintz Levin

On September 13, 2017, the Municipal Securities Rulemaking Board (the "MSRB") published a market advisory on selective disclosure (the "Notice"). The stated purpose of the Notice is to "increase awareness" of selective disclosure as a "market fairness" concern. Although the Notice acknowledges that selective disclosure by issuers of, or conduit obligors on, municipal securities is not prohibited or "inherently problematic", the Notice cautions issuers and obligors in the municipal market not to selectively disclose material nonpublic information.

The Notice's bottom line is to urge that issuers of and obligors on municipal securities voluntarily disclose to the broader marketplace information that is potentially material and is being disclosed or has been disclosed to a subset of actual or potential bondholders "by a method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public", including, for example, by posting the relevant information on the MSRB's EMMA website.

The Notice addresses the practice of certain municipal securities issuers and obligors of making selective disclosure, which occurs when certain classes of investors (the Notice singles out investment bankers, investment advisers and institutional investors as "typical" recipients) are given access to information but other investors are not. Selective disclosure may occur when the issuer presents information relating to an issue to current or prospective investors, for example, during road shows, investor conferences and one-on-one investor calls or meetings. The Notice states that "these events are not inherently problematic, but they can become so when the information conveyed is nonpublic and material".

The Notice addresses selective disclosure in both the primary and secondary markets. As an example, the MSRB notes that investor conferences and investor calls often include question-an--answer sessions, which may place the issuer at risk of discussing nonpublic material information, such as information that is not included in the preliminary official statement. As to secondary market selective disclosure, the MSRB uses the example of when an issuer might provide new nonpublic

material information, which is not required to be disclosed pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 ("Exchange Act") or any other rule, to select investors or analysts.

As an example from other markets, the Notice outlines some of the requirements of the Securities and Exchange Commission's (SEC) Regulation Fair Disclosure, more commonly known as Regulation FD, adopted in 2000 to address, in part, selective disclosure by public companies. The regulation provides that, when an issuer discloses material nonpublic information to certain persons (e.g., brokers, dealers, investment advisers and investment companies), it must publicly disclose that information. If the selective disclosure was intentional, the issuer must make the public disclosure simultaneously; if it was unintentional, the issuer must make the public disclosure promptly.

The Notice acknowledges that Regulation FD does not apply to municipal issuers (or to obligors on municipal securities that are not public issuers of non-municipal securities), as municipal issuers are exempt from regulation by the SEC (other than antifraud provisions). Similarly, while the Exchange Act provides the MSRB with broad authority to write rules governing the activities of brokers, dealers, municipal securities dealers and municipal advisors, it does not provide the MSRB with authority to write rules governing the activities of issuers.

The Notice also acknowledges that selective disclosure, even of material nonpublic information, does not in and of itself constitute inside information for purposes of "insider trading" prohibitions, as such prohibitions generally have been construed as applicable only where the disclosure is made in breach of a duty to the issuer. However, the Notice appears to promote reducing selective disclosure by highlighting the risk that selective disclosure of nonpublic and material information might be indicative of material omissions or misstatements in offering documents or result in transactions that might be considered insider trading.

The Notice suggests that issuers and conduit obligors may wish to develop and follow guidelines for disclosure in a manner that disseminates all potentially material nonpublic information to all market participants. This is not unlike the push a few years ago by the Internal Revenue Service for issuers to establish post-issuance compliance guidelines. The Notice further suggests that issuers consider adopting, on a voluntary basis, the dissemination principles set forth in Regulation FD.

The MSRB claims that the purpose of the Notice "is not to discourage direct communications between issuers and investors and/or analysts, as road shows, investor conferences and other similar communications are legitimate market practices that are not inherently problematic." Although the Notice is measured in tone and does not communicate any new legal requirements, it may prompt some issuers to decide that it is overly burdensome to sort through what good faith nonpublic communications might be deemed "unfair" selective disclosure, and to determine that their most efficient options are to err on the side of not entertaining calls or meetings involving individual analysts or investor groups or to post all nonpublic communications (presumably including transcripts of oral discussions) on EMMA. Although some issuers have adopted model standards to address these concerns; for some issuers, especially smaller issuers that are not in the market regularly, a policy of publicly posting everything that is said may well have a chilling effect on routine conversations between issuer representatives and investors. There also may be routine and follow-up conversations between issuer representatives and investor representatives that focus on details and monitoring of generally known items that an issuer may reasonably deem not to be material, and there is no reason to discourage such interactions.

It is to be hoped that the municipal market will continue to operate in a manner that acknowledges investor protection and market integrity and that continues to disclose material information to all without an overreaction that shuts down individualized discussions.

Mintz Levin

By Charles Carey

September 15, 2017

MSRB Issues Advisory on Selective Disclosure of Material Information: Day Pitney

The Municipal Securities Rulemaking Board (MSRB) published an advisory on September 13 highlighting to municipal issuers, dealers and municipal advisors the importance of disclosing material information "fairly, equitably and in the public domain." The MSRB is concerned that "selective disclosure" creates an information imbalance favoring a limited group of bondholders, such as investment banking firms, investment advisors or institutional investors, who are given access to material information that others do not have. Selective disclosure can occur:

- during investor road shows, conferences and one-on-one investor calls or meetings;
- in the course of bank private placements of municipal issues;
- when there is a question/answer session, because the issuer might discuss information that is not included in a preliminary official statement;
- in the secondary market when the original disclosure documents were accurate and complete but new, nonpublic material information is provided by the issuer but not required to be disclosed pursuant to Rule 15c-2-12.

The MSRB advises that issuers make it a practice to consider whether material nonpublic information has been shared and to take steps to ensure any such information is made available to the general public promptly.

Selective disclosure, while not unique to the municipal market, is specifically prohibited in the corporate market under Securities and Exchange Commission Regulation Fair Disclosure (FD). Municipal issuers are not subject to Regulation FD, but the MSRB's advisory cautions about the potential for federal fraud liability if, for example, known material information is omitted from required public disclosures. Further, if an investor were to make a trade based on improperly disclosed material nonpublic information, that could constitute insider trading.

The MSRB stressed that along with issuers, dealers (acting as underwriters) and municipal advisors may incur liability for selective disclosure under anti-fraud provisions and MSRB Rule G-17, which requires that dealers and municipal advisors deal fairly with all persons and prohibits them from engaging in any deceptive, dishonest or unfair practice.

The MSRB noted that it is a common practice in the case of road shows and investor conferences for an attorney to review the oral script and distributed materials to be certain all the information is included in the disclosure documents available to the general market.

For your convenience, the advisory can be found here.

by Judith A. Blank, Namita Tripathi Shah, and Glenn G. Rybacki

September 14, 2017

Day Pitney

Commentary: Duty of Care Enforcement for Municipal Advisors.

The Securities and Exchange Commission this month announced a significant enforcement action against an Oklahoma municipal advisor, Municipal Finance Services, Inc., and two officers of the firm, including its founder and president.

The action, announced on Aug. 24, offers helpful guidance for municipal advisors regarding the fiduciary duty of care. Prior municipal advisor enforcement has focused on disclosure to issuer clients of advisors' conflicts of interest, an important duty of loyalty element. As a whole, these actions reflect the SEC's constructive concerns for issuer protection pursuant to Dodd-Frank.

The SEC summarized: "Fiduciaries must act in the utmost good faith and use reasonable care to avoid misleading clients." Issuers will benefit from advisor competence and affirmative provision of informed advice.

The MFSOK action also illustrates how advisors' professional obligations to issuers can be expected to benefit investors when advisors assist issuers with disclosure. The SEC stated in its 1988 release proposing the Commission's interpretation regarding underwriter investigatory responsibilities that financial advisors "hav[ing] access to issuer data and participat[ing] in drafting the disclosure documents" in competitive sales "will have a comparable obligation [to the investigatory responsibilities of underwriters] under the antifraud provisions to inquire into the completeness and accuracy of disclosure presented during the bidding process."

Some advisors disagreed strongly, but the MFSOK action shows that the Commission is persisting, appropriately using the municipal advisors' fiduciary duty as a vehicle. Since 1988, the SEC also has undertaken disclosure enforcement against financial advisors in negotiated offerings.

MSRB Rule G-42 was not in effect at the time of the MFSOK events beginning in 2011. So, the action is based on the statute. Nevertheless, several important Rule G-42 themes appear in the SEC's release.

At the outset, it is important to consider MFSOK's contracted scope of services with a City. The SEC's release states that, pursuant to a 2011 agreement, MFSOK "was responsible for preparing the City's official statements, … reviewing and commenting on all legal documents" related to bond issuance, and "assisting the City in complying with its continuing disclosure agreements."

The City had entered into continuing disclosure agreements in 2005, 2008 and 2012 requiring audited financial statement filings within 180 days after fiscal year end. In accordance with SEC no-action guidance, the 2005 and 2008 CDAs could be amended only "with (1) bondholder consent; or (2) an opinion of bond counsel that the amendment would not materially impair the interests of bondholders."

The amendment and bond counsel opinion were required to be filed with repositories. The 2012 CDA omitted amendment by bondholder consent, looking to bond counsel or paying agent determinations. Each CDA required filing of an event notice upon a modification of bondholder rights.

MFSOK assisted the City with competitive sales in 2012 and 2013. In 2013, MFSOK's officers reviewed and commented on a CDA draft. The 2013 CDA, which was "prepared by bond counsel,"

"purported to" amend the three prior CDAs to extend the City's filing date to 360 days. The Commission concluded that the amendment was adverse to investors because it "had the effect of delaying significantly the date by which investors in the 2005, 2008 and 2012 bonds had access to the City's annual reports." The Commission observed that "some investors in the earlier bonds engaged in transactions without the benefit of the updated financial information … that had been promised … ."

MFSOK's officers had never seen such an amendment and had concerns. Yet, they "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 City's three prior CDAs." The preparation of the 2013 amendment by bond counsel did not equate with the required bond counsel opinion.

Importantly, MFSOK's officers did not communicate their concerns to the City. They "failed to advise their client of the prerequisites for amendments … and failed to ensure that their client was in compliance." Instead, MFSOK "recommended" that the City sell the 2013 bonds to an underwriter in a competitive sale using an official statement that summarized the 2013 CDA. The City executed the 2013 amendment, "relying in part on MFSOK's advice."

Although MFSOK had begun in 2011 to assist the City "with the submission of annual reports on EMMA," MFSOK did not advise the City until 2016 to file the 2013 CDA amendments, with the result that investors holding the prior bonds "were not informed of the new 360-day deadline" for three years.

All Respondents were ordered to cease and desist violations; MFSOK was censured; MFSOK was ordered to pay a $50,000 civil penalty; each of its two officers were ordered to pay $8,000 civil penalties; and MFSOK entered into undertakings to establish written policies and procedures and periodic training "regarding the fiduciary duty" and to appoint an official responsible for ensuring compliance with the policies and procedures and maintenance of records regarding training.

The MFSOK action provides significant food for thought for advisors. It applies the advisors' fiduciary duty of care strictly, but fairly, requiring due care in the provision of advice, the provision of informed advice, and the conduct of due diligence as a basis for recommendations to issuers. MFSOK's investigatory responsibilities to assist the City in making disclosure provides important investor protections.

Of course, every action depends upon specific circumstances. Advisors' responsibilities to issuers depend upon contractual scopes of services. Still, the MFSOK action provides an excellent template. One may expect that, as future actions apply MSRB Rule G-42, with its granular elaboration of advisors' duties, issuers, investors and the market as a whole will benefit from substantially increased professionalism.

The Bond Buyer

By Robert Doty

Published August 30 2017, 12□56pm EDT

MSRB Seeks to Clarify and Extend Requirements for Obtaining CUSIP

Numbers.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) proposed amendments to MSRB Rule G-34, on obtaining CUSIP numbers, which aim to clarify existing requirements and improve market consistency. If approved, the rule would codify the MSRB's longstanding interpretation that municipal securities dealers are required to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases. Additionally, if approved, non-dealer municipal advisors advising on competitive offerings would be required, like dealer municipal advisors under the current rule, to apply for CUSIP numbers.

The proposed amendments take into consideration feedback received from the industry and public in response to two requests for comment in March 2017 and June 2017. The MSRB's proposal includes a principles-based exception from the requirement to obtain CUSIP numbers for direct purchases of municipal securities by banks – as well as their non-dealer control affiliates – that are intended to be held to maturity.

The SEC will publish the MSRB's proposal in the Federal Register and invite additional public comment. The MSRB reviews and responds to these comments as part of its participatory rulemaking process.

View the filing.

T+2 Settlement Cycle Goes Into Effect Tuesday.

Financial firms will take advantage of the long Labor Day weekend to update their systems for Tuesday's start of the T+2 settlement cycle, which will require transactions to be settled two days instead of three days after a trade is executed. "The project is changing the market structure that touches every market participant whether they are buy side, sell side, service providers, utilities, big firms, small firms or custodians," says Tom Price, a managing director at SIFMA.

Learn more at SIFMA's Shortened Settlement Cycle Resource Center.

MSRB Reminds Municipal Market Participants that the Two-Day Settlement Cycle Becomes Effective September 5, 2017.

In support of the industry-wide effort to shorten the settlement cycle for all securities transactions, the Municipal Securities Rulemaking Board (MSRB) amended its rules to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle ("T+2"). The MSRB is reminding municipal securities dealers that these amendments will become effective September 5, 2017, which corresponds with the broader industry transition to T+2. The MSRB began its early support of this industry initiative by proposing amendments to its uniform practice rules, MSRB Rules G-12 and G-15, in March 2016.

Read the regulatory notice announcing the transition date.

View the order granting approval of the MSRB's rule amendments.

GASB Financial Reporting Model: Project Update

Work continues on the GASB's project reexamining the financial reporting model. In the last update, I told you about all the outreach we'd conducted following the issuance of the Board's first document for public comment, the Invitation to Comment (ITC), *Financial Reporting Model Improvements—Governmental Funds*.

The ITC focused on the following issues:

- Recognition approaches (measurement focus and basis of accounting)
- Format of the governmental funds statement of resource flows
- Specific terminology
- Reconciliation to the government-wide statements, and
- For certain recognition approaches, a statement of cash flows.

Now, the GASB staff is analyzing the stakeholder feedback we received through over 100 comment letters and almost 100 participants in public hearings and user forums. Once that analysis has been completed and the information is synthesized for review, it will be presented to the members of the Financial Reporting Model Reexamination Task Force and discussed at a task force meeting in September. Beginning in October, the Board will redeliberate issues raised in the ITC with the benefit of stakeholder input, including task force feedback.

The results of these redeliberations will be presented in a second document for public comment, a Preliminary Views, that also will address a number of additional issues. These issues are expected to include:

1. *Government-Wide Statement of Activities*—The Board will consider alternative formats to improve the usefulness of the statement of activities.
2. *Proprietary Fund Financial Statements*—The Board will consider reporting alternatives related to the existing requirement to separately present operating and nonoperating revenues and expenses.
3. *Budgetary Comparisons*—The Board will consider the appropriate method of communication (as a basic financial statement or required supplementary information) for budgetary comparison information and which budget variances, if any, should be required to be presented.
4. *Permanent Funds*—The Board will consider alternatives for reporting information about permanent funds.

If you have ideas about other ways you or other stakeholders might be interested in learning about the work the Board is doing to improve the financial reporting model, we'd love to hear from you!

GASB On the Horizon: Capitalization of Interest Cost.

The GASB currently is deliberating a project that reexamines the idea that the cost of borrowing during a construction period should be included in the cost of the capital asset.

The project is taking another look at the accounting and financial reporting requirements for capitalization of interest cost, with the goal of enhancing the relevance of capital asset information and potentially simplifying related reporting. The Board is reviewing the current guidance in light of

the definitions of financial statement elements established in the GASB's conceptual framework.

A key question the Board is exploring is whether interest cost is a period expense relative to borrowing or is a necessary cost of the capital asset. Based primarily on the GASB's definition of an asset, the Board has tentatively decided to propose eliminating the requirement to capitalize interest cost. This proposal, if adopted after due process, would be adopted on a prospective basis.

What's next: After the conclusion of project deliberations over the summer and fall months, the Board is expected to vote on an Exposure Draft before the end of the year.

More information about the Capitalization of Interest Cost project.

U.S. Muni Bond Issuers Should Break Out Bank Loans - Rulemaker.

NEW YORK, Aug 23 (Reuters) – Municipal bond issuers should have to report their direct bank loans separately from other kinds of debt on their financial statements, according to the head of the group that sets disclosure standards for U.S. state and local governments.

That requirement would help "separate those disclosures and give the reader a perspective," David Vaudt, chairman of the Governmental Accounting Standards Board (GASB), told Reuters in an interview on Wednesday.

GASB in June proposed changes to the way states and cities report direct loans and private bond placements. By reporting such information separately in financial notes, readers can more easily identify and evaluate the controversial forms of borrowing that can pose risks to bondholders and credit ratings.

Investors in the $3.8 trillion municipal bond market have become increasingly concerned as the use of direct loans and private bond placements has grown in recent years.

Such direct debt is not always disclosed. When it is, the terms can be cumbersome for investors and taxpayers to discover.

Direct debt could also contain terms that potentially put a bank at the front of the line for repayment, ahead of bondholders.

Issuers use direct debt because the loans can be faster to accomplish than traditional public bond offerings, which usually require long, costly bond documents laden with financial disclosures. Sometimes, direct debt provides cheaper financing and fast liquidity.

But if a state or city violates the terms of a direct loan, it is easier for a single entity, like a bank, to call the loan or pursue some other remedy, Vaudt said.

"It's much more difficult to go to all the bondholders and get some type of action taken," he said.

The state of Arkansas disputed the idea that direct debt should be separated from public bond offerings on financial statements.

"Some may argue that direct placement bonds may have different terms but this could be true of any debt, regardless of the means by which the debt was incurred," the state wrote in comments about the suggested rules. "The means of incurring debt does not alter the basic construction of the

obligation.”

The deadline for comments is Sept. 15.

Reuters

by Hilary Russ

(Reporting by Hilary Russ in New York; Editing by Meredith Mazzilli)

Muni Bond Issuer and Underwriter Charged With Disclosure Failures.

The Securities and Exchange Commission today announced that a municipal financing authority in Beaumont, California, and its then-executive director have agreed to settle charges that they made false statements about prior compliance with continuing disclosure obligations in five bond offerings.

Also settling charges are the underwriting firm behind those offerings and its co-founder for failing to conduct reasonable due diligence on the continuing disclosure representations.

The SEC’s Enforcement Division uncovered the violations as part of a review of municipal issuers and underwriters that did not voluntarily self-report under the agency’s Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. The Beaumont Financing Authority and the underwriter, O’Connor & Company Securities Inc., would have been eligible for more lenient remedies had they self-reported during the MCDC Initiative.

According to the SEC’s order, the Beaumont Financing Authority had issued approximately $260 million in municipal bonds in 24 separate offerings from 2003 to 2013 for the development of public infrastructure. For each of those offerings, a community facilities district established by Beaumont agreed to provide investors with annual continuing disclosures, including important financial information and operating data. From at least 2004 to April 2013, the district regularly failed to provide investors with the promised information. The Beaumont Financing Authority failed to disclose this poor record of compliance when it conducted the 2012 and 2013 offerings totaling more than $32 million. As a result, the bonds appeared more attractive and investors were misled about the likelihood that the district would comply with its continuing disclosure obligations in the future.

“Investors in municipal bonds depend on timely and complete continuing disclosure from municipal issuers,” said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division’s Public Finance Abuse Unit. “Issuers and underwriters will continue to be held accountable when they fail to provide investors with an accurate picture of past compliance with continuing disclosure obligations.”

In a complaint filed in the Eastern Division of the U.S. District Court for the Central District of California, the SEC charged Beaumont’s then-city manager Alan Kapanicas, who also served as the Beaumont Financing Authority’s executive director. According to the complaint, he approved and signed the misleading offering documents. Kapanicas agreed to settle the charges without admitting or denying the allegations, and pay a $37,500 penalty. He also agreed to be barred from participating in any future municipal bond offerings.

In consenting to an SEC order without admitting or denying the findings, the Beaumont Financing Authority agreed to retain an independent consultant to review its policies and procedures. It also is

required to establish appropriate and comprehensive policies, procedures, and training for employees as well as designate a compliance officer in order to ensure compliance with continuing disclosure agreements.

O'Connor & Company Securities Inc. and its co-founder and former primary investment banker Anthony Wetherbee agreed to settle the charges against them without admitting or denying the SEC's findings. O'Connor & Company Securities Inc. will pay a $150,000 penalty and retain an independent compliance consultant to review its policies and procedures. Wetherbee will pay a $15,000 penalty and serve a suspension from the securities industry for six months.

The SEC's investigation was conducted by Steven Varholik and Jason H. Lee of the Public Finance Abuse Unit with assistance from Deputy Chief Mark R. Zehner, Jonathan Wilcox, and Creighton L. Papier. The investigation was supervised by Monique C. Winkler.

Aug. 23, 2017

This Week In Securities Litigation - SEC Municipal Actions

The Commission filed actions against investment advisers or their associates this week involving: compliance issues tied to political intelligence regarding government agencies like CMS; another centered on the payment of excessive fees; and a third involving unauthorized transactions.

Municipal securities were also a focus this week. A series of actions were filed centered on the failure to comply with continuous disclosure obligations. Those obligations typically require the issuer to periodically update the financial information on bonds sold to the public.

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Breach of duty: In the Matter of Municipal Finance Services, Inc., Adm. Proc. File No. 3-18139 (August 24, 2017) is a proceeding which names as Respondents the firm, a registered municipal advisor, Rick Smith, the founder of the firm, and Jon Wolff, a vice president at the firm. The firm was an adviser to the City under a written agreement. Essentially, it advised the City on offerings. In May 2013 the City issued certain bonds that included a continuing disclosure agreement. At the time the City had three outstanding bond issues, each of which also had continuous disclosure agreements. The 2013 agreement amended the disclosure obligations for the prior offerings by extending the time in which to furnish the financial information by one year and in other ways that were inconsistent with the previously issued bonds. Respondents failed to advise the City about these points and did not submit the agreements to EMMA for three years. The Order alleges violations of Exchange Act Section 15B(c)(1). To resolve the proceeding the firm will implement an undertaking which includes an obligation to adopt appropriate polices and procedures. In addition, each Respondent consented to the entry of a cease and desist order based on the Section cited in the Order. The firm was censured and will pay a penalty of $50,000. Each of the individual defendants agreed to pay a penalty of $8,000.

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Municipal securities/disclosure: SEC v. Kapanicas, Civil Action No. 5:17-cv-01704 (C.D. Cal. Filed August 23, 2017) is an action against Alan Kapanicas, the former executive director of the Beaumont Financing Authority which issued about $260 million in municipal bonds in 24 separate offerings from 2003 through 2013. For each offering the City of Beaumont, California agreed to provide

investors with annual continuing disclosures. From at least 2004 through April 2013 the City failed to comply with this obligation. In offerings in 2012 and 2013 the City failed to disclose its poor financial condition. This made the bonds appear more attractive, misleading investors. The complaint alleged violations of Securities Act Sections 17(a)(2) and (3). Mr. Kapanicas resolved the action, consenting to the entry of a permanent injunction based on the Sections cited in the complaint. He also agreed to pay a penalty of $37,000. See Lit. Rel. No. 23920 (Aug. 24, 2017); *see also In the Matter of Beaumont Financing Authority*, Adm. Proc. File No. 3-18132 (August 23, 2017)(related action against the Financing Authority based on essentially the same facts; resolved with a series of undertakings and a cease and desist order based on Securities Act Sections 17(a)(2) and (3)); In the *Matter of O'Connor & Company Securities, Inc.*, Adm. Proc. File No. 3-1131 (August 23 2017)(action based on same facts as above naming underwriter and a registered representative at the firm, Michael Wetherbee as Respondents; resolved with a cease and desist order based on Securities Act Sections 17(a)(2) and (3) and Exchange Act Section 15B(c)(1) and a censure of the firm which will pay a penalty of $150,000; Mr. Wetherbee is suspended from the securities industry, from serving in an supervisory capacity and from participating in a penny stock offering for six months; he will pay a penalty of $15,000).

by Thomas Gorman

August 25, 2017

Dorsey & Whitney LLP

MSRB Proposes to Refine the Municipal Fund Securities Data it Collects.

PHOENIX – The Municipal Securities Rulemaking Board is seeking comment on a draft plan to refine the data it collects regarding the investment options offered in 529 college savings plans and Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) programs.

Both 529 plans and ABLE programs, the latter of which creates tax-advantaged savings accounts for individuals with disabilities and their families, are municipal fund securities. The MSRB regulates dealers that underwrite or sell interests in 529 plans and ABLE accounts. The MSRB first began collecting data about 529 plans in 2015 and will begin collecting data about ABLE programs in 2018 on a Form G-45 under Rule G-45 on reporting of information on municipal fund securities.

The data the MSRB collects, which is not publicly available, can be difficult to decipher under current reporting rules because different plans have different practices.

MSRB executive director Lynnette Kelly said in a release that the board is trying to be able to more accurately monitor these programs and spot potential risks and wrongful conduct.

"Essentially, our goal is to be able to more precisely compare apples to apples," Kelly said. "Fine-tuning the data we collect will allow the MSRB to make more accurate comparisons across 529 plans and ABLE programs, enhancing our ability to understand and monitor the market."

There are four main data points the MSRB is looking to either refine its collection of, or get more information from dealers about: program management fees, benchmark return percentages, performance by asset class, and investment option closing dates.

Form G-45 requires that underwriters report the amount of the program management fee assessed

by the 529 plan. This fee is usually separately identifiable, but for some 529 plans this isn't the case. Instead, the program management fee is sometimes included in total fund operating expenses assessed by the underlying mutual fund in which the investment option exists. The MSRB is proposing to require dealers to report the program management fee separately on Form G-45.

Dealers are required to report the benchmark return percentage for each investment option offered by a 529 plan for specified periods. The MSRB has found that some investment options use custom or "blended" benchmarks for their performance, making it difficult to make apples-to-apples comparisons across plans. The MSRB is therefore proposing to require an underwriter to a 529 plan or an ABLE account to identify and provide annually the weighted value of each index that make up the benchmark.

G-45 requires that an underwriter report the asset classes in each investment option as of the most recent semi-annual period, but there is no mandate that they provide information about how the asset classes within an investment option are performing. The MSRB is proposing to collect that information to show how a particular asset class is performing on an annual basis.

In addition, sometimes an investment option offered in a 529 plan may be closed to new investors but allow current account owners to continue to invest in it even though it is "closed." A 529 plan may also close an investment option completely. In either case, the investment option data submitted for that investment option on Form G-45 doesn't differentiate between the two and can be contrary to analytical expectations, so that the MSRB isn't able to easily understand why. To clarify that, the board is proposing to require an underwriter to a 529 plan or an ABLE program to provide information during each semi-annual reporting period about whether an investment option was closed to new investors or closed completely.

Comments on the draft changes to Form G-45 are due by Sept. 21.

The Bond Buyer

By Kyle Glazier

08/23/17

SEC Charges Issuer, Dealer, Others in First Post-MCDC Enforcement Action.

PHOENIX – The Beaumont, Calif. Financing Authority, its former executive director, underwriter O'Connor & Company Securities Inc., and its co-founder have been charged by the Securities and Exchange Commission over false statements made about prior compliance with continuing disclosure obligations in five bond offerings.

All four entities agreed to settle the charges against them without admitting or denying the commission's findings.

This is the commission's first post-Municipalities Continuing Disclosure Cooperation initiative disclosure enforcement action.

The SEC said the parties would have been eligible for more lenient enforcement treatment under MCDC had they voluntarily reported the conduct under that program. But they did not so.

“Investors in municipal bonds depend on timely and complete continuing disclosure from municipal issuers,” said LeeAnn Ghazil Gaunt, chief of the SEC enforcement division’s public finance abuse unit. “Issuers and underwriters will continue to be held accountable when they fail to provide investors with an accurate picture of past compliance with continuing disclosure obligations.”

The charges stem from bond issuances in 2012 and 2013. According to the SEC, BFA, located in Riverside County, had issued approximately $260 million in bonds in 24 separate offerings from 2003 to 2013 to help finance the development of infrastructure. For those offerings, City of Beaumont Community Facilities District No. 93-1, a community facilities district established by Beaumont that agreed to provide investors with continuing disclosures, including annual financial information and operating data. From at least 2004 to April 2013, the district regularly failed to provide investors with information in accordance with its continuing disclosure agreement.

“The Beaumont Financing Authority failed to disclose this poor record of compliance when it conducted the 2012 and 2013 offerings totaling more than $32 million,” the SEC said. “As a result, the bonds appeared more attractive and investors were misled about the likelihood that the district would comply with its continuing disclosure obligations in the future.”

The SEC charged BFA with negligence in committing securities fraud. BFA agreed to cease and desist from future securities law violations and to retain an independent consultant to review its policies and procedures. It also agreed to establish appropriate and comprehensive policies, procedures, and training for employees as well as designate a compliance officer in order to ensure compliance with continuing disclosure agreements.

Alan Kapanicas, 65, Beaumont’s former city manager who also had been former executive director of BFA, agreed to pay a $37,500 penalty and be barred from participation in any future municipal bond offerings. The SEC said he “failed to exercise reasonable care” and “repeatedly either failed to read and understand the district’s continuing disclosure agreements or disregarded their requirements.” He was also charged with negligence in committing securities fraud.

O’Connor & Company Securities. based in Costa Mesa, Calif., agreed to pay a $150,000 penalty, for violating securities fraud laws and Municipal Securities Rulemaking Board Rules G-17 on fair dealing and G-27 on supervision. It agreed to retain an independent consultant to conduct a review of its policies and procedures as they relate to the investigation of the truthfulness and completeness of key representations contained in municipal securities offering documents.

Under the MCDC, underwriter penalties were set at $20,000 for each offering of $30 million or less containing materially false statements about continuing disclosures. Had it participated in the MCDC, O’Connor & Company could have shaved $50,000 off its penalty.

Anthony Wetherbee, 71, the firm’s co-founder and former primary investment banker, will pay a $15,000 penalty and be suspended from the securities industry for six months. He was also charged with negligence in committing securities fraud and violating the MSRB’s fair dealing rule.

“Wetherbee, and through his actions, OCSI, failed to conduct adequate due diligence and, as a result, failed to form a reasonable basis for believing in the truthfulness of BFA’s assertions that the district had complied with its prior CDAs contained in the BFA’s 201 and 2013 official statements.” the SEC said. Neither the banker nor his firm ever checked the MSRB’s EMMA system to determine if the assertions were truthful and complete, the commission said.
Neither Beaumont nor O’Connor & Company could be reached for comment.

The conduct alleged by the SEC in this case is precisely what the MCDC was designed to bring

attention to. Rolled out in spring 2014, the initiative promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the previous five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements. In total, the initiative led to settlements with 72 issuers from 45 states and 72 underwriters representing 96% of the underwriting market. In December, the SEC announced it was finished with MCDC settlements and would turn its attentions to violators who did not report, whom the SEC considered to be at high risk for future violations.

The Bond Buyer

By Kyle Glazier

08/23/17

Regulatory Reform: BDA Submits Letter to U.S. Treasury Upcoming Report on U.S. Capital Markets and Securities Law & Regulation.

On August 22nd, Bond Dealers of America submitted a letter to the Treasury Department regarding its upcoming report on U.S. Capital Markets Regulation, which is due out in the fall of 2017. The letter is here for your review. Treasury staff specifically requested BDA's input on regulations, enforcement, and market liquidity.

BDA's letter focuses on the following issues:

- FINRA Rule 4210
- Retail Confirmation Rules
- Defining Municipal Securities as High Quality Liquid Assets (HQLA)
- U.S. Fixed Income Market Liquidity
- Regulatory Cost-Benefit Analyses
- Enforcement Improvements

The letter's sections are designed to provide Treasury Staff with a brief synopsis of the significant issues BDA member firms are confronting. If Treasury Staff requests additional information, BDA will engage member firms and deliver answers.

Treasury Report Series on Banking, Securities, and Capital Markets Regulation

In response to Executive Order 13772 (**Core Principles for Regulating the U.S. Financial System**), issued by President Trump on February 3, 2017, the U.S. Treasury will issue a series of reports on the U.S. financial regulatory system. The first report focused on the regulatory system for U.S. banks and credit unions. That report can be accessed here.

The second report, focused on U.S. capital markets regulation will be published in the fall of 2017

Implications of the Report

- The report will be the first statement with policy specifics and recommendations related to the U.S. capital markets by the Administration
- The report will be studied by Congress, especially as the Senate considers which financial regulatory reforms could garner the bipartisan support necessary to meet the 60-vote threshold

FAF Trustees Agree to Retain GASB Scope Of Authority Policy Without Modification.

Norwalk, C T— August 22, 2017 — The Board of Trustees of the Financial Accounting Foundation today approved a report, *Three-Year Review of GASB Scope of Authority: Consultation Process Policy*, that leaves unchanged the Governmental Accounting Standards Board's (GASB) scope of authority policy.

That policy outlined a pre-agenda consultation process for the GASB and the FAF's Standard-Setting Process Oversight Committee to follow in determining whether information the GASB might consider for standard-setting activity is "financial accounting and reporting information" within the scope of the GASB's standard-setting mission. The November 2013 FAF report that introduced the policy and the related consultation process called for the FAF to review the effectiveness of the consultation process three years after implementation.

"I'm very pleased that the Trustees have affirmed the effectiveness of the consultation process, which strikes the right balance by maintaining the independence of the GASB, while ensuring appropriate oversight by the Trustees," said FAF Chairman Charles H. Noski. "We would like to express our thanks to the stakeholders who shared their thinking with us and helped us reach our conclusions."

The Trustees also agreed to review the policy again within five years.

Additional information is available on the GASB Scope of Authority page on the FAF website.

MSRB Seeks Comment on Refining Data Collected about 529 Plans and ABLE Programs.

Washington, DC – To support its oversight responsibilities, the Municipal Securities Rulemaking Board (MSRB) is seeking comment on a draft plan to refine data elements the MSRB collects relating to the investment options offered in 529 college savings plans and Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) programs.

The MSRB aims to clarify data it collects from dealers acting as underwriters to 529 plans and data it will collect from dealers acting as underwriters to ABLE programs, and collect additional information on investment plan options.

"Essentially, our goal is to be able to more precisely compare apples to apples," said MSRB Executive Director Lynnette Kelly. "Fine-tuning the data we collect will allow the MSRB to make more accurate comparisons across 529 plans and ABLE programs, enhancing our ability to understand and monitor the market."

These investment vehicles are municipal fund securities. The MSRB regulates dealers that are underwriters to and dealers that sell interests in 529 plans and ABLE programs. The MSRB first began collecting data about 529 plans in 2015 and will begin collecting data about ABLE programs in 2018. Data collected on MSRB Form G-45 allows the MSRB and other regulators that are charged by statute with examining dealers to analyze and compare 529 plans and ABLE programs and monitor the market for potential risks and wrongful conduct. The data as collected by the MSRB

currently is not available to the public.

Comments on the MSRB's draft changes to Form G-45 should be submitted no later than September 21, 2017. Read the request for comment.

Date: August 22, 2017

Contact: Jennifer A. Galloway
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jgalloway@msrb.org

MSRB Amends Municipal Fund Security Advertising Requirements.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on Friday, August 18, 2017 to amend MSRB Rule G-21(e), on municipal fund security product advertisements by municipal securities dealers. The amendments will be effective on November 18, 2017. Read the approval notice.

"These changes ensure investors are alerted to the potential risks of investing in particular investment options of municipal fund securities," said MSRB Executive Director Lynnette Kelly.

The approved amendments reflect changes to SEC rules governing money market fund advertisements and improve regulatory consistency of disclosure requirements for those municipal fund securities that invest in money market funds.

The approved amendments limited to Rule G-21(e) were originally introduced as part of a broader request for comment on updating and harmonizing certain provisions of the MSRB's municipal securities dealer advertising rule and establishing similar advertising regulations for municipal advisors. The MSRB continues to consider the comments received on the other aspects of its broader proposal.

Date: August 21, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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NABL: SEC Charges Issuer, Underwriter That Did Not Report Under MCDC.

The SEC announced that a municipal financing authority in Beaumont, California, and its then-executive director, have agreed to settle charges that they made false statements about prior compliance with continuing disclosure obligations in five bond offerings. The underwriting firm behind those offerings and its co-founder settled charges for failing to conduct reasonable due diligence on the continuing disclosure representations.

The SEC press release, with links to the SEC orders and complaint, is available here.

Counting Munis as Liquid Even If Markets Are Dry.

Municipal bonds historically have been an investment that lets you sleep easy. Their low-risk reputation has been tested in the last decade by some high-profile bankruptcies, with Puerto Rico and Detroit's being the most prominent. But in recent years, big banks have been scooping up more state and local debt than ever before. Now Congress is pushing to make the sector more even attractive to banks. The magic charm would be qualifying certain municipal bonds as High-Quality Liquid Assets, or HQLA. The question is whether that label might get slapped on bonds that are certainly high quality, but may not be really, truly liquid.

1. What's so desirable about being HQLA?

In the aftermath of the 2008 financial crisis, regulators wanted to make sure that banks didn't run out of money in the next credit crunch. They began requiring them to calculate what's called a liquidity coverage ratio (LCR) to test whether they hold enough cash and easy-to-sell assets to weather a short-term liquidity shock, when borrowing might be hard and buyers might disappear for less-than-sterling assets. The most valuable assets in this calculation are ones that can be sold quickly and without discount — High-Quality Liquid Assets.

2. What is Congress trying to do?

Regulators currently have left municipals out in the cold as far as HQLA is concerned, worried that too many municipal securities would be hard to sell in a hurry. Now, the House and Senate are moving to allow banks to treat certain municipal bonds as High-Quality Liquid Assets when calculating their liquidity ratio. The House Financial Services Committee unanimously approved a bill that would treat qualifying municipal bonds as high-quality liquid assets. The original form of the bill labeled them Level 2A assets in the existing regulatory framework, though an amendment changed that to 2B. The Senate has its own version of the bill which has secured largely bipartisan support, though it's at a standstill right now as their legislative calendar is inundated with other priorities, such as tax reform.

3. What's the difference between Level 2A and Level 2B?

Assets designated as Level 2B are treated more conservatively than those labeled Level 2A as they are considered to be more of a credit risk, and therefore less high quality, and not as liquid. In calculating their liquidity ratio, banks are required to impose a larger haircut, or discount, and 2B assets can only constitute 15 percent of total HQLA holdings. The haircut level for Level 2B assets ranges from 25 to 50 percent; no specific haircut percent has been proposed for municipal bonds so far.

4. Will Congress end up passing this?

Most likely, yes — even if not this year, with Congress "up to its eyeballs" in other business, says Philip Fischer, who heads up municipal research for Bank of America Merrill Lynch. After all, you'll be hard-pressed to find a legislator that doesn't want to make municipal debt, a key financing tool used in their own jurisdictions, more attractive. It'll get states and counties better rates and may marginally increase demand in the short-term.

5. Are banking regulators on board?

They've been divided on the HQLA question since 2016, when the Federal Reserve said it would allow HQLA treatment of state and municipal bonds that "meet the same liquidity criteria that currently apply to corporate debt securities." The other two major financial regulating agencies, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, haven't taken that step. The disagreement among agencies leaves banks in an awkward position, Fischer said. Neither the OCC or the FDIC have issued a statement in support of or against this latest bill.

6. Are munis really high-quality liquid assets?

That depends on whom you ask. The vast majority of municipals are certainly high quality, given the taxing power of the government agencies that issue them, but it's also an extremely fragmented market that negatively affects just how liquid each issue may be at any given moment. They lack a dedicated exchange, so pricing can be disjointed, says Jeffrey Lipton, head of municipal research at Oppenheimer & Co. These peculiarities will require regulators to look beyond a rating to assess the trade volume and outstanding float of each specific bond before granting it HQLA status, he said. While this all will make the narrative more complicated, it shouldn't disqualify the sector from the race.

7. Why does this matter?

If municipal bonds gain regulatory par with certain corporate debt issues, they figure to become an even more popular part of a bank's portfolio. As of March 31, U.S. banks held a record $554 billion, or about 14.5 percent, of all outstanding municipal debt. Thanks goes in large part to President Barack Obama for this boom in bank municipal holdings. He signed a stimulus package in 2009 that gave banks enhanced tax incentives to purchase municipals. Granting certain municipals HQLA status now will likely see banks demand for municipals increase further. This would spark higher prices (and lower yields) for state and local debt. For President Donald Trump, a stronger market for municipal bonds might mean a better chance for his plan for $1 trillion in proposed infrastructure spending to come to fruition.

Bloomberg Markets

By Kristy Westgard

August 21, 2017, 2:00 AM PDT

Dallas Bond Deal for Statler Hotel Rehab Being Probed by SEC.

The Dallas Morning News has been digging into an unusual bond deal being used to help underwrite the Statler Hotel redevelopment in downtown Dallas, a massive improvement project that includes a building the News will soon call home.

At issue: The sale in 2016 of $26.5 million in municipal bonds backed by future tax incentives that the city of Dallas granted to the developer.

DMN reporters Miles Moffeit and Terry Langford have unearthed that officials with the Securities and Exchange Commission are questioning "at least four people involved in the $230 million renovation of the historic hotel and adjoining former library."

From the Dallas Morning News:

> One focus of the SEC inquiry is the sale last year of $26.5 million in municipal bonds backed by future tax incentives that the city of Dallas granted to the developer under what's called tax-increment financing. Cities use such deals to lure developers to build in specific areas with little economic growth.
>
> Under these programs, any increases in property-tax collections in these zones are rebated to developers over time and up to a certain limit — $46.5 million in the case of the Statler project.
>
> Rather than wait to collect these tax payments over decades, Centurion decided to raise money immediately by selling bonds that in the future would be paid off by the tax rebates.
> The IRS ruled last month that the bonds do not qualify for the tax exemption that investors were promised. The agency did not explain its reasoning, but Mike Culler, a public-finance tax lawyer for Squire Patton Boggs, said the deal probably failed to show a benefit to the public.
> The Wisconsin agency that was behind the bond sale said it has appealed the IRS decision.

This hasn't been the first time that the News has put a spotlight on the project.

The Statler Hotel redevelopment budget, which has risen 50 percent over the past three years, is built on several government programs and hefty tax incentives, according to the Dallas paper.

And earlier this year, Moffeit and Langford reported on the IRS probing aspects of the project's financing.

The new complex will include boutique shopping, fine dining, business offices, and hotel rooms, according to the Statler Hotel website. The Dallas Morning News will rent the old library building, which is part of the development as well as a national historic site.

The Texas Monitor

By Trent Seibert – August 18, 2017

SR-FINRA-2017-027 - Proposed Rule Change.

Proposed Rule Change Relating to Capital Acquisition Broker Rules 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and 458 (Books and Records Requirements for Government Distribution and Solicitation Activities)

Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to adopt Capital Acquisition Broker Rules 203 (Engaging in Distribution and Solicitation Activities with Government Entities) and 458 (Books and Records Requirements for Government Distribution and Solicitation Activities) that would apply established "pay-to-play" and related rules to the activities of member firms that have elected to be governed by the Capital Acquisition Broker ("CAB") Rules and that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

Read the Proposed Rule Change.

BDA to Submit Comment Letter: DOL Fiduciary Rule.

On August 7, 2017, in response to a Request for Information published by the Department of Labor, the BDA submitted a comment letter to the DOL focused on how it should amend the Fiduciary Duty Rule and the Principal Trading and Best Interest Contract Exemption.

BDA Comment Letter Summary — Primary Areas of Focus

- The Department of Labor and the Securities and Exchange Commission should work together to formulate an improved best interest standard of care
- The rule and exemptions unnecessarily prohibit access to the benefits of a dealer's inventory
- BDA urges the Department to remove the anti-arbitration clause from the Best Interest Contract Exemption
- The term "sufficiently liquid" should be removed from the principal trading exemption

Applicability Date Letter: Submitted July 2017

Recently, the BDA submitted a comment letter focused on whether the Department of Labor should delay the January 1, 2018 Best Interest Contract Exemption and Principal Trading Exemption applicability date. The letter is here.

- BDA's letter expresses strong support for delaying the applicability date of the exemptions until the Department of Labor has finished its review of the rule and proposed amendments to improve the exemptions

Additional Documents

DOL Enforcement Guidance is here.
Morgan Lewis Memo on Requirements of the Rule as of June 9th is here.

Bond Dealers of America

August 8, 2017

Labor Department Seeks 18-Month Delay in Fiduciary Rule.

Has proposed pushing the Jan. 1, 2018, compliance date to July 1, 2019

The Labor Department is proposing to delay the fiduciary rule's compliance deadline by 18 months, a move that experts say suggests the retirement-savings rule will emerge from a re-evaluation with significant revisions.

The agency, which has been reassessing the Obama-era rule's economic impact, said Wednesday in a court document that it submitted a proposal to push the Jan. 1, 2018, compliance date to July 1, 2019. The document, filed as part of a lawsuit in the U.S. District Court for the District of Minnesota, also says the Labor Department is considering loosening restrictions on the types of transactions

that are prohibited under the rule, including insurance products and rollovers of individual retirement accounts.

The fiduciary rule "is likely here to stay, but its impact could be significantly reduced over the next few years if exemptions from the rule are significantly expanded," said Jamie Hopkins, a professor at the American College of Financial Services.

The Labor Department couldn't immediately comment.

The first phase of the rule, requiring financial-advice providers to act in retirement savers' best interest, took effect June 9. The request for a delay would give agency officials more time to conduct their economic-impact review and give industry players more time to weigh in. Last month, the Labor Department issued a request for information, writing that it "is interested in the possibility of regulatory changes that could alter or eliminate contractual…requirements," among other potential changes.

In Wednesday's filing, Labor Secretary Alexander Acosta said the agency had also proposed changes to how certain transactions are treated under the rule. Transactions such as IRA rollovers and insurance products including annuities could become exempt under the final rule, the document suggests.

"There is a lot on the table here," considering the questions the Trump administration has raised about the impact of the rule's compliance costs and legal liabilities, said Erin Sweeney, an attorney at Miller & Chevalier Chartered who represents parties in litigation regarding fiduciary obligations.

Ms. Sweeney said the delay would give the financial-services industry more time to comply with the regulation, while at the same time preventing firms from "starting down a compliance path only to do a zig-zag" if the rule is revised.

For retirement savers, the delay doesn't change the requirement that financial advisers put clients' interests before their own. It does, however, make it the best-interest standard harder to enforce. The rule as written by the Obama administration included a provision that would allow investors to bring class-action suits against advisers they say violated their fiduciary duty. While such suits don't typically yield big paydays for individual investors, the potential cost to advisers and firms was meant to prevent violation of the rule.

"Until you have a contract, it's hard to imagine a situation where a lawyer brings a case," Ms. Sweeney said.

Some financial-industry executives cheered the delay proposal. "I think that everyone was hoping for a delay," said Ronald Kruszewski, chief executive at Stifel Financial Corp. "It's encouraging that the DOL is taking a look at both protecting consumers and protecting choice."

Investor watchdogs, meanwhile, expressed concern. "Retirement savers need and deserve a fully enforceable best interest standard backed by real restrictions on conflicts," said Barbara Roper, director of investor protection at the Consumer Federation of America. "The biggest impediment to investors receiving the full benefits of the rule is uncertainty over its fate, and a delay of this length only contributes to that uncertainty."

The delay notification stems from a lawsuit brought by Thrivent Financial for Lutherans against the Labor Department. The organization has challenged the department's authority surrounding the rule and approach to how clients can bring cases against financial advisers they say violated their fiduciary duty. The case is one of several that has been levied against the department.

Expected to publish Thursday, the delay proposal was submitted to the Office of Management and Budget, the gatekeeper for revisions and delays to U.S. regulations.

The Wall Street Journal

By Lisa Beilfuss

Updated Aug. 9, 2017 5:23 p.m. ET

Write to Lisa Beilfuss at lisa.beilfuss@wsj.com

Market Wary of Planned MSRB Primary Offering Concept Release.

PHOENIX – Market participants are a bit mystified about what the Municipal Securities Rulemaking Board could be looking for in its upcoming concept release on primary offering practices, although some groups are working to update their own guidelines.

Issuers, dealers, and municipal advisors all told The Bond Buyer that they are unaware of any pressing problems or uncertainties in primary offering practices or MSRB rules governing primary offerings.

The board announced last month that it plans to put out a lengthy concept release sometime in the next couple of months that will seek market input on numerous aspects of primary offering practices. Concept releases are the generally the precursor to proposed new rules or rule changes. But unlike the federally-mandated municipal advisor rulemaking the board has spent much of its time on during the last several years, the genesis of this effort is more difficult to pin down.

“They’ve been talking about this for a little bit,” said John Vahey, managing director of federal policy for Bond Dealers of America. Vahey noted that the MSRB has now moved through the rulemaking mandated by the Dodd-Frank Act, which included setting up a new regulatory regime for muni advisors, and is now taking a look at its other rules. The MSRB has multiple rules that touch on primary offering practices including Rule G-11, on primary offering practices and Rule G-32, on disclosures in connection with primary offerings, as well as rules on the collection of certain data.

“We don’t yet know what this concept release is going to look like,” said Vahey. “Our members pound on the table about niche issues, but to my knowledge they’re not really focused on MSRB rules on primary offerings.”

“Nothing is jumping off the page at me,” he said.

MSRB executive director Lynnette Kelly recently hinted at a connection between the board’s primary offering effort and the Securities and Exchange Commission’s August 2015 enforcement case against Edward Jones. In that case, its first on primary market pricing of bonds, the SEC ordered the St. Louis based, retail-oriented dealer to pay more than $20 million for overcharging retail customers for new munis.

The SEC found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, and the former head of its syndicate desk, took bonds into the firm’s own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until

secondary market trading began.

The firm has since dropped out of the negotiated underwriting business. But while sources acknowledge that the Edward Jones case is likely a factor in the MSRB's effort to update its rules, they said they generally prefer for the market to produce guidance or update practices rather than regulators.

"That is a process that we as a trade association are doing as well," said Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at the Securities Industry and Financial Markets Association. Norwood said that SIFMA has long maintained a model document for a master agreement among underwriters, a contract setting forth the legal relationships between syndicate members in a negotiated offering. Norwood said SIFMA feels that master agreement has served well, but is nonetheless working on updating it and hopes to have that done in the next few months.

"We're looking at it as market participants working together contractually," Norwood said. "The MSRB is certainly looking at it from a rules-based approach. We're following the MSRB's process towards rule change."

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA members want to address the topic of primary offering disclosure in a new best practice that will be considered for approval this year, but that it has not lobbied the MSRB to propose further regulations on dealers or muni advisors. The MSRB does not regulate issuers, but does have a Dodd-Frank mandate to protect them.

"There are gray areas," Brock said. "But no, we're not asking for more regulation."

The National Association of Municipal Advisors is also unsure of the MSRB's specific aim, but has a general list of topics for which it will watch.

"NAMA will develop comments in response to specific practices the MSRB's upcoming proposal will address," said Susan Gaffney, the group's executive director. "Some areas we will watch for include – ensuring issuer objectives are being followed, including structuring decisions; whether or not MSRB rules correspond with new Internal Revenue Service issue price rules; and if there are ways to enhance EMMA so that additional data can be utilized when pricing bonds."

The MSRB has not committed to a timetable for the concept release, but has indicated it would likely be sometime in the fall.

The Bond Buyer

By Kyle Glazier

08/08/17 07:03 PM EDT

Ex-Los Angeles Investment Banker Gets Extra Five Years for Tribal Bond Fraud.

NEW YORK — A former Los Angeles investment banker imprisoned for 11 years for a stock manipulation scheme was sentenced on Friday to an additional five years for misappropriating

proceeds from a bond issue by a Native American tribe.

Jason Galanis, 47, was sentenced by U.S. District Judge Ronnie Abrams in Manhattan, who also ordered him to forfeit more than $43 million.

“There simply aren’t enough words to fully express how profoundly sorry and remorseful I am,” Galanis, once dubbed “Porn’s New King,” said before the sentence was imposed. “I stand before you humiliated, utterly humiliated.”

Abrams said that while she was pleased to learn that Galanis had been teaching other inmates in prison, his conduct, which prosecutors say harmed both investors and the Oglala Sioux Nation in South Dakota, warranted a substantial punishment.

According to prosecutors, beginning in 2014, Galanis and his father, John, persuaded the Wakpamni Lake Community Corp, an affiliate of the Oglala Sioux Nation, to issue $60 million in municipal bonds.

Together with his father and five associates, Galanis and his co-defendants then misappropriated bond proceeds, prosecutors said. They said he obtained $8.5 million for himself to fund a lavish lifestyle.

The scheme left bond investors holding worthless securities, and the tribal corporation with no way to make interest payments due on the bonds, prosecutors said.

Galanis pleaded guilty to the scheme in January.

He had already pleaded guilty in July 2016 to a separate scheme to manipulate shares of the now defunct reinsurer Gerova Financial Group Ltd.

In February, U.S. District Judge Kevin Castel sentenced Galanis to 11 years and three months in prison for the Gerova scheme, also ordering him to forfeit $38 million, a mansion in Bel Air, California, and a $7 million apartment in New York.

Galanis was dubbed “Porn’s New King” by Forbes magazine in 2004 after buying the nation’s largest processor of credit card payments for internet pornography.

Three years later, the SEC fined him $60,000 after alleging he prepared false accounting information for Penthouse International Inc, in which he held a large stake.

By REUTERS

AUG. 11, 2017, 5:42 P.M. E.D.T.

(Reporting By Brendan Pierson in New York; Editing by Andrew Hay)

MSRB Examining Primary Offering Practices and Rules.

PHOENIX – The Municipal Securities Rulemaking Board is preparing to issue a concept release seeking market feedback on a broad range of primary offering practices, MSRB executive director Lynnette Kelly said Friday.

The concept release, a type of document the MSRB uses to seek input on potential rule changes, is large and should be released sometime in the next two months, Kelly said following the conclusion of the MSRB's recent board meeting of its fiscal year, which ends on Sept. 30.

The MSRB has a number of rules that touch on primary offering practices, Kelly said, such as MSRB Rule G-11, on primary offering practices, MSRB Rule G-32, on disclosures in connection with primary offerings, and the collection of certain data.

MSRB executive director Lynnette Kelly said the MSRB wants to ask a lot of questions about primary offering practices.

Kelly specifically mentioned the Securities and Exchange Commission's August 2015 enforcement case against Edward Jones and whether that might lead to rule changes. In that case, its first on primary market pricing of bonds, the SEC ordered the St. Louis based, retail-oriented dealer to pay more than $20 million for overcharging retail customers for new munis.

The commission found that instead of selling new bonds to customers at the initial offering price as required, Edward Jones, acting as a co-underwriter, took bonds into its own inventory and then improperly sold them to customers at higher prices. In some cases, the firm failed entirely to underwrite and offer the new bonds to investors until secondary market trading began.

In the wake of that case, SEC staff openly questioned whether industry practices needed to change.

Work on the concept release dates from around that time, or slightly afterwards, according to Kelly.

"This has been in motion 12-18 months," she said.

The announcement of the release came a day after the MSRB reraised decades-old concerns about issuers selecting or influencing the selection of underwriter's counsel prior to primary offerings, an issue Kelly described as a "tangent" to the concept release's aim, as the MSRB has no authority to mandate issuer behavior.

Before adjourning, the board also agreed to file with the SEC changes to its Rule G-34 on CUSIP numbers. If approved by the SEC, the change would, for the first time, require non-dealer municipal advisors to be subject to the CUSIP requirement for new issue securities that are sold in competitive offerings.

Dealers had complained about the MSRB's "clarification" that they are required to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent.

The rule change includes an exception for dealers and municipal advisors from the CUSIP number requirements. Under the exception, CUSIP numbers are not needed for direct purchases by banks, their non-dealer control affiliates and consortiums, where the dealer or municipal advisor reasonably believes the purchaser's intent is to hold the securities to maturity.

Kelly also noted that the deadline for registered MAs to take and pass the Series 50 qualification exam is Sept. 12, but that 128 of the 633 MA firms registered with the MSRB still do not have a single person who has passed the test.

The MSRB has been reaching out to MAs about this and has some concerns about the implications for issuers and for dealers who rely on the independent registered municipal advisor or IRMA exemption from MA registration when they provide advice to issuers. A pilot Series 54 exam for MA

principals should be available in 2019, said Kelly.

The board agreed to revise draft amendments to Rule G-21 on dealer advertising, and to file them, along with a proposed new Rule G-40 on municipal advisor advertising, with the SEC. The MSRB said its proposed amendments to Rule G-21 would, among other things, enhance the MSRB's fair-dealing provisions by harmonizing Rule G-21 with certain of FINRA Rule 2210's content standards for advertisements, including testimonials. Similarly, proposed new Rule G-40 would set forth general provisions, address professional advertisements and require principal approval for advertisements by MAs.

Kelly said the board next week will announce new members and officers slated to take their seats on the MSRB's Board when it begins its new fiscal year Oct. 1.

The Bond Buyer

By Kyle Glazier

Published July 28 2017, 12:45pm EDT

MSRB Announces New Officers and Board Members for Fiscal Year 2018.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced new officers and members of its Board of Directors who will begin their terms on October 1, 2017. Lucy Hooper, Executive Vice President at Davenport & Company LLC, will serve as Chair of the Board. Arthur Miller, Managing Director, Goldman, Sachs & Co., will serve his second term as Vice Chair.

"The Board revised the MSRB's strategic goals this year to address the evolving dynamics of the municipal securities market," said MSRB Executive Director Lynnette Kelly. "Our newly elected leadership represents a strategic combination of market expertise and continuity, and will provide a steady hand as we pursue these new goals."

New members joining the Board for four-year terms beginning October 1, 2017 are William M. Fitzgerald, Sr., Founder, Fitzgerald Asset Management, LLC; Manju S. Ganeriwala, Treasurer, Commonwealth of Virginia; Seema Mohanty, Founder and Managing Director, Mohanty Gargiulo, LLC; Donna Simonetti, former executive director at JP Morgan; and Beth Wolchock, Managing Director, Oppenheimer & Co. Inc.

"I am delighted that we have attracted such a diverse and experienced class of new Board members, who will undoubtedly help advance the MSRB's compliance, transparency and education objectives," Kelly said.

The MSRB also announced that Board member Gary Hall, whose term was set to expire September 30, 2017, will serve an additional two years on the Board to complete the term of Pat Sweeney, who recently resigned from the Board due to a job change.

The Board, which has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors, establishes regulatory policies and oversees the operations of the MSRB. All Board members must be knowledgeable about the municipal securities market and were selected from more than 90 applicants.

Other Board members are J. Anthony Beard, Renee Boicourt, Robert Clarke Brown, Julia Harper Cooper, Ron Dieckman, Richard Ellis, Jerry W. Ford, Richard Froehlich, Lakshmi Kommi, Kemp J. Lewis, Chris Ryon, Edward J. Sisk and Dale Turnipseed.

MSRB Officers and New Board Members, Fiscal Year 2018

Chair-Elect Hooper has been an MSRB Board member since 2014. She currently serves on the Nominating and Governance Committee. Ms. Hooper is Executive Vice President at Davenport & Company LLC where she has served as Director of Fixed Income Sales and Trading since 2000. She joined the firm in 1981 and has held various fixed-income positions. Earlier she worked as a trader and in fixed income sales for First and Merchant National Bank, which became Sovran Bank. From 2000 to 2008, Ms. Hooper served as a subject matter expert on the MSRB's Professional Qualifications Advisory Committee. She is past chair of the Board of Trustees at Randolph-Macon Woman's College (now Randolph College), where she graduated magna cum laude and Phi Beta Kappa with a bachelor's degree.

Vice Chair-Elect Miller has been an MSRB Board member since 2014 and will serve his second term as Vice Chair in the 2018 fiscal year. He is Managing Director of the Public Sector & Infrastructure Group in the Investment Banking Division of Goldman, Sachs & Co. Mr. Miller joined Goldman Sachs in 1985, where he serves as Co-head of the Public Finance Strategies and Analytics Group. He has previously worked in the firm's New Product Development Group, and the Fixed Income Research Group. He started his career as an associate attorney at Mudge Rose Guthrie Alexander & Ferdon. Mr. Miller earned a bachelor's degree from Princeton University, a master's degree from the University of North Carolina, a law degree from Duke University School of Law, and a master's of law from New York University.

William M. Fitzgerald, Sr. is the Founder of Fitzgerald Asset Management LLC where he manages debt portfolios for institutional and high-net worth investors. He also serves as the Founder and Chief Investment Officer at Global Infrastructure Asset Management LLC. where he manages investment vehicles that finance infrastructure projects with equity and debt. Prior to his current role, Mr. Fitzgerald was until 2008 a managing director and chief investment officer at Nuveen Asset Management, which he joined in 1998, and was ultimately responsible for $67 billion in assets under management. Mr. Fitzgerald has a bachelor's degree from Beloit College and a master's degree in business administration from the University of Chicago Booth School of Business. He also is a Chartered Financial Analyst.

Manju S. Ganeriwala is Treasurer of the Commonwealth of Virginia where she is responsible for overseeing the management of the Commonwealth's investment portfolio, issuance of general obligation bonds and appropriation-backed bonds for debt-issuing authorities, management of outstanding debt, and administration of the State's insurance and unclaimed property programs. She is chair of the Commonwealth's Treasury Board and serves on 10 other public boards, including the Virginia Housing Development Authority, the Virginia Port Authority, the Virginia Resources Authority, and the Virginia College Savings Plan. Prior to becoming Treasurer in 2009, Ms. Ganeriwala served as a deputy secretary of finance at the Commonwealth of Virginia, where she advised the governor on all state financial matters, including crafting the state budget, developing revenue forecasts, issuing debt and retaining the Commonwealth's "AAA" bond rating. Her earlier service to the Commonwealth includes leadership positions serving as the chief financial officer for the Virginia Department of Medical Assistance Services and as an associate director of the Virginia Department of Planning and Budget. She is a member and past president of the National Association of State Treasurers (NAST), a member and past chair of the State Debt Management Network, and a member of National Association of State Auditors, Comptrollers and Treasurers (NASACT). Ms.

Ganeriwala is the recipient of multiple public finance awards including the NAST Harlan Boyles-Edward T. Alter Distinguished Service Award (2016) and the Jesse M. Unruh Award (2014), the Virginia Women in Public Finance Lifetime Achievement Award (2015), the Northeastern Women in Public Finance and the Bond Buyer, Trailblazing Women in Public Finance Award (2015), and NASACT's President's Award (2013). Ms. Ganeriwala has a bachelor's degree from the University of Bombay and a master's degree in business administration from the University of Texas at Austin.

Seema Mohanty is the Founder and Managing Director of Mohanty Gargiulo, LLC where she oversees client development, relationship management and daily operations of the capital markets advisory business, including derivatives and municipal bond pricing. She serves as swap advisor for sophisticated municipal securities issuers, including government and non-profit clients with large and complex derivatives portfolios. Prior to her current role, Ms. Mohanty was managing director and head of municipal derivatives and structured products at UBS, where she also managed the firm's first book of credit facilities for tax-exempt clients. Earlier she served as managing director at Morgan Stanley, where she managed the issuer derivatives marketing group, and worked at JP Morgan early in her career. Ms. Mohanty has a bachelor's degree from the University of Michigan and a master's degree in business administration from the University of Chicago Booth School of Business.

Donna Simonetti is a former executive director at JP Morgan, where she was director of fixed income compliance. In that capacity, she advised the firm's public finance department on compliance issues regarding the sales, trading, underwriting and investment banking of municipal securities. Prior to joining JP Morgan in 2008, Ms. Simonetti was managing director principal at Bear Stearns and Co., Inc., where she oversaw compliance activities in the firm's municipal bond and public finance departments. Previously she was a senior vice president and senior business analyst in the municipal capital markets division at First Albany Capital, which she joined in 1981 and earlier served as a municipal credit analyst and institutional municipal sales principal. Ms. Simonetti began her career as a municipal credit analyst at Fidelity Management and Research Company. Throughout her career, Ms. Simonetti served on numerous industry committees and practice groups, including the MSRB's Uniform Practice and Glossary Committees. She currently serves on the finance committee of the board of The Telling Room, a non-profit writing center. Ms. Simonetti has a bachelor's degree from the State University of New York at Albany and a master's of business administration from Northeastern University.

Beth Wolchock is Managing Director and Municipal Principal at Oppenheimer & Co. Inc., where she leads the firm's municipal securities underwriting activities. In a career spanning more than 40 years, Ms. Wolchock has undertaken a progression of roles and responsibilities in underwriting and public investment banking arenas. Prior to joining Oppenheimer in 2013, Ms. Wolchock held positions at CastleOak Securities, LLP where she created the firm's municipal department and established its underwriting business; at Jackson Securities, LLC, where she was a branch manager and oversaw sales and trading; and at Artemis Capital Group (later Dain Rauscher Inc.), where she was a senior vice president and managed the firm's syndicate department. Earlier in her career, Ms. Wolchock was an underwriter and syndicate specialist successively at PaineWebber Inc., Kidder Peabody and Dean Witter Reynolds, Inc. Ms. Wolchock was a member of the Board of Governors for the Municipal Bond Club of New York. She has a bachelor's degree from the State University of New York at Buffalo.

Date: August 2, 2017
Contact: Jennifer A. Galloway
202-838-1500
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MSRB Modernizes Customer Account Transfer Rule.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) to amend MSRB Rule G-26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer standard for all municipal securities dealers. The amendments will be effective on January 29, 2018. Read the approval notice.

“The MSRB recognizes the need to revisit its rules over time to ensure that they continue to achieve their purpose and reflect the current state of the municipal market,” said MSRB Executive Director Lynnette Kelly. “Updating our customer account transfer standards increases efficiency and reduces confusion and risk to investors, ultimately allowing them to better move their municipal securities to a dealer of their choice.”

Rule G-26 was adopted in 1986 as part of an industry-wide initiative to create a uniform customer account transfer standard for all dealers engaged in municipal securities activities. Today’s amendments update Rule G-26 to better harmonize with the customer account transfer rules of other self-regulatory organizations to promote the uniform standard.

The amendments are part of a broader retrospective review of the MSRB’s uniform practice rules, which previously resulted in changes to modernize close-out procedures and support the industry-wide shift to a T+2 settlement cycle. Read more about the MSRB’s regulatory efficiency initiatives.
Date: July 31, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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What Happened to L.A.'s Push to End its Pay-to-Play Reputation? So Far, Not Much.

As an election loomed earlier this year, Los Angeles politicians were eager to prove that moneyed interests had not bought City Hall.

Five City Council members called for a ban on campaign contributions from real estate developers seeking city approvals, saying it would address the perception that L.A. engages in “pay-to-play” politics. One of them went even further, pushing for full public financing, a system that would bankroll campaigns with taxpayer money instead of checks from wealthy donors.

Six months later, neither proposal has had a hearing at City Hall.

Although both were referred to a council committee headed by council President Herb Wesson, no meetings have been scheduled so far. The effort to overhaul campaign funding did not come up last week, when Wesson laid out an ambitious agenda for the next 2 ½ years.

City leaders say they are still committed to reviewing the proposals. But neighborhood leaders and activists have been voicing doubts about whether they are serious.

“Look, it’s gone nowhere,” said Walter Hall, who serves on the board of the Greater Valley Glen Council. “Nothing has come out of the process since it started in January.”

The neighborhood council recently endorsed the developer donation ban, partly to prod city officials. Hall said his group also took action in response to a Times investigation into a real estate project known as Sea Breeze. The Times found more than $600,000 in contributions from donors linked directly and indirectly to the developer of that project, which was approved despite planning department opposition.

The proposals from city lawmakers to overhaul campaign finance laws were unveiled in January, when L.A.’s elected officials were fighting Measure S, a ballot proposal that would have imposed sweeping restrictions on real estate development. Measure S backers argued that wealthy developers use campaign contributions to persuade city politicians to approve out-of-scale building projects.

Developers spent millions to defeat the proposal, and voters rejected it in March.

Since then, backers of Measure S say City Council members have failed to follow through on their promises of reform. The proposed ban on developer donations is “completely dead as far as we can see,” said Jill Stewart, director of the Coalition to Preserve L.A., which pushed for passage of Measure S. “It was a lot of talk.”

City officials, in turn, say the proposals are very much alive — and will have a hearing at Wesson’s rules committee before the end of the year.

“I don’t kill anything. I don’t bury anything,” Wesson said. “But right now, I’ve got a rollout of an agenda that I think takes some priority.”

That agenda includes efforts to form a municipal bank, build more affordable housing, draft legislation to protect immigrants and hold a series of events aimed at improving race relations. Wesson’s committee also has been under the gun to finish crafting regulations for marijuana businesses before January, when licensed sales of recreational cannabis become legal across California.

The proposal to ban developer donations was co-authored by Councilman David Ryu, who was elected in 2015 after pledging not to accept such contributions. Nick Greif, a Ryu policy aide, said his boss wants a ban in place before fundraising begins for the 2020 city election — which leaves council members with time to deliberate.

“That said, we don’t want things to linger,” Greif added.

Councilman Paul Krekorian, who also sponsored the proposal, said he remains committed to keeping campaign finance reform at the top of this year’s agenda.

“We need to find solutions that build greater trust with the people we represent and make the entire system fairer and more transparent,” he said in a statement.

Three other politicians who backed the proposed ban on developer donations were running for reelection at the time — and faced challengers who had pledged not to accept donations from real estate developers needing city approvals.

Councilman Mike Bonin, who signed on to the developer donation ban, also brought forward a separate proposal for full public financing. Under such a system, candidates seeking public funding

would have to get a minimum number of small donations from their constituents to demonstrate their campaigns are viable, then forgo any more fundraising.

Bonin spokesman David Graham-Caso said the plan is still being worked on. The councilman, he said, has not yet decided exactly when it would go to voters — in June or November of next year.

The public financing proposal will probably face opposition, said Michele Sutter, co-founder of the activist group Money Out Voters In, which supports the move.

“The folks who profit from this system and who get to wield greater influence as a result of it are not that interested in relinquishing that advantage,” she said.

A previous push for public financing in L.A. was abandoned after years of scrutiny. During those discussions, a city analyst warned public financing could be “very costly.”

If the system becomes too expensive, Angelenos may be reluctant to put additional public funds into political campaigns, said Jessica Levinson, president of the Los Angeles City Ethics Commission, which could be asked to vet the two campaign finance proposals.

“It can be tagged as welfare for politicians,” she said.

Levinson said that, even with a public financing system, wealthy donors could continue pouring unlimited amounts of money into independent committees that spend lavishly to support candidates. She also questioned whether a donation ban targeting developers would withstand a legal challenge. Other critics have argued that such a ban unfairly demonizes builders of much-needed housing.

In Valley Glen, however, the neighborhood council wants L.A. to go further by also prohibiting donations from developers who are “likely to submit plans” for projects in the future.

“Why would an out-of-town developer, or any developer, whose only business is to make money, give money [to a campaign] unless he thinks it’s going to be to his benefit?” said Hall, the neighborhood council member.

The Los Angeles Times

by Emily Alpert Reyes and David Zahniser

July 30, 2017

Conflicted Counsel: The MSRB Cautions Against Issuer Selection of Underwriter’s Counsel.

Long-time municipal market insiders can recall an era when pay-to-play was rampant and kickbacks were just the cost of doing business. But with the advent of rules of professional conduct and greater transparency, today’s municipal market participants operate with competence, accountability and integrity. The Municipal Securities Rulemaking Board (MSRB) carefully monitors market practices to identify threats to market integrity. One troubling practice from the market’s opaque past has persisted—the practice known as “issuer designation of underwriter’s counsel.”

Underwriters’ counsel are important members of the deal team. They assist underwriters with due

diligence responsibilities, including conducting thorough and independent reviews of municipal securities issuers' offering documents. The heightened regulatory scrutiny on the adequacy of due diligence performed by underwriters of municipal securities in the wake of the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation (MCDC) initiative underscores the importance of underwriters retaining independent, expert counsel.

Yet some municipal securities issuers designate the counsel of their underwriters, or exert undue influence in the selection. When counsel is selected by—and perhaps beholden to—the issuer, the counsel's allegiance and ability to scrutinize the issuer's documents with the necessary independence, rigor and expertise are called into question. Ultimately, there is the potential for investor harm if important and material information about the municipal securities or the issuer is misrepresented or omitted, whether purposefully or unintentionally. The underwriter also may suffer financial loss, reputational harm and fraud liability if it relies on insufficiently qualified or potentially conflicted counsel.

The MSRB first shone a light on this practice in 1998, articulating the view that underwriters "must be free to select counsel in whom they have confidence and who are free of the possibility of any conflicting allegiances to other parties involved in the underwriting process." Since that time, several industry groups have offered best practices encouraging less issuer involvement in the selection of underwriter's counsel. The MSRB has issued a market advisory to restate its concerns about the practice.

The MSRB recognizes that issuers often have compelling reasons for their involvement in selecting underwriter's counsel, such as managing costs, retaining counsel already familiar with the issuer's operations and finances and, in some cases, supporting women- or minority-owned firms. However, this practice gives rise to real or perceived conflicts of interest that undermine the integrity of the municipal market. This practice should not be a part of public finance.

The Bond Buyer

By Lynnette Kelly

Published July 27 2017, 2□34pm EDT

Lynnette Kelly is Executive Director of the Municipal Securities Rulemaking Board

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FINRA and the MSRB Issue FAQs on Bond Mark-Up Disclosure.

On July 12, 2017, the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) published new implementation guidance on the bond mark-up disclosure requirements set to take effect next spring. Under amended FINRA Rule 2232 and amended MSRB Rules G-15 and G-30, effective May 14, 2018, dealers will be required to disclose on retail customer confirmations their mark-ups on most municipal and corporate bond transactions, calculated from the bond's prevailing market price (PMP).

Read the FAQs.

Town Supervisor: Bonding Adviser Removed During Investigation.

Babylon Supervisor Rich Schaffer has removed the town's municipal finance adviser pending the outcome of a U.S. Securities and Exchange Commission investigation.

The SEC on June 30 asked town employees to preserve documents related to municipal bonding work by the adviser, Doug Jacob, a subcontractor for the town and former town comptroller, for evidence as part of a civil investigation, documents show.

The request to Town Attorney Joe Wilson states the agency believed the town may possess "documents and data that are relevant to an ongoing investigation."

The letter, provided to Newsday by town spokesman Kevin Bonner, asks Babylon officials to preserve documents "created on or after Jan. 1, 2015 that concern the town's issuance of general obligation bonds in 2015 and 2016; Red Hill Professional Services, Inc; and Douglas F. Jacob."

Jacob, 56, of Pelham in Westchester County, owns Red Hill, a general services company founded in 2007 that provides workers to the town. Jacob served as comptroller for the town for a decade before resigning in December 2003.

The town does not contract directly with Red Hill or Jacob, who has an office in the Town Hall Annex. Babylon officials contract with Herbert L. Greene, a solid waste consultant, who subcontracts to Jacob and Red Hill to provide workers for several town departments.

The SEC letter did not provide details about the focus of the investigation. An agency spokeswoman declined to comment.

But Schaffer said Jacob had shown him a separate letter from the SEC to Jacob about the investigation indicating it focuses on whether Jacob had violated the federal Dodd-Frank Act, which aims for better financial industry regulation, including making sure advisers put the municipality's interests ahead of their own.

At issue are Jacob's dual roles as financial adviser to the town and head of a company that provides workers for the town, Schaffer said.

"The question is whether or not they believe there's a conflict of interest" between Jacob's two roles and his ability to provide unbiased advice on bonding, Schaffer said. "I don't believe there is but I will leave it up to the professionals."

Red Hill employees in 2016 worked in 16 town departments including transportation, drug and alcohol counseling, the fire marshal and the town attorney's offices, according to documents. One of the employees is Jacob's son, Max Jacob, who has worked in the controller's office since 2010.

Doug Jacob is an SEC-registered municipal financial adviser and for more than a decade has been helping the town with annual bonding by acting as a "liaison between the town, the brokerage firms, and bond counsel," according to Bonner. Jacob did not respond to requests for comment. A message left at a number listed for Red Hill — the same number as Jacob — was not returned.

The town bonded for $65 million in 2015 and 2016. The town has not bonded yet this year.

Wilson in a July 8 letter told town employees that they must abide by the SEC's request to "preserve and retain" documents, noting the agency's letter "should not be construed as an indication that the town has done anything improper or violated the law."

Local governments frequently use advisers to help them decide how and when to issue the bonds and how to invest proceeds from the sales, according to the SEC's website. The Dodd-Frank Act, passed in 2010, required advisers to register with the SEC.

Greene in 2016 submitted invoices to the town for himself, Jacob and 32 Red Hill workers totaling $1.5 million, according to documents.

Jacob invoiced $115,712 for his own services that year as a subcontractor, according to Bonner. Greene's contract has one-year extensions running through the end of 2018.

Jacob was one of five top town officials who in 1997 were indicted on felony charges of falsifying documents filed with the state in order to hide a deficit.

Four of the officials were acquitted. Jacob was convicted in 1998 of eight misdemeanor counts of second-degree offering a false instrument for filing and was sentenced to probation.

Schaffer, who is also chairman of the Suffolk County Democratic Party, maintains the arrests were a political vendetta by then-Suffolk County District Attorney James Catterson Jr., a Republican. Schaffer said he believes Jacob was convicted of "actions every other town on Long Island takes" in moving money between the capital and operating funds.

Schaffer said Jacobs was used as a financial adviser on bonding because "he has a lot to offer the town and he's one of the main reasons why we have one of the highest bond ratings of any municipality on Long Island."

If the SEC finds a problem with Jacob's work, he will be permanently removed as adviser — but the town will continue to subcontract with his company, Schaffer said.

"Red Hill provides a very valuable service to the town and allows us to continue to operate as we do and provide the services that we do in the 2 percent tax cap world," he said.

Newsday.com

Updated July 30, 2017 6:00 AM

By Denise M. Bonilla

FINRA And The MSRB Issue FAQs On Bond Mark-Up Disclosure: WilmerHale

On July 12, 2017, the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) published new implementation guidance on the bond mark-up disclosure requirements set to take effect next spring.1 Under amended FINRA Rule 2232 and amended MSRB Rules G-15 and G-30, effective May 14, 2018,2 dealers will be required to disclose on retail customer confirmations their mark-ups on most municipal and corporate bond transactions, calculated from the bond's prevailing market price (PMP).3

Key insights from the new implementation guidance are summarized below. The guidance, provided in the form of frequently asked questions (FAQs), attempts to clarify when and how mark-ups should be disclosed and how to determine PMP, among other topics. Nevertheless, the FAQs may raise new questions as dealers work to overhaul their systems to comply with the controversial new

requirements before the May 2018 deadline. FINRA and the MSRB coordinated on the publication of the FAQs, consulting with the Securities and Exchange Commission (SEC) in advance. Both FAQs use the same numbering scheme (followed here), with minimal differences between the two versions.

Continue reading.

Last Updated: July 25 2017

Article by Paul R. Eckert, Bruce H. Newman and Daniel Martin

WilmerHale

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting July 26-27, 2017 where it discussed municipal advisor professional qualifications, primary market practices and market transparency developments related to promoting a fair and efficient municipal securities market.

Electronic Municipal Market Access (EMMA®) Website
Consistent with the MSRB's new strategic goals that emphasize further evolving the EMMA website into a comprehensive transparency platform that meets the needs of municipal market participants and the public, the Board reviewed public and user feedback to improve the usefulness and usability of the EMMA website, and provided direction to staff on its priorities.

Municipal Advisor Professional Qualifications
The Board discussed professional qualifications requirements of municipal advisors, including the September 12, 2017 deadline for municipal advisors to take and pass the Municipal Advisor Representative Qualification Examination (Series 50). As of July 25, 2017, 128 municipal advisor firms registered with the MSRB did not have at least one person qualified with the Series 50 exam or enrolled to become so qualified. The Board considered potential implications for municipal entity and obligated persons clients that hire municipal advisors and for dealers who may rely on the "IRMA" exemption, which provides assurance that municipal entities have engaged an independent registered municipal advisor to act as their fiduciary. The Board requested staff to continue its education and outreach campaign to inform market participants, and will closely monitor the issue. The MSRB is holding a webinar at 3:00 p.m. ET on August 10, 2017 called, "What to Expect from Your Municipal Advisor," which will include a discussion on the potential implications for municipal entities of the upcoming municipal advisor exam deadline. Register for the webinar here.

The Board also discussed the next step in the development of the municipal advisor principal exam, which is to conduct a job analysis of municipal advisor principals to further develop the content outline for the principal exam. The MSRB anticipates that the principal exam will be available as a pilot in 2019.

Primary Offering Practices
The Board discussed comments received on proposed changes to MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements, and agreed to file amendments with the SEC. The changes seek in part, to provide clarity and flexibility for dealers and municipal advisors in

obtaining CUSIP numbers for new issues of municipal securities. The proposed changes would clarify the rule's definition of "underwriter" to reflect the MSRB's longstanding public interpretation that placement agents, when engaged in private placements, including direct purchases, are underwriters for purposes of Rule G-34. The proposed changes would amend the rule to make all municipal advisors in competitive sales of municipal securities subject to the CUSIP number requirements, thereby addressing any potential regulatory inefficiencies in competitive sales of new issues. The proposed changes would also establish an exception for dealers and municipal advisors from the CUSIP number requirements, and for dealers from the depository eligibility requirements, for direct purchases by banks, their non-dealer control affiliates and consortiums thereof, where the dealer or municipal advisor reasonably believes the purchaser's present intent is to hold the securities to maturity.

The MSRB is currently engaged in a multi-year review of primary offering practices to identify any necessary revisions to existing rules or the need for guidance to support existing protections for municipal securities investors and issuers. At its meeting, the Board agreed to publish a concept proposal seeking industry and public input on possible changes to the primary offering rules and practices of dealers in municipal securities such as aspects of MSRB Rule G-11, on primary offering practices, and MSRB Rule G-32, on disclosures in connection with primary offerings, and data points collected under the rule.

Advertising Rules
The Board discussed comments received on draft amendments to the MSRB's proposal to update and harmonize certain provisions of its municipal securities dealer advertising rule, MSRB Rule G-21, with those of other financial regulators, and to create similar advertising standards for municipal advisors. In response to market feedback, the Board agreed to revise draft amendments to Rule G-21 and to file them, along with proposed new Rule G-40, on municipal advisor advertising, with the Securities and Exchange Commission (SEC). The proposed amendments to Rule G-21 would, among other things, enhance the MSRB's fair-dealing provisions by harmonizing Rule G-21 with certain of FINRA Rule 2210's content standards for advertisements, including testimonials. Similarly, proposed new Rule G-40 would set forth general provisions, address professional advertisements and require principal approval for advertisements by municipal advisors.

Reporting of Information on Municipal Fund Securities
The Board discussed the MSRB's collection of data relating to municipal fund securities, specifically, ABLE (Achieving a Better Life Experience Act) programs and 529 college savings plans, and directed staff to continue work on several projects related to such data collection.

Date: July 28, 2017

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MSRB Publishes Market Advisory Addressing Conflicts of Interest with Issuer Designation of Underwriter's Counsel.

The Municipal Securities Rulemaking Board (MSRB) today published a market advisory addressing the practice of municipal securities issuers designating the counsel of their underwriters, or influencing the underwriter's selection of counsel. The MSRB's advisory restates concerns first

raised by the organization in the 1990s that investors may be harmed in a variety of ways in any offering process that does not properly utilize the review, guidance and counseling of an independent, competent and appropriately critical underwriter's counsel. To minimize conflicts of interest and to reduce any influence by an issuer that may call into question the qualifications or independence of the underwriter's counsel, the MSRB suggests that an issuer refrain from involving itself in the underwriter's selection of counsel or that an issuer's involvement in such process be minimal and limited to concerns regarding competency, conflicts of interest and the avoidance of excessive costs.

Read the market advisory.

MSRB's G-42 Guidance Notes Ambiguities for MAs in Conduit Issues: Burr & Forman

Last week, the MSRB issued "guidance" on the application of Rule G-42 conduct standards for Municipal Advisors in conduit issues. The "guidance" highlights ambiguities from the "for or on behalf" language in the MA Rule when applied to conduit issues (where the MA interacts with both the municipal issuer and the conduit borrower).

Beyond issue-spotting though, the "guidance" merely urges care and defers to the SEC for after-th--fact "facts and circumstances" determinations. In fact, it includes a "don't ask us" disclaimer: These "are interpretive issues that are solely within the jurisdiction of the SEC. Requests for interpretation regarding such issue should be direct to the SEC's Office of Municipal Securities."

Extended to MAs in December 2015, Rule G-42 sets out conduct and disclosure standards following from an MA's statutory fiduciary duty to Municipal Entities ("ME") and duty of care to Obligated Persons. In a conduit borrowing, the governmental issuer is an ME and the conduit borrower is an Obligated Person (but might also be an ME).

There are six take-aways from the guidance:

1. First and always ask "who is the client": The issuer, conduit borrower or both? Who pays your fee isn't dispositive.
2. Next determine if the client is an ME (fiduciary duty) or OP (duty of care). If the conduit borrower also is an ME, then ME status (and your obligations) trump their status as an OP/conduit borrower.
3. Assess actual and potential conflicts of interest now and throughout the representation.
4. Disclose and update those conflicts.
5. Mitigate those conflicts.
6. Withdraw if those conflicts are irreconcilable.

MSRB's guidance discusses potential conflicts and issues in five scenarios involving MAs' involvement in conduit borrowings.

- First, where an Issuer Hires MA for / to Conduit Borrower, consider, disclose and mitigate potential conflicts of interest (arising from the Issuer's payment of the MA's fee).
- Second, where an MA knows (or reasonably should) that an ME client will be seeking and passing along advice to a OP conduit borrower, then the MA should consider, disclose and mitigate potential conflicts arising from an actual or implicit "dual representation." The discussion notes

that the MA's fiduciary duty to an ME may mean that the MA cannot "disclose away" actual conflicts. A scope limitation within an engagement may offer appropriate protections, together with thoughtful termination provisions. Clearly, an engagement letter should disclaim any advice to non-clients.

The same considerations apply to explicit dual representations, where:

- Third, the OP conduit borrower hires the MA to provide advice to both borrower and issuer.
- Fourth, dual but "independent" representations in which the OP and ME each hire the same MA.
- Fifth, dual but "independent" representations in which the OP and ME each hire the same MA, but the engagement is staffed by separate MAPs for each client (because the MA enterprise itself owes obligations to each client). So "Chinese Walls" may help mitigate, but won't avoid, conflicts of interest.

The guidance is MSRB Regulatory Notice 2017-13 (July 13, 2017), here.

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House Committee Unanimously Approves Bill to Classify Municipal Bonds as High-Qualify Liquid Assets.

The House Financial Services Committee on July 25 unanimously voted to report the Municipal Finance Support Act of 2017, H.R. 1624, to the full House of Representatives for consideration. The legislation, introduced by Representative Luke Messer (R-IN), would allow large banks to count some of their municipal bond investments, including tax-exempt housing bonds, as high-quality liquid assets (HQLAs) under federal bank liquidity standards. NCSHA and several other state and local organizations supported the bill.

H.R. 1624 would modify a regulation the Federal Reserve, the Department of Treasury, and the Federal Deposit Insurance Corporation (FDIC) released in October 2014 to ensure that large banks hold enough liquidity to continue making payments during periods of financial stress. Under the rule, banks with at least $250 billion in assets (or $10 billion in foreign exposure on their balance sheet) must maintain a minimum liquidity coverage ratio (LCR) comprised of certain financial investments that are considered HQLAs. The rule took effect at the beginning of 2017.

A previous summary of H.R. 1624 by NCSHA can be found here.

The legislation has 18 cosponsors: Republicans Randy Hultgren (IL), Peter King (NY), Bruce Polquin (ME), Richard Hudson (NC), Carlos Curbelo (FL), and Dennis Ross (FL); and Democrats Carolyn Maloney (NY), Gregory Meeks (NY), Robin Kelly (IL), Terri Sewell (AL), Kyrsten Sinema (AZ), Eleanor Holmes Norton (DC), Gwen Moore (WI), Marc Veasey (TX), Brad Sherman (CA), Ron Kind (WI), Nydia Velazquez (NY), and John Delaney (MD).

There is a similar bill in the Senate introduced by Senators Mark Warner (D-VA) and Mike Rounds (R-SD), S 828. Though the bill has been referred to the Senate Banking Committee, the Committee has not scheduled action on it.

JULY 28, 2017

BDA Submits Comment Letter: Proposed Limited Safe Harbor from FINRA Debt Research Rules for Desk Commentary.

BDA Comment Letter Summary

- BDA believes 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
- If and when FINRA proposes rule text for the safe harbor, it should provide clarity on desk commentary content

Recent BDA Actions

- **BDA Comment Letter:** On July 14th, BDA submitted a comment letter in response to FINRA's request for comment on a proposed safe harbor for desk commentary. The letter is here.
- **Morgan Lewis Memo:** In May, Amy Natterson Kroll of Morgan Lewis joined BDA's conference call to discuss the proposed safe harbor. A memo on the proposal authored by Ms. Kroll can be read here.
- **FINRA Proposal:** FINRA has requested comment on a proposed safe harbor from the debt research rule specifically for desk commentary distributed to certain institutional customers.

Bond Dealers of America

July 17, 2017

MSRB Announces Topics to be Discussed at July Board Meeting.

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet July 26-27, 2017 in Washington, DC, where it will discuss the upcoming municipal advisor professional qualification deadline, public and user feedback on its Electronic Municipal Market Access (EMMA®) website and other rulemaking and policy topics.

View the MSRB Board of Director's meeting discussion items.

New MSRB Fee to be Assessed on Underwriters to 529 College Savings Plans.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) amendments to MSRB Rule A-13, on underwriting and transaction assessments for brokers, dealers and municipal securities dealers, to assess a new annual fee on dealers acting as underwriters to 529 college savings plans. The amendments are effective immediately. The new fee is based on a percentage of total aggregate plan assets as of December 31 each year, as required to be reported by an underwriter on MSRB Form G-45. The MSRB will invoice for the new underwriting fee beginning in May 2018.

A key strategic priority of the MSRB is the financial sustainability of the organization, facilitated by the fair and equitable assessment of fees across all regulated entities. The new underwriting fee will defray the MSRB's costs of operating and administering its rulemaking, market transparency and educational activities concerning dealers acting as underwriters to 529 college savings plans.

View the SEC filing.

Study Finds EMMA has Reduced Price Volatility, Price Differentials.

WASHINGTON – The Municipal Securities Rulemaking Board's introduction of EMMA and its subsequent requirements for dealers to disclose near-real time information on the system has narrowed measures of market inefficiencies like price volatility and price differentials but has not eliminated the advantage institutional investors have over retail investors, according to a study from Komla Dzigbede.

The paper was one of several chosen to be presented as part of the Brookings Institute's annual Municipal Finance Caucus here. Dzigbede, an assistant professor at Binghamton University, was invited to present the paper during one of the conference's sessions.

The study, published this month, explores secondary market trade data on California state general obligation bonds issued between 2005 and 2014. That period of time was chosen to cover the span before EMMA was launched in March 2008 as well as the time after the MSRB's 2009 introduction of requirements for dealers to report information to the new system. The requirements touched on, among other things, auction rate securities disclosure and all-electronic official statement dissemination standards. They also included mandatory disclosure of trade information on a near real time basis to EMMA.

EMMA and the establishment of the subsequent disclosure requirements to the system have helped investors by giving those in the market more information to use as they carry out transactions, Dzigbede said.

Regulators "must respond more effectively to counteract disparities in information flow and rent-seeking behavior, which creates unequal opportunities for the retail investor segment of the market," said Komla Dzigbede, assistant professor at Binghamton University.

Average daily trade prices rose in the post-regulatory period while trade price differentials decreased by an average of $0.18. Dzigbede said that the trade price rise may be attributable to investors' gradually demanding increased yields as more information on bonds became available because of the increased disclosures. That increase in information may also be the underlying cause of the trade price differential decline as investors were more able to assess the value of bonds, he said.

Trade volatility, which Dzigbede said is generally associated with an inefficient market, declined by 0.26% in the post-EMMA regulation period, according to the data. While that is good news and shows the regulations were effective, Dzigbede said that the data shows that institutional investors benefited more from the changes, seeing a higher margin of decline for volatility than retail investors.

He said that finding confirms "evidence on the inequities in trade pricing that tend to favor large investors over small investors in municipal securities secondary markets."

So while the regulation was generally good for the market and “should give renewed impetus” to such regulatory efforts, there is still work to be done to lessen the advantage institutional investors have, Dzigbede said.

He added that regulators “must respond more effectively to counteract disparities in information flow and rent-seeking behavior, which creates unequal opportunities for the retail investor segment of the market.” One way to do that, according to Dzigbede, is to identify spaces within the market that are attractive to retail investor trades and target protective regulatory schemes there.

He also said it is important for the MSRB and Securities and Exchange Commission to help educate investors, especially small ones, about things like complex, sophisticated debt instruments and the mechanics of trading portfolios and the risks associated with them.

Karol Denniston, a partner with Squire Patton Boggs in San Francisco who specializes in bankruptcy matters who was chosen to comment on Dzigbede’s paper, said that the market is “never going to be an even playing field” between institutional and retail investors.

Institutional investors have “more information, bigger purchases, and better access to the market,” Denniston said. “I’m not sure if we’re ever going to see a level of disclosure that is going to balance out” retail and institutional investors.

She agreed with Dzigbede that regulators need to focus more on promoting and ensuring strong disclosure in the municipal market but said the enforcement of the disclosure provisions is particularly important right now as states like California deal with funding pensions and other post employment benefits.

“The premise of the paper is good, disclosure will make the market more efficient,” Denniston said.

“[But] there needs to be some mechanism to enforce [disclosure regulations] so people take it seriously. We need some teeth.”

Her comments are drawn from experiences she has had while working with troubled entities. She said that she sees some issuers having financial troubles that are reluctant to report them because they want to try to keep up appearances. That lack of disclosure is especially problematic as states and municipalities confront a variety of fiscal challenges like pensions, she said.

The Bond Buyer

By Jack Casey

Published July 18 2017, 11:13am EDT

Electronic Trading: Strengthening Best Execution in the Muni Market.

In preparing the municipal bond market in late 2015 for a new order-handling standard, the Municipal Securities Rulemaking Board took note of an important trend. “As the availability of electronic systems that facilitate trading in municipal securities increases,” the MSRB wrote, “dealers need to determine whether these systems might provide benefits to their customer order flow.”

The MSRB's guidance underscored a development seen in other markets and asset classes when electronic trading takes hold. As regulators move to raise execution standards, electronic trading comes to play a significantly more important role in the compliance process.

That is especially the case in a market as complex and fragmented as municipal bonds. Though about half the size of the U.S. corporate bond market in value, the muni market features about 20 times the number of securities and about 10 times the number of issuer entities, by one researcher's estimate. Those totals include a complicated variety of coupons and structures, as compliance officers can attest. It's not surprising that a large number of muni issues trade rarely.

Electronic trading proves especially valuable in markets such as municipal bonds, where liquidity is highly dispersed and discontinuous. Market participants gain the power to conduct price discovery efficiently across a broader range of potential counterparties, identifying trading opportunities not available to them through typical voice and messaging channels. Adding to the power of electronic trading in the municipal bond market in the last several months is the emergence of an "all-to-all" marketplace, in which dealers as well as asset managers can interact with one another on an anonymous basis.

In helping solve the muni market's liquidity puzzle, electronic trading has, in effect, raised the bar on best execution. Market participants who embrace fully integrated electronic trading strengthen their ability to achieve and validate best execution. Overall, electronic trading puts them in a better position to assess market quality across multiple sources of liquidity, audit their activities, measure their outcomes, fine-tune their policies and practices, manage operational risks and respond to customers.

Rule G-18's Execution Standard

Reflecting the muni market's complexities and its over-the-counter status, regulatory views on best execution have evolved slowly. It was only last year when the Municipal Securities Rulemaking Board put into effect its first explicit rule for best execution.

MSRB Rule G-18 creates "an order-handling and transaction-execution standard." The rule requires dealers to exercise "reasonable diligence" to determine the best market in the security it seeks to trade on behalf of a customer. Then dealers must buy or sell securities in that market so that the resulting price to the customer "is as favorable as possible under prevailing market conditions."

In its guidance, MSRB instructed dealers to establish policies spelling out how they meet the standards, and to review these annually in light of changes in market conditions and market structure, among other factors. The standard does not apply to investors with at least $50 million in assets as long as they affirm that they meet the MSRB definition of "sophisticated municipal market professionals," or SMMPs. Also excluded are inter-dealer trades, though customer trades cleared through another dealer are covered by the standard.

It was in the context of identifying the "best market" that the MSRB took note of the growing importance of electronic trading in its guidance in late 2015.

Since then, the emergence of the "all-to-all" electronic marketplace has begun to change the context for addressing the MSRB's standard. By bringing together bids and offers of major national and regional dealers as well as institutional investment managers, the "all-to-all" environment provides a previously unavailable, dynamic view of market quality and conditions incorporating a wide range of liquidity sources. Potential buyers and sellers see not only levels offered by dealers, but those offered by investment managers as well.

Operational Benefits

With these pricing and liquidity insights come a number of significant operational advantages. At the pre-trade stage, pricing history and current quotes are easily viewed, as well as evaluative data from two widely used sources. Pre-trade and post-trade integration with order management systems helps manage exposures and reduce operational risks. Rounding out these efficiencies is automated settlement.

Of prime importance to the compliance process is the detailed audit trail generated by electronic trading. This gives compliance staff a record of market conditions and levels available at the time of the trade. Audit trails open the way for post-trade analysis and provide relevant data for the annual reviews of dealers' policies and procedures required by Rule G-18. For investment managers, the audit trail can help them assess the quality of execution they are receiving.

As has been seen in other fixed-income categories, electronic trading starts slowly and then adoption rates over time tend to accelerate. Though in its early stages, all-to-all trading is poised to become a more important factor in the consolidation of muni market liquidity as investment managers grow more comfortable "making" prices as well as "taking" them. In that scenario, best execution — how to achieve and validate it efficiently and credibly — looks likely to remain among the leading factors driving increased adoption of electronic trading in the muni market in the months and years ahead.

The Bond Buyer

By Hardy Manges

July 10 2017, 9:00am EDT

Hardy Manges is Head of Municipal Dealer Sales at MarketAxess, responsible for new business development and strategy, training, and relationship management with dealers in the institutional municipal market.

SIFMA Asks SEC to Reject 'Inefficient' MSRB Account Transfer Proposal.

WASHINGTON – The Securities Industry and Financial Markets Association is urging the Securities and Exchange Commission to reject proposed Municipal Securities Rulemaking Board changes on customer account transfers, saying the amendments are inefficient and that the board would be better off simply cross-referencing other regulators' rules.

Bond Dealers of America is not asking the SEC to disapprove the proposal, but is seeking several changes including extending the period between when the changes are adopted and when they become effective to give dealers more time to adjust to a number of amendments taking effect then.

The SIFMA and BDA comments respond to an SEC filing from the MSRB containing proposed changes to MSRB Rule G-26 on customer account transfers. Rule G-26 currently requires dealers to cooperate in the transfer of customer accounts and includes various procedures for carrying out the transfer process. A transfer occurs when a customer decides to transfer an account from one dealer, the carrying party, to another, the receiving party. G-26 lays out specific time frames during which the transfers must occur as well as limits on why the receiving party can protest a customer's transfer instruction.

The rule was adopted in 1986 and is part of an industry-wide initiative to create a uniform customer account transfer standard, according to the MSRB. The standard is primarily driven by the Automated Customer Account Transfer Service (ACATS) of the National Securities Clearing Corp. (NSCC). ACATS is a system that facilitates the transfer of securities from one trading account to another at a different brokerage firm or bank.

The MSRB's rule, which governs municipal security-only customer account transfers, is similar to other self-regulatory organization rules, such as New York Stock Exchange's Rule 412 and Financial Industry Regulatory Authority's Rule 11870. The MSRB periodically modifies its requirements under G-26 to conform to provisions in the parallel rules of other self-regulatory organizations, which have changed somewhat in recent years, so that there is a consistent standard.

SIFMA echoed its past comments to the MSRB in its most recent letter, saying that Rule G-26 in its current form is unnecessary and that dealers would be better off having the MSRB cross-reference the other regulators' rules, particularly FINRA Rule 11870.

"SIFMA and its members feel the proposed amendments take an approach that is a step backward; instead of supporting rulebook simplification and harmonization and promoting automation to facilitate faster transactions, the proposed amendments are inapposite," wrote Leslie Norwood, managing director and associate general counsel with SIFMA.

Norwood added that SIFMA still believes that most of the firms subject to G-26 and no other regulatory rules regarding account transfers don't participate in ACATS anyway.

The MSRB responded to FINRA's past suggestions by saying that if it were to simply incorporate FINRA's Rule 11870 by reference, it "potentially could be seen as delegating its core mission to protect investors, issuers, and the public interest and to promote a fair and efficient municipal market."

SIFMA said it strongly disagrees with the MSRB's rationale for rejecting their recommended approach and pointed to other MSRB rules like G-41 on anti-money laundering compliance program and G-35 on arbitration that include cross-references.

"In this instance, the MSRB would not be seen to be delegating its core mission to protect the municipal securities market, as there is nothing particularly unique regarding the transfer of customer accounts with respect to municipal securities," Norwood wrote.

She added that if the MSRB stays with its decision against cross-referencing, it could choose to instead allow FINRA member firms to follow FINRA 11870 and NYSE member firms to follow NYSE Rule 412 instead of G-26 while also requiring firms not covered by either to follow Rule G-26.

"If the primary purpose of the changes and the draft amendments is to re-establish consistency with ACATS and the rules of other SROs by conforming G-26 to significant updates by the NSCC, the NYSE and FINRA that have relevance to municipal securities, the best way to accomplish this is to have one governing rule that is cross-referenced by the other self-regulatory organizations," Norwood wrote.

Additionally, SIFMA said that having different rules for account level transfers could result in: additional compliance burdens, conflicting examiners from different regulators applying different rules to the same customer account transfer, and confusion among customer.

"We feel these reasons are significant enough to warrant complete rule harmonization governing these procedures," Norwood wrote.

Both SIFMA and BDA included concerns in their letters about the need to harmonize the timeframes under MSRB Rules G-26 and G-12 on uniform practice with FINRA rule 11870 because G-12 was recently amended to shorten the amount of time dealers had to close out account transfer fails. Both dealer groups said FINRA should harmonize its rule to those of the MSRB.

BDA also proposed that the effective date be changed from some time around January 2018 to about 180 days after the adoption of the Department of Labor's principal trading and best interest contract exemptions, which are to become applicable on Jan. 1, 2018. The group said that having an effective date around January 2018 would add to already significant regulatory changes dealers will have to be adjusting to around that time.

BY SOURCEMEDIA | MUNICIPAL | 07/06/17 07:08 PM EDT

By Jack Casey

MSRB Names General Counsel and Chief Compliance Officer.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that it has promoted Michael L. Post, who has held leadership roles in the MSRB's Market Regulation department since 2013, to serve as General Counsel. In this role, Post will serve as senior legal counsel and policy advisor to the Board of Directors, and will oversee Board governance, rulemaking for municipal securities dealers and municipal advisors, regulatory relationships and legislative affairs.

"Mike has successfully guided the MSRB's regulatory affairs through an intense period of rulemaking, driven in part by our expanded mandate under the Dodd-Frank Act and the priorities outlined in the 2012 Securities and Exchange Commission Report on the Municipal Securities Market," said MSRB Executive Director Lynnette Kelly. "He is a trusted advisor to the Board and we are thrilled to have him step into this role as our Chief Legal Officer, Bob Fippinger, departs at the end of the month."

Before joining the MSRB as Deputy General Counsel in 2013, Post served for more than 10 years in various senior roles at the Securities and Exchange Commission (SEC). From 2007 to 2009, he was Counsel to Chairman Christopher Cox, advising on a wide range of legal, policy and management issues arising primarily out of the Division of Trading and Markets, Division of Enforcement and Office of Municipal Securities. He also served as a senior litigation counsel in the appellate group in the SEC's Office of the General Counsel and received the Manuel F. Cohen Outstanding SEC Younger Lawyer Award. From 1998 to 2003 Post was in private practice in the Supreme Court and appellate litigation group at Sidley Austin LLP. He began his legal career as a judicial law clerk to Judge Paul J. Kelly, Jr. on the U.S. Court of Appeals for the Tenth Circuit.

Post earned a juris doctor from The George Washington University Law School, a master's of public administration degree in public policy analysis from Arizona State University and a bachelor's degree in economics from the University of California, Los Angeles.

The MSRB also announced that it has named Gail Marshall Chief Compliance Officer. Marshall has served as Associate General Counsel – Enforcement Coordination since 2015. She is responsible for managing the MSRB's professional qualifications program, enforcement support initiatives and internal corporate legal activities.

“Gail is an indispensable resource for fellow securities regulators and MSRB-regulated firms,” Kelly said. “She works tirelessly to support industry needs and facilitate regulatory compliance.”

Prior to joining the MSRB as Associate General Counsel in 2015, Marshall served as Of Counsel at Bingham McCutchen LLP from 2000-2015 where she advised broker-dealers and investment advisers on compliance with federal, state and self-regulatory organization regulatory matters, and represented clients in examination and enforcement proceedings. Earlier she was an attorney with the SEC where she served as special counsel to Commissioner Isaac C. Hunt, Jr., as well as special counsel in the Division of Trading and Markets and Division of Enforcement.

Marshall received a master’s of law in securities and financial regulation from Georgetown University Law Center, a juris doctor from New England School of Law and a bachelor’s degree in management from Westfield State University.

Date: July 10, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Provides Implementation Guidance on Mark-up Disclosure.

Washington, DC – In advance of the May 2018 implementation of landmark new regulations that enhance the transparency of costs associated with municipal securities transactions for retail investors, the Municipal Securities Rulemaking Board (MSRB) is providing extensive guidance to assist municipal securities dealers in preparing to comply.

Amendments to MSRB Rule G-15 require dealers to disclose additional information on retail customer confirmations for a specified class of principal transactions, including the dealer’s mark-up or mark-down as determined from the prevailing market price of the security. Today’s guidance, provided in a clear question-and-answer format, addresses the new confirmation disclosure requirements, determination of the prevailing market price and disclosure to customers of the time of execution of trades and link to more security information on the Electronic Municipal Market Access (EMMA®) website. Read the FAQs.

“By offering additional guidance with nearly a year remaining for firms to prepare, the MSRB aims to facilitate the industry’s adoption of this historic new level of price transparency for retail investors,” said MSRB Executive Director Lynnette Kelly. “Today’s guidance is one example of the MSRB’s renewed commitment to supporting regulated entities’ compliance with new and existing standards of conduct. Regulated entities can expect to see additions to these FAQs as more questions on the mark-up rule arise, as well as best practices and other compliance resources on a variety of topics in the months ahead.”

The mark-up disclosure requirements were approved by the Securities and Exchange Commission on November 29, 2016 and take effect on May 14, 2018, affording dealers approximately 18 months from the adoption of the amendments to develop appropriate processes and systems.

To further support understanding of and compliance with changes to Rule G-15, the MSRB will host a half-day seminar on November 2, 2017 in Washington, DC to give municipal securities dealers the opportunity for an in-depth discussion of the mark-up disclosure requirements and the determination

of prevailing market price. Register to attend. Register to participate via webcast.

If needed, the MSRB will host a half-day seminar on an additional date in 2018 to provide further opportunity for in-depth discussion. The MSRB also will be providing education to retail investors to promote understanding of the new information available on their trade confirmations.

The MSRB continues to work in coordination with the Financial Industry Regulatory Authority (FINRA), which has adopted similar confirmation disclosure rules and corresponding guidance for other areas of the fixed income markets.

Date: July 12, 2017

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MSRB and the Municipal Forum of New York Host Municipal Finance Day in Washington, DC.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) and the Municipal Forum of New York will host recent high school graduates participating in the 2017 Urban Leadership Fellows Program for "Municipal Finance Day" in Washington, DC on Friday, July 14, 2017.

"This is the sixth consecutive year that the MSRB has connected young people who are interested in careers in public finance with the industry's regulators and policymakers," said MSRB Executive Director Lynnette Kelly. "Each year we are energized and excited to inspire the next generation of leaders and innovators in the municipal securities market."

The Urban Leadership Fellows Program provides underserved graduates of New York City's public high schools with an opportunity to explore careers in finance through a paid summer internship. The participants' visit to Washington, DC supplements the practical skills gained at their internships with an understanding of the legal, regulatory and policy implications facing the municipal securities market.

This year's featured speakers at Municipal Finance Day include Representative Gwen Moore of Wisconsin; Hester Peirce, Director, Financial Markets Working Group and Senior Research Fellow, Mercatus Center at George Mason University; and MSRB Executive Director Lynnette Kelly.

The Municipal Forum of New York has sponsored the Urban Leadership Fellows since 1992 through its Youth Education Fund.

Date: July 13, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Provides Guidance on Duties of Non-Solicitor Municipal Advisors in Conduit Financing Scenarios.

To facilitate compliance with its Rule G-42, on duties of non-solicitor municipal advisors, the Municipal Securities Rulemaking Board (MSRB) today provided interpretive guidance addressing the applicability of the rule in several scenarios that may arise in connection with the issuance of municipal securities for a conduit borrower. The MSRB's guidance discusses a municipal advisor's relationship(s) with, and duties and obligations owed to, a municipal entity issuer, an obligated person that is a conduit borrower, or both, in these scenarios.

Read the regulatory notice.

Groups Ask MSRB to Broaden CUSIP Exception for Private Placements.

WASHINGTON – Market groups are asking the Municipal Securities Rulemaking Board to broaden a potential exception to its proposal to clarify that CUSIPs are required for private placements, saying the current version doesn't go far enough because it excludes non-bank entities.

The groups made their requests in comment letters responding to a modified proposal from the MSRB on its Rule G-34 on CUSIP numbers. The original proposal, released for comment on March 1, clarified that Rule G-34 requires dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent. The proposal also broached adding a requirement that non-dealer municipal advisors for the first time be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering.

The board recast that proposal in June in response to market concerns by adding an exception for private placements that involve a limited number of participants and are not expected to be resold. The exception would allow a dealer acting as an underwriter or a placement agent in a new private placement with a bank to "elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit the resale of the municipal securities to another bank."

It would also apply for MAs in competitive sales of munis where the securities are purchased directly by a bank and the MA believes the bank will hold the securities to maturity or limit any resale to another bank.

Leslie Norwood, managing director and associate general counsel with the Securities Industry and Financial Markets Association, said SIFMA and its members "welcome" the MSRB's exception but believe "that the exception should be clarified to clearly accommodate similar non-bank purchasers."

SIFMA, in addition to the American Bankers Association, is proposing language that would provide an exception for dealers or MAs if the underwriter or MA reasonably believes that the purchaser of the munis is: a bank; any entity directly or indirectly controlled by the bank or under common control with the bank other than a broker-dealer; or a consortium of the previous institutions used to participate in a purchase of a new issue of municipal securities.

The SIFMA-proposed exception would also require that the munis are either being purchased with no present intent to sell or distribute or that resales will be limited to the institutions described

above or qualified institutional buyers or accredited investors as defined by Securities and Exchange Commission rules.

ABA's proposed exception differs from SIFMA's in that it specifies that the exception should apply if the purchasers represent their intentions not to resell and to only resell to the particular investors named, meaning dealers and MAs could rely on the investors' representations. SIFMA does not specifically include the need for a representation.

Bond Dealers of America agreed that the exception should apply to non-bank affiliates. It, along with Bloomberg's Open Symbology Group, also suggested that the MSRB consider moving away from a CUSIP requirement and instead allow other security identifiers.

SIFMA said that in the absence of the language it is proposing, the MSRB should clarify the documentation underwriters and MAs would be required to produce during a regulatory examination. It is asking that a reasonableness standard apply and made clear that written guidance from the MSRB "would be extraordinarily helpful."

The MSRB said in its June proposal that it expects both dealers and MAs to have policies and procedures in place that are reasonably designed to help them come to conclusions about whether to get a CUSIP number. Dealers and MAs would also be expected to document their findings that play into any ultimate determinations about whether to get CUSIPs. However, it said it would not set prescriptive steps to comply with the exception, specify instances where the exception would apply, or define the parameters for how a dealer should craft its policies and procedures.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA supports the ABA's representation idea because it would address the group's concern that the original exception language was not clear enough and would ultimately damp demand for bank loans and direct purchase financings. The language ABA is proposing would "allow for all participants to rely on the investor's representation and will add certainty that CUSIPs are not assigned to those securities," Brock said.

The National Association of Municipal Advisors agreed with GFOA and ABA in its comment letter, saying the inclusion of the "represent" language would mean "all parties will have a better understanding and ability to ensure that the intent of the investor is known based on fact."

NAMA also said it is concerned that the process for getting CUSIPs under the proposal would require dealers and MAs to get the CUSIPs before they can determine if they are needed and leave them without the possibility of reimbursement if the CUSIPs are ultimately unnecessary.

Both GFOA and NAMA also said the MSRB should consider including exceptions for other situations like state and local government bonds purchased by other state and local governments with no intention to resell.

NAMA also reiterated its opposition to the MSRB's intent to require non-dealer MAs to be subject to the CUSIP requirement, saying the requirement does not align with the regulatory structure or roles and responsibilities associated with MAs.

The requirement would not benefit MA clients, would create confusion when a competitive deal does not have an MA involved, and would blur the line between MA and dealer activity, according to Susan Gaffney, executive director of NAMA and author of the group's letter.

"Instead of expanding the current responsibility of MAs to obtain CUSIPs in competitive sales, the MSRB should altogether eliminate the responsibility of having any MA (independent or

broker/dealer MAs) obtain CUSIP numbers," Gaffney wrote. "This is an activity best suited for underwriters who use the identifiers to sell the bonds."

Gaffney said the MSRB should be aware of the time and cost burdens MAs would face if the proposal were to be approved.

Norwood wrote that there is currently a regulatory imbalance between dealers and MAs because of the existing CUSIP requirements and that the MSRB's proposal to include non-dealer MAs is "an opportunity to level the regulatory playing field."

She added that SIFMA understands the concern about non-dealer MAs possibly acting as dealers under the proposed requirements and asked that the SEC confirm that such activity in this context would not constitute dealer activity.

The Bond Buyer

By Jack Casey

07/03/17 07:07 PM EDT

SIFMA Submits Comments to the SEC on Proposed Rule Change to Amend MSRB Rule G-26, on Customer Account Transfers.

SIFMA provided comments to the Securities and Exchange Commission (SEC) on the Municipal Securities Rulemaking Board's (MSRB) proposed rule filing SR-MSRB-2017-03, which would amend MSRB Rule G-26, on customer account transfers. SIFMA incorporates by reference our prior comment letter to the MSRB as part of this proceeding, and specifically request that the SEC consider the issues raised in that letter as part of its consideration of the Proposal. SIFMA and its members strongly urge you to disapprove the proposed rule change in its current form.

Read the letter.

BDA Submits Comment Letter: MSRB Second Request for Comment on Draft Amendments to and Clarifications of MSRB Rule G-34, on Obtaining CUSIP Numbers.

The BDA submitted a comment letter to the MSRB in response to their second request for comment seeking industry input on draft rule amendments to MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements. You can find our final comment letter here.

BDA's comment letter addresses the following:

- Expresses support for the changes the MSRB made from the original request for comment
- Requests clarifications exempting direct purchases by banks from the CUSIP and depository eligibility requirements
- Requests a clarification where direct purchase transactions are not purchased by banks but instead by their non-bank affiliates

- Suggests that the MSRB should not refer specifically to CUSIP but to any identification number widely accepted in the municipal securities market

Background on updated proposed amendments:

- Provides a limited exception to the requirement to obtain CUSIP numbers, and to apply for depository eligibility, in the case of a direct purchase of municipal securities by a bank, affiliated banks or a consortium of banks formed for the purpose of participating in the direct purchase.
- Amends the definition of "underwriter" in Rule G-34(a) to cross reference to the definition of "underwriter" set forth in Exchange Act Rule 15c2-12(f)(8) and requires all municipal advisors to obtain CUSIP numbers when advising an issuer in a competitive new issue transaction in municipal securities.
- Requires all municipal advisors to obtain CUSIP numbers when advising an issuer in a competitive new issue transaction in municipal securities, however, the MSRB seeks comment on draft proposed exceptions from each of these requirements in certain limited circumstances.
- The MSRB proposes to make the application of the draft rule amendments set forth in this second request for comment prospective.

You can find BDA's letter to the MSRB for the original proposed amendments here.

Bond Dealers of America

June 29, 2017

MSRB MA Compliance Guidance Details Rules for Firms, Professionals.

WASHINGTON – The Municipal Securities Rulemaking Board has released a compliance advisory for municipal advisors that details rules applicable to MAs and provides examples of potential violations.

The document, released on Thursday, follows the board's announcement of its new strategic goals, which include an organizational shift toward assisting regulated entities with their compliance efforts.

The MSRB said that goal prioritizes initiatives like issuing regulatory guidance and advisories to support compliance with its rules. The board said it issued the MA compliance document "to aid advisor firms with understanding recently implemented MSRB rules and identifying potential compliance risks."

"This advisory is designed to aid municipal advisors in the process of establishing, maintaining, reviewing, testing and modifying written compliance policies and supervisory procedures," the MSRB said in the advisory. "The MSRB engages in an ongoing dialogue with municipal market participants through outreach events and education activities so that the compliance resources it prepares are appropriately tailored and responsive to market needs."

The MSRB also said the guidance is intended for general information purposes only and included links in each section to give MAs the ability to access more information about the rules.

One rule the guidance covers is MSRB Rule G-42 on core duties of municipal advisors. Rule G-42 applies to MAs engaging in municipal advisory activities other than the solicitation of municipal entities or obligated persons on behalf of certain third parties. The rule subjects MAs to a duty of

care and a duty of loyalty.

The duty of loyalty, among other things, requires that an MA deal honestly with the municipal entity client and with the utmost good faith. It also requires an MA act in the best interest of its municipal entity client without regard to self-interest. The duty of care covers requirements like ensuring the MA possesses the degree of knowledge and expertise needed to provide a municipal entity client with informed advice.

One violation of the rule can occur if the MA fails to inform their municipal entity client that the underwriter the MA is recommending has agreed to recommend the MA for services on another transaction it is underwriting. If an MA tells its client that it has chosen to limit the scope of the due diligence it will undertake to identify any conflicts of interest that may need to be disclosed, the MA would also be in violation of the rule.

The MSRB recommends, among other things, that MAs assess how they are ensuring their professionals are adhering to the rule as well as how well it is structuring client agreements and detailing the responsibilities of each party.

The board also included considerations for MAs associated with its Rules G-37 on political contributions and G-20 on gifts and gratuities.

G-37 is designed to address pay-to-play practices in the market and generally prohibits MAs from engaging in advisory business with a municipal entity within two years of certain contributions to an official of such municipal entity. The MSRB said a failure to track payments made by MA professionals at fundraising events and failures to submit required quarterly disclosure filings to the board could count as violative conduct.

Rule G-20 generally prohibits an MA from giving any item or service of value in excess of $100 per year, in aggregate, to any recipient if the gift or service is in relation to the municipal securities or MA activities of the recipient's employer. A failure to review regular business expenses to gauge the frequency of gifts of meals or entertainment hosted by the firm could lead to potentially violative conduct, the MSRB said.

The board included considerations and possibly violative conduct in relation to rules that ensure MA firms and professionals are properly qualified as well as rules that firms have appropriate compliance programs and properly maintain their books and records.

The Bond Buyer

By Jack Casey

Published June 29 2017, 2:42pm EDT

MSRB Publishes Compliance Advisory for Municipal Advisors + Webinar

Just a few weeks ago, the Municipal Securities Rulemaking Board (MSRB) announced new strategic goals that include an organizational shift to assisting regulated entities with their compliance efforts. This goal prioritizes such initiatives as issuing regulatory guidance and advisories to support compliance with MSRB rules.

The MSRB is providing this Compliance Advisory for Municipal Advisors to aid municipal advisor firms with understanding recently implemented MSRB rules and identifying potential compliance risks. The advisory addresses applicable MSRB rules implemented since the publication of the MSRB's first compliance advisory for municipal advisors.

This updated advisory describes factors a municipal advisor firm should consider when evaluating the effectiveness of its compliance controls and the need to implement measures to mitigate its exposure to compliance risks. Proactively addressing compliance risks benefits municipal advisors, their municipal entity and obligated person clients and, ultimately, investors and public confidence in the municipal securities market.

Register to attend a free educational webinar on compliance risks identified in this advisory on Thursday, August 3, 2017 at 3 p.m. ET.

We look forward to your participation and feedback during the webinar and on an ongoing basis to help ensure our future compliance resources are appropriately tailored and responsive to market needs. We plan to publish a compliance advisory for municipal securities dealers soon. The next annual Compliance Advisory for Municipal Advisors, as well as one for municipal securities dealers, will be published in early 2018.

For additional compliance resources, municipal advisors are encouraged to visit the MSRB's website (www.msrb.org).

SEC Probes Bankers From Barclays, Morgan Stanley on Puerto Rico Bond Sales.

(Reuters) – The U.S. Securities and Exchange Commission may take action against bankers from Barclays Plc and Morgan Stanley for their roles in Puerto Rico bond sales, according to filings with the Financial Industry Regulatory Authority (FINRA).

According to records filed with FINRA, the SEC's staff has recommended the agency file an enforcement action against Barclays' Luis Alfaro and James Henn for alleged violation of fair dealing rules for their roles in the island's debt sales.

The SEC staff suggested that Henn, who has worked at Barclays since 2008, and Alfaro, who worked at First Bank Puerto Rico Securities before moving to Barclays in 2013, allegedly violated securities and municipal bond rules on fraud, deception and misrepresentation during the sale of Puerto Rico bonds.

The SEC staff also suggested sanctioning Morgan Stanley's Charles Visconsi, the co-head of public finance, and his former colleague Jorge Irizarry, in connection with disclosures Puerto Rico made in documents circulated to investors, according to FINRA records.

Barclays, Morgan Stanley and the SEC were not immediately available for comment. Reuters could not obtain contact information for Alfaro, Henn and Visconsi.

Bloomberg earlier reported on the allegations on the bankers.

Puerto Rico's financial oversight board said on Wednesday that it was still in debt restructuring talks with creditors of the island's power utility, PREPA, a day after rejecting a proposed deal to

restructure $9 billion of the utility's bonds.

By REUTERS

JUNE 28, 2017, 9:33 P.M. E.D.T.

(Reporting by Parikshit Mishra in Bengaluru and Lisa Lambert in Washington; Additional reporting by Kanishka Singh in Bengaluru; Editing by Andrew Hay and Leslie Adler)

New MSRB Compliance Advisory Helps Municipal Advisors with Identifying Potential Compliance Risks.

Read the Advisory.

Cadwalader Lawyers Say That Financial CHOICE Act Might Alter SEC Enforcement Strategies And Procedures.

In a recent memorandum, Cadwalader attorneys Jason Halper, Jodi Avergun, Joe Moreno, Lex Urban, Kendra Wharton and Aaron Buchman posited that the "Financial CHOICE Act of 2017" (the "CHOICE Act") could alter SEC enforcement strategies and procedures significantly. The CHOICE Act would make several changes to the current SEC practice of using in-house administrative proceedings rather than federal district courts for enforcement actions. The CHOICE Act would, among other things, (i) reform investigations by (a) establishing an "Enforcement Ombudsman," (b) revising Wells notice procedures and (c) imposing further requirements for pre-enforcement analyses and evaluations, (ii) give respondents the choice between terminating SEC administrative proceedings and forcing the SEC to pursue action in federal court, or continuing administrative proceedings with the benefit of a higher "clear and convincing" burden of proof, (iii) strip Administrative Law Judges of the authority to issue barring orders, and (iv) require the SEC to announce and adopt any legal theory it would pursue through full notice-and-comment rulemaking before imposing that theory through an enforcement action.

Last Updated: June 22 2017

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.

Commentary: Remodeling the Rule Book.

In our fast-moving society, yesterday's exciting innovations are today's antiquated has-beens. Every industry faces pressures to evolve in response to a rapidly changing political, economic and technological environment. Our brand-new smartphones become relics days out of the box, our state-of-the-art kitchens look dated within the decade, and yes, our long-standing regulations can

risk hindering rather than advancing the fairness and efficiency of the municipal securities market.

But when it's time to remodel the kitchen, step back before swinging a sledgehammer. While some features are destined for the scrap heap, others stand the test of time and deserve preservation. The Municipal Securities Rulemaking Board (MSRB) takes a methodical, participatory approach to keeping its regulations for municipal securities dealers and municipal advisors up-to-date.

One of the major advantages of the MSRB's structure as a self-regulatory organization is having experienced cooks in the regulatory kitchen. The MSRB's regulatory activities are informed by the insight of participants in the municipal securities marketplace who serve on the Board of Directors. An incoming class of new members joins the Board each year, ensuring that the MSRB receives fresh input on the practical realities of its rules from professionals who embody the diverse perspectives and activities of broker-dealers, banks, municipal advisors, municipal bond issuers, investors and others. Board member input is one of the most important ways the MSRB considers, on an ongoing basis, the need for review of certain industry practices or changes to existing rules.

When the MSRB identifies the need to further draw on the expertise and perspectives of market participants, it rallies a "kitchen cabinet" in the form of ad hoc advisory boards or committees to advise on topics of market interest. For example, the MSRB has convened an Investor Advisory Group to ensure our investor protection proposals, such as potential changes to MSRB rules on primary offering practices, are informed at the earliest point of consideration by input from investors in municipal bonds.

For kitchen remodelers, construction plans must be vetted by everyone who will use the revamped space. So too with the MSRB's plans to update or modernize its existing rules. The MSRB may issue a concept release to solicit insight from market participants and other interested parties on the underlying issue, including possible alternatives to rulemaking. If rulemaking is pursued, the MSRB generally publishes a request for comment so that the public and regulated entities can provide input on the proposed rulemaking. The MSRB's policy on the use of economic analysis in rulemaking ensures that available data and information on any anticipated burdens of implementation are considered at the earliest stage of the rulemaking process.

It is the policy of the MSRB to regularly consider and evaluate its rules retrospectively and propose amendments as appropriate and consistent with the public interest. As anyone who has tackled a kitchen remodel can attest, these projects can impact the rest of the house. Taking a hard look at a specific regulation in the MSRB's rule book of roughly 45 standard-setting rules inevitably prompts consideration of other related rules. MSRB rules are helpfully categorized by their intent to foster fair practice, uniform practice, market transparency, professional qualification or operational standards. When one rule within a category is identified as in need of updating, other rules within that category also receive scrutiny. To further support retrospective rule review, the MSRB solicits public input on the entirety of its rule book and body of interpretive guidance, as it did in December 2012.

The MSRB does not close the door to input and conversation once updates to its regulations are adopted. Rather, we conduct extensive outreach to municipal securities dealers, municipal advisors, municipal entities, investors and fellow regulators on a regular basis to solicit feedback that informs the MSRB's policy initiatives. MSRB Board members and staff frequently participate in industry events around the country and engage regularly with industry trade associations, issuer associations, investor representatives and other stakeholders. The MSRB's outreach initiatives often lead to the development of interpretive guidance or compliance resources that help facilitate understanding of MSRB rules as they evolve.

Market feedback received throughout the year is synthesized and incorporated into the MSRB's formal strategic and operating planning processes. Periodically, the Board meets in a dedicated strategy session to review the MSRB's strategic direction and goals, which it did most recently in January 2017. These planning sessions are also informed by market conditions and relevant priorities of policymakers. The MSRB's strategic goals guide the development of the annual operating plans that prioritize activities the MSRB will undertake in any given year to best serve its mission. This process includes identifying MSRB rules that are candidates for amendment, consolidation, streamlining or deletion in the interest of achieving greater efficiency, effectiveness or alignment with current behaviors and conditions in the municipal market. For example, the MSRB last year made two sets of amendments to its uniform practice rules, to modernize close-out procedures for municipal securities and to pave the way for the industry-wide transition to a two-day settlement cycle.

The MSRB recognizes that to be effective and best fulfill its mission, its rules must be responsive to changes in the municipal securities market and broader landscape. Our self-regulatory structure, participatory processes and commitment to stakeholder engagement support the MSRB's ongoing efforts to create and maintain efficient and effective municipal market regulations. The MSRB welcomes industry and public feedback and pledges our continued focus on rule maintenance and modernization.

by Lynnette Kelly

June 26 2017, 10:16am EDT

The Bond Buyer

MSRB Files Proposed Amendments to Municipal Fund Security Advertising Requirements.

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities Exchange Commission (SEC) proposed amendments to MSRB Rule G-21(e) related to municipal fund security product advertisements. The MSRB is proposing amendments to Rule G-21(e) to address important regulatory developments and to enhance protections for investors in municipal fund securities. The proposed amendments reflect changes to SEC rules governing money market fund advertisements and improve regulatory consistency of disclosure requirements for those municipal fund securities that invest in money market funds. View the filing.

The MSRB originally proposed these amendments as part of a broader request for comment on updating and harmonizing certain provisions of its municipal securities dealer advertising rule and establishing similar advertising regulations for municipal advisors. The MSRB continues to consider comments received from market participants on the other aspects of its proposal.

Many MA Firms Have Yet to Get Their Advisors Qualified.

WASHINGTON – As the deadline for municipal advisors to pass their qualification exam approaches, roughly 26% of registered firms have no advisors who have qualified, potentially leaving issuers with fewer firms on which to rely, according to regulators.

Those firms have until Sept. 12 to either have an advisor pass the Series 50 exam or get out of the business.

Continue reading.

The Bond Buyer

By Jack Casey

Published June 19 2017, 12:48pm EDT

MSRB Publishes Guide for Customer and Municipal Advisory Client Complaint Problem and Product Codes (and Webinar).

The Municipal Securities Rulemaking Board (MSRB) reminds regulated entities, which include brokers, dealers, municipal securities dealers and municipal advisors, of the October 13, 2017 effective date for amendments to rules related to customer and municipal advisory client complaints. Read the January 18, 2017 approval notice for amendments to MSRB Rules G-10, G-8 and G-9.

The amendments require, in part, that regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients using a standard set of product and problem codes. The MSRB Rule G-8 Customer and Municipal Advisory Client Complaint Problem and Product Codes Guide is now available.

The MSRB, in coordination with FINRA in the interest of consistency for those regulated entities that are also FINRA members, developed codes for the electronic complaint log required by Rule G-8 based on product and problem codes required by FINRA Rule 4530, but tailored to address municipal securities and municipal advisory activities. FINRA, in coordination with the MSRB, incorporates in its Rule 4530 product and problem codes explanations relating to municipal securities and municipal advisory activities, and includes Problem Code 15, Municipal Advisor Conflict of Interest, to address allegations relating to municipal advisor conflicts of interest.

The MSRB will host an educational webinar about the amendments to Rules G-10, G-8 and G-9 on Thursday, July 13, 2017 at 3:00 p.m. ET. Register here.

Reminder: Comments on Draft Amendments to MSRB Rule G-34 on CUSIP Numbers Due Next Friday, June 30.

Read the RFC.

NFMA Recommended Best Practices in Disclosure for Local Government General Obligation Debt.

The NFMA Disclosure Committee released the Recommended Best Practices in Disclosure for Local

Government General Obligation Debt, draft dated June 22, 2017.

Comments will be taken through September 30, 2017, after which a final version will be prepared.

To view the paper, click here.

MSRB: See How Government Finance Professionals Use the MSRB's EMMA Website when Issuing Bonds.

Watch video.

MSRB: Hear From Government Finance Professionals About How EMMA Helps With Fulfilling Disclosure Obligations.

Watch video.

MSRB Announces New Strategic Goals, Including Focus on Supporting Compliance and Enhancing the EMMA Website.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today articulated updated strategic goals that will guide the organization for the next several years and emphasize the importance of data, information and education in effective regulation of the municipal securities market.

"We are emerging from an intense period of rulemaking driven in part by the imperatives of the Dodd-Frank Act and the 2012 Securities and Exchange Commission Report on the Municipal Securities Market," said MSRB Executive Director Lynnette Kelly. "It's an appropriate time for the MSRB to shift our focus and assist regulated entities with their compliance efforts. Our updated goals prioritize initiatives such as issuing guidance, advisories and FAQs that will support that endeavor."

The MSRB's 2017 strategic goals also include expanding the utility of its Electronic Municipal Market Access (EMMA®) website to provide widespread access to municipal market data and tools that support fair transactions and facilitate decision-making, and maximizing the use of data to support market transparency and regulation. Additionally, the MSRB will conduct a comprehensive analysis of relevant market data to maximize its availability, utility and quality for the benefit of all market stakeholders and the public.

A fourth strategic goal focuses on the MSRB's status as a self-regulatory organization, which ensures regulatory activities benefit from the insight of participants in the municipal securities marketplace. The MSRB plans to leverage the expertise inherent in the self-regulatory organization model to advance the integrity and efficiency of the municipal securities market.

The final strategic goal addresses financial stewardship. To carry out its Congressionally mandated

mission, the MSRB must have financial stability and sustainability, and maintain sufficient reserves to operate without interruption, regardless of market conditions. The MSRB is committed to promoting financial sustainability by assessing fair and equitable fees, diversifying funding sources and spending responsibly.

The MSRB Board of Directors established the strategic goals after engaging in a long-term planning effort that included soliciting input from stakeholders, assessing changes in the market and considering the political, economic and technological environment. “These strategic priorities represent the interests of our stakeholders and a continued path to a fair and efficient municipal securities market,” Kelly said.

The MSRB’s updated strategic goals are:

1. Facilitate industry understanding of and compliance with MSRB rules through rule guidance, clarification and education in support of market efficiency.
2. Further evolve the EMMA website into a comprehensive transparency platform that meets the needs of municipal market participants and the public.
3. Optimize the use and dissemination of municipal market data to further support market transparency and inform regulation.
4. Leverage the MSRB’s unique perspective and expertise as an independent self-regulatory organization.
5. Promote financial sustainability by assessing fair and equitable fees, diversifying funding sources and spending responsibly.

More information about the goals is available here.

Date: June 19, 2017

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

MSRB Publishes Guide for Customer and Municipal Advisory Client Complaint Problem and Product Codes.

The Municipal Securities Rulemaking Board (MSRB) reminds regulated entities, which include brokers, dealers, municipal securities dealers and municipal advisors, of the October 13, 2017 effective date for amendments to rules related to customer and municipal advisory client complaints. Read the January 18, 2017 approval notice for amendments to MSRB Rules G-10, G-8 and G-9. The amendments require, in part, that regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients using a standard set of product and problem codes. The MSRB Rule G-8 Customer and Municipal Advisory Client Complaint Problem and Product Codes Guide is now available.

The MSRB, in coordination with FINRA in the interest of consistency for those regulated entities that are also FINRA members, developed codes for the electronic complaint log required by Rule G-8 based on product and problem codes required by FINRA Rule 4530, but tailored to address municipal securities and municipal advisory activities. FINRA, in coordination with the MSRB, incorporates in its Rule 4530 product and problem codes explanations relating to municipal

securities and municipal advisory activities, and includes Problem Code 15, Municipal Advisor Conflict of Interest, to address allegations relating to municipal advisor conflicts of interest.

The MSRB will host an educational webinar about the amendments to Rules G-10, G-8 and G-9 on Thursday, July 13, 2017 at 3:00 p.m. ET. Register here.

Treasury Recommends Treating High-Grade Munis as HQLA.

WASHINGTON – The Treasury Department is recommending that high-grade municipal securities be included as high quality liquid assets under federal banking rules, a stance that state and local groups as well as some legislators have taken since the rules were first passed.

The Treasury made its recommendation to include munis as Level 2B liquid assets, the lowest level categorization of high quality, in a report compiled in response to President Trump's Feb. 3 executive order on core principles for regulating the U.S. financial system. The order laid out seven "core principles" that the Trump administration would like the financial system to adhere to, such as making regulations as efficient as possible. It directed Treasury to compile a report on how the current rules and regulations governing the financial system are operating with respect to those principles.

Treasury compiled its report after meeting with numerous regulators, including the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp., and the Federal Reserve Board.

Department officials also met with a range of stakeholders. The recent report on the depository system is one of four that Treasury plans to release to comply with Trump's order. The others will focus on capital markets, the asset management and insurance industries, and non-bank financial institutions.

Treasury does not specify what types of munis it believes should qualify as "high-grade," meaning it would likely be up to the regulators to determine which munis they consider to be worthy of a Level 2B classification. Federal banking rules say HQLA should, among other things, be easily and immediately convertible into cash with little or no expected loss of value during a period of liquidity stress. HQLA should also have lower risk, and demonstrate minimal volatility.

Emily Brock, director of the Government Financial Officers Association's federal liaison center, said the report's recommendation of classifying some munis as HQLA "shows the administration's commitment to what we know to be the case, that muni bonds are not only high quality but also a liquid investment."

"I think that is a great testament to the progress of [munis as] HQLA," she added.

The Fed, OCC, and FDIC adopted rules in 2014 that 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.

State and local groups as well as other municipal market participants were troubled after the regulators did not include munis as HQLA under the new rules because of concerns that they were not liquid enough. Dealers and issuers said the choice to exclude munis would increase borrowing costs for state and local governments and lead to higher volatility in the municipal market.

The concerns spurred the Fed to act in April 2016 by revising its rule to count munis as level 2B HQLA assets if they meet the same liquidity criteria that applies to corporate debt. Market participants said they were grateful for the recognition but were still concerned that the proposal was too restrictive because the amended rule said munis could only account for 5% of total HQLA. There was also concern that the rule would be too limited because the Fed lacks jurisdiction over many of the larger banks that invest in munis. The FDIC and OCC did not change their rules to be line with the Fed's.

Muni market concerns also led to proposed, bipartisan bills in both the House and Senate during the last legislative session. Neither bill became law during the session but both have been reintroduced this session and have received support from state and local groups.

Sens. Mike Rounds, R-S.D., and Mark Warner, D-Va., have sponsored a bill that would require bank regulators to treat munis that are investment grade, liquid, and readily marketable as Level 2B liquid assets. Level 2B also includes corporate debt and publicly traded common stock. Reps. Luke Messer, R-Ind., and Carolyn Maloney, D-N.Y., go even farther with their bill, which would treat munis that are investment grade, liquid, and readily marketable as Level 2A liquid assets. Level 2A also includes debt from U.S. government-sponsored enterprises like Fannie Mae and Freddie Mac as well as foreign sovereign debt. While Level 2B assets can only make up 15% of a bank's HQLA, Level 2A assets can make up 40% under the current banking rules.

Brock said that having a recognition of munis as HQLA from the administration as well as from Congress is "a huge step in the right direction." She said GFOA is pushing for a Level 2A classification and that designation as Level 2B "is pretty much as drastic a concession as we're willing to make."

GFOA, along with 14 other state and local groups, wrote a letter to the Senate Banking Committee and each member of the House in April urging the committee and members to support the currently pending legislation. Brock said the request has been well-received in the committee.

Adding the administration's push for including munis under the regulators' rules gives a second way, aside from Congress, of reaching the groups' goal if the OCC, FDIC, and Fed all follow the administration's recommendation. Brock said that GFOA is supportive of all the efforts to achieve the goal and is of the perspective that whatever way gets munis included fastest is worth pursuing.

The Bond Buyer

By Jack Casey

Published June 13 2017, 3:45pm EDT

A Town's 'Creative Accounting' Leads to a Fraud Conviction.

Such misrepresentation is common in municipal bookkeeping. Rarely do officials answer for it.

For years, local governments have had little to fear from using dubious accounting practices to shore up their finances on paper. Sure, critics could scream: In 2015 Paul Volcker, a former chairman of the Federal Reserve, sounded the alarm about states and cities that used slippery accounting to "obscure their true financial position, shift current costs onto future generations, and

push off the need to make hard choices." But rarely have officials been made to answer for their deception.

Until now. Last month a jury convicted Christopher St. Lawrence, the former town supervisor of Ramapo, N.Y., of federal charges including securities fraud in connection with the financing of a minor-league baseball stadium. Prosecutors have frequently jailed local officials for accepting bribes or stealing money. But Mr. St. Lawrence, who could serve prison time and is planning to appeal, is the first to face criminal charges for cooking a municipality's books. His conviction, part of an escalating federal enforcement effort, should be a wake-up call for towns, cities and states nationwide.

In 2010 residents of Ramapo voted 67% to 33% against using public money to build a new stadium for the Rockland Boulders. So Mr. St. Lawrence concocted an elaborate plan to have the town's economic-development agency float debt for the stadium. But the agency couldn't actually finance all the debt: Mr. St. Lawrence was funneling money to it from town accounts. Then he tried to hide Ramapo's weakening finances.

After assuring a bond analyst in 2013 that the town's budget was sound, Mr. St. Lawrence was caught on tape telling employees, with a laugh, that to make the numbers work "we're going to have to all be magicians." Prosecutors also accused him of recording on Ramapo's books a proposed $3.1 million sale of town property, even though the deal eventually fell through because the land was a rattlesnake habitat.

Mr. St. Lawrence's lawyers argued that he did not profit from the transactions. They portrayed him as a well-meaning official guilty only of creative financing. But several witnesses painted a picture of Mr. St. Lawrence as a man who lied to raise money for a pet project and then tried to cover up the result.

The former head of Ramapo's development agency, N. Aaron Troodler, was charged with conspiring to commit securities fraud and pleaded guilty. He testified at Mr. St. Lawrence's trial that the town had booked a $3.6 million payment from Mr. Troodler's agency for rights to the stadium land, even though there had been no such transfer.

Ramapo's finances remain in disarray, and the town has struggled to pay its debts. But the acting supervisor says there's no way to know how bad the situation is until officials complete a forensic audit. Meantime, Standard & Poor's has withdrawn Ramapo's credit rating because of the town's unreliable financial statements.

The jury's verdict ought to resonate far beyond Ramapo. Nearly 44,000 local governments issue debt, and for years the Securities and Exchange Commission, daunted by the task of trying to track their financial filings, did little to discipline public officials. But then came the financial crisis, followed by a rash of government defaults, including in Stockton, Calif., where one official described the city's bookkeeping as having "eerie similarities to a Ponzi scheme."

By early 2010 the SEC had created a new unit to police municipal misconduct. Later that year, regulators accused New Jersey of misleading investors over a decade about its pension debt. No penalties were imposed, but the state was told to change its practices. Since then, the SEC has gotten tougher. In 2013 it charged Miami and the city's budget director, Michael Boudreaux, with financial manipulation that included shifting money among its various accounts "to mask increasing deficits." In an unprecedented civil trial, a jury found both guilty, and a judge fined Miami $1 million and Mr. Boudreaux $15,000.

With Ramapo, the SEC and prosecutors went a step further by bringing criminal charges. But this may represent the proverbial tip of the iceberg. Municipal budgeting is littered with misrepresentations meant to raise money for favored projects, increase spending during election years, or reward political supporters with rich contracts. Investors and taxpayers should welcome a crackdown.

The Wall Street Journal

By Steven Malanga

June 16, 2017 6:00 p.m. ET

Mr. Malanga is a fellow at the Manhattan Institute and a senior editor for City Journal.

As the Countdown to the New Issue Price Regulations Continues, Let the Document Negotiations Begin!

The effective date of the new issue price regulations (Regulations) is less than a week away, and because of the need to discuss and plan for application of the new rules with issuers, underwriters and financial advisors for bonds that will be subject to the new rules, we are already gaining experience with documentation relating to the Regulations. NABL and SIFMA have done an excellent job of providing model documents – sale documents in the case of SIFMA and issue price certifications in the case of NABL – that will significantly smooth the transition from a reasonable expectations standard for establishing issue price to a general rule based on actual sales. Use of these model documents, with some variations, should ease the burden, which could otherwise be overwhelming, of negotiating these documents for each type of bond sale with each underwriter. Like all model documents, however, there will undoubtedly be fine tuning as we gain more and more experience working with the Regulations and negotiating documents for specific transactions. This post notes two negotiating issues that have been raised in current transactions.

Continue reading.

The Public Finance Tax Blog

By Bob Eidnier on June 5, 2017

Squire Patton Boggs

Outline For Discussion Of New Issue Price Rules.

New tax rules relating to establishing the issue price of publicly offered tax-exempt bonds become effective soon. This outline describes the new issue price rules, provides a high-level strategic analysis to help guide a discussion between an issuer and its advisors, and sets forth (at the end) the regulations themselves.

Basic Principles

Effective Date: The new tax rules for establishing the issue price of bonds apply to all tax-exempt

bonds sold on or after June 7, 2017. Some preparation is required in advance of the pricing date to make sure the provisions of a notice of sale or bond purchase agreement (and any related agreement among underwriters) allow for the issuer to implement the new rules in the manner desired.

Issue Price established by CUSIP: The rules apply on a CUSIP-by-CUSIP basis. The sum of the CUSIP issue prices is the issue price of the entire issue of bonds. It is best to focus on CUSIPs rather than maturity dates due to split coupons or other features that materially differentiate the terms of bonds of the same maturity. The issue price for each group of substantially identical bonds is established separately.

Actual Facts and Safe Harbors: The approach of the new rules is to provide a baseline rule that establishes issue price based on actual facts (i.e., the first price at which 10% of a CUSIP is actually sold to the public) and then to provide safe harbor rules that allow the issuer to use the initial offering price as the issue price if certain requirements are satisfied, regardless of whether 10% of each CUSIP is sold at the initial offering price. If satisfying a safe harbor is desired but not achieved, actual facts will control.

Sales to Public: Perhaps the most helpful rule is that all sales by an underwriter to a party that is not an underwriter are treated as sales to the public. Any party that is not connected to the issuer through a contract or series of contracts (e.g., BPA, AAU, retail distribution agreement) is treated as the public. A sale of bonds to a known "flipper" is as good as a sale of bonds to a buy and hold investor.

Actual Facts Rule: Issue price can always be established based on the first price at which 10% of the principal amount of a CUSIP is actually sold to the public. Note that this rule may not be as clear as it seems. The exact time of sales of bonds to different investors may not be easy to establish.

Hold-The-Price Rule: One safe harbor that can apply in all public offerings is the hold-the-price rule. The issue price of a CUSIP is the initial offering price for that CUSIP (as evidenced by the pricing wire), so long as the underwriters have agreed in writing not to sell or offer any bonds of that CUSIP at a price higher than the initial offering price for a period of five business days after the sale date. The five-day requirement ends early if at some point 10% of the principal amount of that CUSIP has actually been sold to the public at any combination of prices that are not higher than the initial offering price.

Competitive Sale Rule: For bonds sold in a typical competitive sale process, the issue price of a CUSIP is the initial offering price for that CUSIP (as evidenced by the pricing wire), so long as the issuer receives at least three bids for the bonds from reasonably competitive bidders. The detailed requirements of this safe harbor, set forth at the end of this outline, should be consulted. Note that if three bids are not received, the winning bidder can be required (for example, in the notice of sale as a condition of making the bid) to satisfy the hold-the-price rule. The two rules are not mutually exclusive.

Continue reading.

Article by Andrea Ball, Charles C. Cardall, Richard Chirls, Dean Criddle, Kathryn V. Garner, Richard J. Moore, Edwin G. Oswald, Aviva M. Roth, Scott Schickli, Larry D. Sobel, John Stanley, Angela Trout, Winnie Tsien and George G. Wolf

Last Updated: June 6 2017

Orrick

Analysts: Muni Disclosure Varies by Sector.

PHOENIX – Analysts see major discrepancies in the quality of disclosure available across different sectors of the municipal market, while regulators would like to see good disclosure across-the-board.

Investor analysts had high praise for the quality of disclosure in the healthcare and senior living spaces generally, but had more mixed responses when it came to charter schools and certain revenue and general obligation debt for governments and essential services, particularly for smaller or less frequent issuers. Regulators have made improving muni market disclosure a priority in recent years, with enforcement actions aimed at underwriters and issuers as well as a new proposal to expand the scope of information investors would have access to.

Lisa Washburn, managing director with Municipal Market Analytics, said that the sectors with issuers that operate more like for-profits and companies generally have better disclosure, but that it "defies across the board categorization." Hospitals are generally better disclosers not only in terms of the timeliness of filing, in part through quarterly disclosures, but also because they have been doing interim reporting for years, she said.

"If you look at it, the sector is smaller and the investors in health care are more concentrated so the investors were able to request and get more information from the hospitals and health care organizations," Washburn said. "If you have a very concentrated investing base or you have a few very large investors, typically they can at least wield more influence on what you would get."

Arthur Schloss, a senior analyst at Invesco, said that hospitals tend to provide good disclosure in a clear way due to their business-like structure.

"Areas like healthcare, hospitals … they tend to be very numbers-oriented," Schloss said. "You tend to get very good presentation of the numbers."

Schloss said he finds it extremely helpful to see detailed breakdowns of how management arrived at their calculations, because he sometimes finds methodology that could raise an eyebrow.

"I have seen several occasions where a borrower will calculate days of cash on hand, but they will include restricted cash," he said by way of example.

Dean Lewallen, a high yield analyst at AllianceBernstein, said that healthcare and senior living generally have a universal way of presenting their information to investors that makes it easy for investors to navigate.

"Healthcare and senior housing have the most standardized presentation formats and are the most user-friendly for bondholders," he said.

Julie Egan, chair of the National Federation of Municipal Analysts, agreed that hospitals are generally seen as strong issuers with regard to disclosure.

"Historically, hospitals have been a bit of a riskier sector and more difficult to analyze because often they have obligated groups and require more groups to be analyzed as well as reimbursement questions regarding payor mix," Egan said. "It was probably more prudent to get quarterly information."

Egan added that while quarterly reporting is not widespread for munis, it is something NFMA and

analysts generally would like to see from the market. Egan said that fiscal troubles in Detroit and Puerto Rico have gotten analysts questioning some prior beliefs that general obligation bonds are "pretty golden and pretty safe."

"We've been asking for quarterly disclosures for a long time and if our beliefs are changing we may very well require issuers to be more accommodating as far as disclosure," Egan said.

Sectors with limited pools of investors, like those with higher risk securities, can generally get more types of disclosure on a more routine basis, like conference calls, access to managers, and things of that nature, Washburn said. Analysts consistently said that conference calls and issuer willingness to answer questions from bondholders is extremely helpful, but lamented that many issuers have been scared into being relatively unresponsive.

"There is frequently a reluctance to answer detailed questions," said Joseph Rosenblum, AllianceBernstein's director of municipal credit research. Rosenblum said that issuers are sometimes frightened that they could get into trouble for making information available to only a small segment of investors. He suggested that issuers faced with that problem could solve it by scheduling a conference call for all investors.

"It's not as if we want insider information," said Rosenblum.

"I wish there were more frequent calls," said Lewallen. "If it's an investment grade entity, maybe once a year is sufficient. If things get into trouble, you need to have conversations with your investors a lot more frequently."

Periodic communication is necessary even if the continuing disclosure agreement requires relatively infrequent conversations, analysts said. Bondholders are much more likely to agree to measures to alleviate fiscal distress when they've been kept in the loop, said Schloss.

"I've always said I can't help you if I don't know what's going on," Schloss said.

"Lawyers have people so scared," added Lewallen, explaining that many investors seem to believe that they must tell every single investor every piece of information available, or must say nothing to anyone at all.

Washburn said that weaker issuer disclosure, like strong disclosure, is not always sector specific.

However, she said smaller, infrequent local governments "generally speaking" struggle more with disclosure.

Charter schools were another sector that multiple analysts highlighted as sometimes being problematic for analysts. Lewallen said that while the standard quarterly conference calls common in healthcare and senior living would probably be too often for charter schools, there is school specific information such as test results pertinent to investors that could be disclosed in a more timely manner.

"They've got six months to get this general information out, and it's not hard to do," said Lewallen.

"Charter schools are sometimes difficult," said Rosenblum.

Richard Ciccarone, president and chief executive officer of Merritt Research Services in Chicago, said water and sewer issuers could generally improve their disclosures.

“I think a lot of people take water and sewer bonds as being an essential service and therefore less rigorous disclosure is required for them to feel comfortable with it,” Ciccarone said. “There is a lot of work that needs to be done on water and sewer, particularly on getting better metrics in order to measure the quality of their security and their ability to make good on it.” Those metrics should include data usage, customers, water supply, quality of infrastructure, and maintenance programs, Ciccarone said.

While accuracy and fullness of disclosure are important, Ciccarone said, there is also the consideration of issuers’ timeliness in disclosing. Merritt does an annual survey on issuer’s timeliness of disclosure that measures the amount of time between the end of the issuer’s fiscal year and the time the audit is signed. The median reporting time for all issuers Merritt looked at for 2015, the most recent survey, was 151 days, a rise from 142 in 2014 and the first time the number had gone above 150 since 2008.

Of the issuers, wholesale electric, hospitals, and private higher education were the most timely in 2015, taking 105, 112, and 115 days to disclose, respectively. Counties and states took the longest with 180 and 182 days, respectively. Cities were close behind taking 172 days, according to the survey.

While disclosures can be improved, the analysts who spoke with The Bond Buyer generally agreed that disclosure overall has been getting better with time.

“My perspective is that there are gaps and there are things that need to be done, but over the last 30 years we’ve come a long way,” Ciccarone said. “I don’t mind mentioning that because I think it’s only fair to governments that we say that.”

“There’s been a big improvement, I’d say, in the quality of information and the timeliness,” said Lewallen.

Washburn pointed to the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation enforcement initiative, which focused on issuers’ and underwriters’ continuing disclosure failures, as a positive for disclosure in the market.

“Love or hate MCDC … I think that it has at least elevated the conversation about disclosure,” Washburn said.

The SEC is now considering another action aimed at ensuring proper disclosure. The recent regulatory proposal would require event notices to be filed for a broad range of “financial obligations,” if material, including private placements, bank loans, leases, guarantees and monetary obligations resulting from a judicial, administrative or arbitration proceeding. The SEC’s proposed amendments to its Rule 15c2-12 on muni disclosure would also require notices to be filed for actions and events related to financial obligations that “reflect financial difficulties.”

Many participants have criticized the proposal, which is meant to ensure investors and others have access to information about alternative financings to public bond offerings, as overly broad and burdensome. But market groups generally agree with the idea that increased disclosure on private placements and bank loans is important. The SEC is currently considering the numerous comment letters participants sent on the proposal.

Schloss said that while 15c2-12 and any amendments to it are fine as a basic framework, but good disclosure goes well beyond that.

“It’s more of a state of mind, or an outlook, than something you can narrowly require,” Schloss said.

“It’s very hard to rigidly mandate.”

The Bond Buyer

By Kyle Glazier, Jack Casey

Published June 05 2017, 2:17pm EDT

MSRB Adds Exception in Revised Proposal Requiring CUSIPs for Private Placements.

WASHINGTON – The Municipal Securities Rulemaking Board has recast a prior proposal clarifying that CUSIPs are required for private placements by providing a limited exception in response to market comments.

Comments on the MSRB’s revised proposal are due by June 20.

The modified proposal is like the prior version that was released on March 1 in that it clarifies the requirement in MSRB Rule G-34 on CUSIP numbers for dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent. It also requires that non-dealer municipal advisors be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering.

CUSIPs are groups of six- and nine- numbers and letters that identify an issuer and its securities. They are used for a number of purposes in the muni market, including trading, recordkeeping, clearance and settlement, customer account transfers and safekeeping.

Market groups representing dealers, MAs, and issuers responded to the initial proposal asking that the MSRB include an exemption for private placements that involve a limited number of participants and are not expected to be resold. A number of groups also said they were concerned that the proposed changes and clarifications could adversely impact the municipal market by discouraging banks from pursuing private placements and discouraging issuers from engaging placement agents and municipal advisors.

In response to these comments, the MSRB said that while it believes obtaining CUSIP numbers is a necessary aspect of activities like tracking trading and recordkeeping, it also “is of the view that the increase in the number of direct purchase transactions between municipal issuers and banks as an alternative to letters of credit and other similar types of financings may support an exception from the blanket requirement to obtain CUSIP numbers in all private placements.”

The MSRB is proposing an exception in the modified proposed rule under which a dealer acting as an underwriter or a placement agent in a new private placement with a bank could “elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit the resale of the municipal securities to another bank.”

There would also be an exception from applying for CUSIPs for MAs in competitive sales of munis where the securities are purchased directly by a bank and the MA believes the bank will hold the securities to maturity or limit any resale to another bank.

The MSRB said it expects both dealers and MAs to have policies and procedures in place that are reasonably designed to help them come to conclusions about whether to get a CUSIP number and to apply those policies and procedures during any CUSIP number-related evaluations. Dealers and MAs would also be expected to document their findings that play into any ultimate determinations about whether to get CUSIPs.

The board also clarifies that an MA advising an issuer in a competitive sale of new issue securities must apply for the CUSIP number no later than one business day after dissemination of a notice of sale or other such request for bids.

Lynnette Kelly, the MSRB's executive director, noted in a release accompanying the new request for comment that the MSRB modified the draft amendments in light of market feedback and added the MSRB "appreciates the thoughtful participation of commenters in the rulemaking process and invites further dialogue on how to ensure CUSIP number requirements appropriately reduce investor risk and regulatory uncertainty."

The MSRB said it is not setting prescriptive steps to comply with the exception and will not further specify instances where the exception would apply. It also will not define the parameters for how a dealer should craft its policies and procedures. The proposal also does nothing to affect a dealer's obligation to determine whether a transaction should be considered a loan or security, the board said.

Dealers had also been concerned that the first proposal would have been problematic because G-34 requires dealers to apply for depository eligibility and disseminate new issue information, something placement agents may not be able to do because they never purchase the securities.

The MSRB is extending a similar exception to the portion of G-34 that deals with depository eligibility to cover that concern. It proposes the exception cover munis purchased directly by a bank where the underwriter reasonably believes the bank is likely to hold or limit resale of the munis to another bank in a way that makes immobilization in a depository unnecessary. The underwriter would have to make a "principles-based assessment as to whether depository eligibility, and thus, dissemination of new issue information, would be necessary for the particular new issue" and be subject to requirements for policies and procedures and documentation, according to the MSRB.

The MSRB is additionally proposing to make the draft rule amendments prospective after commenters said market participants see the changes as new requirements.

Jessica Giroux, general counsel and managing director of Bond Dealers of America, said BDA is "pleased that the MSRB revised the proposed rule to create an exception for direct purchase transactions," adding it will "provide a major point of needed clarity in the municipal securities market." BDA is still reviewing the proposed changes and plans to comment on other aspects of the proposal in the future, she said.

Leslie Norwood, managing director, associate general counsel and co head of the Securities Industry and Financial Markets Association's municipal securities division, said the group is pleased the MSRB considered industry comments and that SIFMA plans to file a comment letter on the revised proposal.

"Although we are still reviewing the proposal, we believe the addition of an exception to the rule for certain direct placements and the clarification that the rule change will only be applied prospectively are positive changes to the proposal," Norwood said.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said that while the group appreciates the MSRB's work to re-propose the rulemaking, "we remain concerned with the proposal, including having MAs obtain CUSIPs for competitive sales."

"Also, at first glance, the new provision that calls on MAs to 'reasonably believe' that the bank will "likely" hold the security seems to place a burden on MAs to determine the intent of investors, which may conflict with the regulatory limitations that exist with having MAs interface with investors," Gaffney added.

The Bond Buyer

By Jack Casey

06/02/17 07:07 PM EDT

GASB On The Horizon: Debt Disclosures, Including Direct Borrowing.

The GASB is preparing to issue the Exposure Draft, *Debt Disclosures, including Direct Borrowing*. The key question of the project is: *do current disclosure requirements convey the essential information about these transactions to users of financial statements?*

Since the GASB's debt disclosures standards were issued, governments have continued to innovate and diversify their debt portfolios. As a result, related disclosures can be inconsistent. Specifically, concerns have been raised about the adequacy of the disclosures regarding direct borrowings, such a bank loans.

Governments are turning to direct borrowings in lieu of issuing bonds. GASB disclosure requirements for direct borrowings are just as rigorous as they are for other types of debt offerings including bonds; however, direct borrowings contain provisions that often are not associated with other forms of debt, but are essential for users to know about.

One feature of the Board's proposal will be a definition of debt—including direct borrowings—to distinguish it from other types of long-term liabilities in applying disclosure requirements for notes to financial statements.

The Board in this project also considered potential new disclosures that financial statement users need related to debt and is expected to propose the following:

- Unused lines of credit
- Collateral pledged as security for the debt
- Significant events of default or termination events and their significant finance-related effect as specified in the debt agreement, and
- Subjective acceleration clauses.

What's next: An Exposure Draft is expected to be approved in the later part of June 2017. A 90-day comment period will follow after which the Board will consider and then redeliberate due process feedback. A final Statement is planned for spring 2018.

More information about the debt disclosures project.

Coming Soon: New GASB Leasing Guidance.

Later this month, the GASB is scheduled to issue new standards on lease accounting. As many of you know, leasing is an important activity for many state and local governments across the United States. It can be a financing option for obtaining access to certain necessary items—including vehicles, heavy equipment, and buildings—without having to buy them outright.

Through the forthcoming leasing guidance, the Board is seeking to align the accounting and financial reporting of lease transactions more closely with their economic substance. The guidance will be based on the underlying principle that leases are financings of the right to use an underlying asset for a period of time. It will eliminate the current distinction between operating and capital leases by treating all leases as financings.

Board deliberations in the leases project were informed by private-sector lease requirements of the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB), which recently reexamined their leases standards.

WHY NEW GUIDANCE WAS NEEDED

The Board initiated the project because the current leasing guidance predates the GASB and doesn't take the conceptual framework into consideration—including the definitions of assets and liabilities. Moreover, the existing lease standards allow a lease to be structured in a manner that avoids reporting the economic substance of the transaction. That is, a long-term liability and related asset were not reported as a result of the lease transaction.

LEASE DEFINITION

The definition of a lease will change under the new guidance. The definition focuses on a contract that conveys control of the right to use another entity's non-financial asset, which will be referred to in the new Statement as the underlying asset.

LEASE TERM

The lease term is the period during which the lessee has a noncancelable right to use an underlying asset, adjusted for certain options to extend or terminate the lease.

SHORT-TERM LEASES EXCEPTION

The standard provides an exception for short-term leases, which are lease that, at their beginning, have a maximum possible term of 12 months or less. These leases are recognized based on the payment provisions of the contract.

LESSEE ACCOUNTING

Lessee governments—that is, governments that pay to use another entity's capital asset (the underlying asset) for a given period—will report the following about their leases (except for short-term leases):

- An intangible lease asset that represents the government's right to use the underlying asset
- A corresponding lease liability
- Amortization expense from using up the lease asset during the lease, and

- Periodic interest expense on the lease liability.

LESSOR ACCOUNTING

Lessor governments—that is, governments that lease their capital assets to others—will report the following about their leases:

- A receivable for the right to receive payments
- A corresponding deferred inflow of resources
- Lease revenue, reported systematically over the lease term, and
- Periodic interest revenue from the receivable.

EFFECTIVE DATE AND TRANSITION

The requirements of the leasing guidance are to be effective for reporting periods beginning after December 15, 2019, with earlier application encouraged.

More information about the leases project.

BDA Submits Comments to Department of the Treasury and the Internal Revenue Service on Recommendations for the 2017-2018 Priority Guidance Plan.

The BDA submitted comments to the Department of the Treasury and the Internal Revenue Service on recommendations for items that we believe should be included in their 2017-2018 Priority Guidance Plan. You can view our final comments here.

The Treasury Department's Office of Tax Policy and the IRS use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2017-2018 Priority Guidance Plan will identify guidance projects that the Treasury Department and the Service intend to work on as priorities during the period from July 1, 2017, through June 30, 2018.

BDA's letter focuses on the following topics:

- **Political Subdivision:** BDA continues to urge the IRS and Treasury to withdraw the proposed rules and release a new set of proposed regulations that reflect the concerns expressed by BDA and other participants in the municipal bond market.
- **Tax Exempt Bonds & Infrastructure:** The BDA believes tax-exempt bonds can and should continue to play a leading role in infrastructure investment.
- **Issue Price:** We suggest that the IRS and Treasury should monitor the impact of the new rules on the market.

The regulatory notice can be found here.

Bond Dealers of America

June 1, 2017

MSRB Seeks Additional Comment on Requirements for Obtaining CUSIP Numbers.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking additional public comment on draft amendments to MSRB Rule G-34, on obtaining CUSIP numbers. Consistent with its previous proposal, the MSRB's revised draft amendments clarify the obligations of municipal securities dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, and require all municipal advisors to obtain CUSIP numbers in competitive offerings. However, the MSRB is now requesting input on possible exceptions from each of these requirements in certain limited circumstances.

"In light of feedback from municipal market participants, the MSRB has modified its draft amendments to include a principles-based exception from the proposed requirements," said MSRB Executive Director Lynnette Kelly. "The MSRB appreciates the thoughtful participation of commenters in the rulemaking process and invites further dialogue on how to ensure CUSIP number requirements appropriately reduce investor risk and regulatory uncertainty."

The draft amendments would provide an exception to the requirements of Rule G-34 for municipal securities purchased directly by a bank where the underwriter on the transaction or the municipal advisor advising an issuer in a competitive offering reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank. Dealers and municipal advisors relying on the exception would be expected to have in place policies and procedures reasonably designed to assist in their determinations.

Comments on the revised draft amendments should be submitted no later than June 30, 2017. Read the request for comment.

Date: June 1, 2017

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

The Effective Date of the New Issue Price Regulations is Near.

On December 9, 2016, the United States Treasury Department published regulations (the "Issue Price Regulations") setting forth new rules for the determination of the issue price of a tax-exempt bond issue. The Issue Price Regulations changed a rule that had been in place for many decades. These new rules become effective for tax-exempt bonds **sold on or after June 7, 2017** and thus will affect bond issues now entering the pipeline.

What Is the Issue Price? The issue price is generally the reoffering price to the public of a tax-exempt bond at which a substantial amount of the bonds of the same maturity are sold. The issue price of the entire issue is the sum of the issue prices of the particular maturities of the bonds of the issue. There are special rules, described in "A Quick Recap of the New Issue Price Rules" below that apply in certain circumstances.

Why Is Issue Price Important? The yield on a tax-exempt bond issue is often relevant to many of

the tax determinations made by an issuer with respect to that bond issue during the planning stages and could also affect post-issuance obligations of an issuer with respect to that bond issue. Calculating the yield on a bond issue essentially involves discounting the cash flow (principal and interest payments) on the bond issue back to a target amount, which is the issue price. The discount rate is the yield. Thus, a critical component in determining the yield on a bond issue is the issue price.

When Must the Yield Be Determined and Therefore When Must the Issue Price Be Known? In some cases, the issue price must be known and the yield must be determined on the sale date of the bonds. It is especially important to know the issue price and yield on the sale date in the case of an advance refunding bond issue, where the yield on the reinvestment of the bond proceeds in an escrow fund is limited to the bond yield and the escrow investments must be purchased on the sale date. In other cases, such as a current refunding or a new money bond issue, determining the issue price and the yield is less critical from a timing perspective, but generally still needed for overall compliance.

When Does the Yield on the Tax-Exempt Bond Matter? The yield on a tax-exempt bond issue will matter (i) in an advance refunding, because the escrow yield is restricted to the bond yield, (ii) where arbitrage rebate payments or yield reduction payments may be owed to the IRS, and (iii) where certain moneys derived from or related to the tax-exempt bond issue can only be invested in a fixed relationship to the bond yield (such as conduit bonds and single family mortgage revenue bonds).

What Will Happen Next. We have drafted language that will be included in (i) the Bond Purchase Agreements (for negotiated sales of tax-exempt bonds) and Notices of Sale (for competitively sold tax-exempt bonds) as well as (ii) new Issue Price Certificates that the underwriter or direct purchaser of tax-exempt bonds must sign at closing. The form of the required Issue Price Certificate is included as an exhibit to the Bond Purchase Agreement or the Notice of Sale, as applicable. By executing the Bond Purchase Agreement for a negotiated bond or submitting a bid for a competitively bid bond, the underwriter or direct purchaser is acknowledging the application of the new rules and its duties to sell the bonds, and in some instances hold the offering price of the bonds, in accordance with the new rules and to supply the necessary information to the issuer to properly document the issue price.

What Should an Issuer or Conduit Borrower of Tax-Exempt Bonds Do Now. As issuers and conduit borrowers plan their upcoming bond or bond anticipation note issues, they should consult with their Bond Counsel and, where applicable, their Municipal Advisors (sometimes referred to as Financial Advisors), to review the new language and the implications of the new Issue Price Regulations. For negotiated sales, the issuers and conduit borrowers should also consult with the underwriter and underwriter's counsel regarding the underwriter's responsibilities in establishing the issue price.

A Quick Recap of the New Issue Price Rules. Generally, the issue price is the first price at which a substantial amount (10%) of the bonds of each maturity are sold to the "public." The public is any "person" other than an "underwriter" or a related party to an underwriter. A person is any individual or entity for tax purposes and so would include corporations and partnerships. An underwriter is any person who agrees in writing with the issuer that it will participate in the initial sale of the bonds to the public or an entity who agrees with a lead underwriter to do so.

There are three special rules. First, if the bonds are sold in a private placement, the issue price is the purchase price paid for the bonds. **Second**, if the issuer chooses, the issue price will be the

initial offering price to the public (typically the price shown in the Official Statement for the bonds) if the underwriter agrees to offer the bonds at a price no higher than that initial offering price for the first five business days after the sale date. **Third**, if the issuer conducts a competitive sale and receives at least three qualified bids, the issue price will be the reasonably expected initial offering price stated in the winning bid. A competitive sale is (i) a process in which the issuer offers the bond for sale to underwriters at specified written terms where those bid terms are disseminated in a manner reasonably designed to reach potential underwriters, (ii) all bidders have an equal opportunity to bid, (iii) the issuer receives bids from at least three underwriters who have established industry reputations for underwriting new issuances of municipal bonds, and (iv) the issuer awards the bonds to the bidder who submits a firm offer to purchase at the highest price or lowest interest cost.

An issuer can choose any of the permitted methods of establishing the issue price, but the issuer must identify the method chosen not later than the issue date of the bonds. This will typically be evidenced in the Tax Certificate for the bonds.

All of the rules described above apply to bonds sold for money. If bonds are sold for property, such as in the case of certain lease transactions where the vendor performs certain services in exchange for rent payments under the lease, special rules apply that are beyond the scope of this QuickStudy.

Locke Lord QuickStudy

May 31, 2017

JDSUPRA

MSRB Files Amendments to Modernize Customer Account Transfers.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) proposed amendments to MSRB Rule G-26, on customer account transfers. If approved by the SEC, the amendments to Rule G-26 would promote a uniform customer account transfer standard for all municipal securities dealers. The MSRB believes the amendments will make the transfer of customer securities account assets more flexible, less burdensome and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

View the filing.

Single Audit Roundtable Meets.

The Single Audit Roundtable conducted its first meeting of the year to discuss issues surrounding the single audit. The roundtable is a forum established by the American Institute of Certified Public Accountants and hosted by KPMG where federal audit and accountability representatives meet with members of the non-federal and state government audit communities.

In normal fashion the agenda featured updates from the U.S. Office of Management and Budget, AICPA and the U.S. Government Accountability Office, as well as an update on the status of Federal

Audit Clearinghouse activities.

OMB did not reveal a lot of new issues but did talk about the themes of this year's budget proposal: effectiveness, efficiency, accountability and cyber security. It is the Trump Administration's goal to look closely at all federal agencies and their functions to determine if there are changes that can be made to address the themes set forth in the budget proposal. In terms of the single audit and the Uniform Guidance, OMB is looking for input from the grants and audit communities on what sort of changes can be made in the short and long term that will address effectiveness, efficiency and accountability.

OMB also stated that several items are being held pending review to determine if the proposed regulation, guidance or initiative would have a cost or burden associated with it. Such items include:

- An OMB proposal that would amend portions of the Uniform Guidance in the procurement and pension cost areas.
- Additional frequently asked questions that would further clarify inconsistencies in the Uniform Guidance and address minor implementation issues.
- A new schema for the Catalog of Federal Domestic Assistance (CFDA).
- The Single Audit Quality Study.

Representatives from the AICPA Government Audit Quality Center provided an update on center activities. Currently, the center has 230 member firms and 31 state audit offices. Collectively, 93 percent of single audit (dollars) are represented. The AICPA also noted that they are currently working on internal control. Specifically, on what practitioners need to do better work in this area.

Members of the GAO Yellow Book team provided an update on the Yellow Book noting that comments on the exposure are due by July 6 with the final issuance projected for 2018. GAO noted that the new Yellow Book will include a big change in the peer review area specifically with organizations that are not affiliated with a recognized organization. For these organizations, there are several additional peer review requirements.

Additionally, GAO provided that there are quite a few new requirements around performance audits and a new requirement specifically on waste. Auditors are not expected to seek out waste in their audit.

The next roundtable will be held in November.

NASACT

May 15, 2017

SIFMA Municipal Division Recognized by National Federation of Municipal Analysts.

Washington, D.C., May 17, 2017 – SIFMA today received an Industry Contribution Award from the National Federation of Municipal Analysts (NFMA). The award recognizes SIFMA's contributions to issues related to municipal securities disclosure, in particular SIFMA's efforts to bring together stakeholder groups to discuss disclosure and advocate where there is common interest.

Michael Decker, managing director and co-head of SIFMA's Municipal Securities Division, received

the award at a luncheon today in Washington, D.C. The NFMA specifically noted Mr. Decker's efforts to coordinate and lead an industry working group to author a letter to the Municipal Securities Rulemaking Board which recommended several enhancements to the EMMA system to aid transparency.

"I am honored to receive this award on behalf of our members," said Mr. Decker. "SIFMA has consistently worked to improve disclosure in the markets, and we support the goals of investor protection and market transparency."

The NFMA has presented awards annually since 1984. The awards are given to individuals or entities that further the goals of the NFMA for the enhancement and betterment of the municipal bond industry.

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

Dodd-Frank Rollback Could Hinder Funding of Accounting Standards Board.

The anticipated rollback of the 2010 Dodd-Frank financial-overhaul law could affect funding the Government Accounting Standards Board receives, according to the not-for-profit organization that oversees it.

The board, known as the GASB, sets financial accounting and reporting standards for state and local governments in the U.S.. The Financial Accounting Foundation is responsible for the oversight and administration of the activities of both the GASB and the Financial Accounting Standards Board, which is responsible for standards of both public and private companies as well as not-for-profit organizations.

A provision in Dodd-Frank allows the foundation to charge a fee for GASB's services. The fee is paid by broker dealers regulated by the Financial Industry Regulatory Authority, or FINRA, that trade in the municipal bond market.

Before the introduction of the provision, the board was voluntarily funded by organizations that are required to follow the standards the GASB writes, creating a potential conflict of interest, said Matthew Broder, vice president of public affairs at the foundation.

"For the past six years, the GASB has enjoyed reliable and independent funding fees to support operations," he said. The funding could be threatened if the Dodd-Frank Act is pared back, Mr. Broder added.

GASB fees made up 18% of the Financial Accounting Foundation's total revenue in 2016. The organization is also funded by fees for FASB's services, that come from a provision in the 2002 Sarbanes-Oxley corporate-governance law. FASB is funded through fees paid by publicly-listed companies and entities in the U.S.. More than half of the foundation's revenue in 2016 came from such fees.

The scaling back of financial regulations faces opposition. The Council of Institutional Investors, an advocacy group, sent a letter to the House of Representatives Wednesday asking them to oppose the Financial Choice Act, a bill that aims to roll back both Sarbanes-Oxley and Dodd-Frank.

THE WALL STREET JOURNAL

By RHEAA RAO

May 19, 2017 7:55 am ET

BDA Submits Comment Letter: SEC Proposed Amendments to 15c2-12.

On May 15, 2017, BDA submitted a comment letter in response to the SEC's proposed amendments to Exchange Act Rule 15c2-12 which proposes to add two items to the list of event notices to be included in continuing disclosure undertakings. You can find our final letter HERE.

Letter Overview:

- The BDA generally supports the concept of the Proposed Amendments, but offers suggestions to streamline the proposal
- The BDA believes that the definition of financial obligations and the new listed event (16) need to be redrafted more narrowly around bondholder concerns related to competing bank debt
- The BDA believes that something more than just the use of "material" is necessary if the Proposed Amendments will actually result in widespread compliance within the municipal securities market
- The BDA believes that the SEC needs to provide interpretative guidance concerning how dealers should due diligence compliance with the Proposed Amendments to ensure that event filings are material for dealers reporting the related event filings under their MSRB Rule G-47 time of trade responsibilities

Additional Links:

- BDA outside counsel Nixon Peabody has created an alert on the proposed amendments that be read here.
- The SEC's press release and Fact Sheet on the proposed amendments can be found here.

Bond Dealers of America

SIFMA Submits Comments to the SEC on Proposed Amendments to Rule 15c2-12.

The Securities and Exchange Commission has proposed rule amendments Rule 15c2-12 with the goal of improving investor protection and enhancing transparency in the municipal securities market. The amendments to Rule 15c2-12 add two event notices to Continuing Disclosure Agreements. First, issuers and obligated persons must disclose information on the incurrence of alternative financings, including bank loans, direct placements, and similar obligations, and terms of such financings. Second, issuers and obligated persons must disclose any default or termination events with regard to those alternative financings.

View Comments.

See also:

- Press Release: SEC Proposes Rule Amendments to Improve Municipal Securities Disclosures

- Federal Register Notice

May 15, 2017

New York Town Official Convicted in Landmark Bond Fraud Case.

NEW YORK — An elected official of a New York City suburb was convicted on Friday of what authorities have called the first criminal securities charges brought over municipal bonds, a spokesman for federal prosecutors said.

Christopher St. Lawrence, the elected supervisor of Ramapo, New York, was convicted by jurors in federal court in White Plains, New York, of 20 counts including securities fraud, wire fraud and conspiracy. The charges stemmed from actions aimed at securing financing for a stadium in the town.

A lawyer for St. Lawrence could not immediately be reached for comment.

New York federal prosecutors charged St. Lawrence in April 2016 along with Aaron Troodler, former executive director of the town-owned Ramapo Local Development Corp. Prosecutors said the two men defrauded investors who helped finance a controversial minor league baseball stadium.

Troodler pleaded guilty in March under an agreement with prosecutors and testified against St. Lawrence at the trial.

The case followed U.S. regulators' push in recent years to bring civil actions against those accused of misconduct in the $3.7 trillion U.S. municipal bond market.

Prosecutors said Ramapo and the development corporation sold more than $150 million of bonds while Troodler and St. Lawrence concealed the town's deteriorating finances.

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 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 to pay for the project. But Ramapo ended up paying more than half the cost, according to prosecutors.

St. Lawrence and Troodler falsified the town's finances to help sell the bonds, including by putting millions in fake receivables on its books, prosecutors said.

St. Lawrence is also facing civil claims by the U.S. Securities and Exchange Commission.

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 altogether because the town did not file audited financial statements.

The town, which is 28 miles northwest of New York City and had 126,595 residents as of the 2010 census, has said it significantly reduced its debt and cut its exposure to the development corporation by 62 percent as of Dec. 31.

By REUTERS

MAY 19, 2017, 4:00 P.M. E.D.T.

(Reporting By Brendan Pierson in New York; Editing by Cynthia Osterman)

NFMA Comments on Proposed Amendments to SEC Exchange Act Rule 15c2-12.

The National Federation of Municipal Analysts commented to the SEC on proposed amendments to Exchange Act Rule 15c2-12 (File No. S7-01-17).

To view the letter, click here.

BDA / Nixon Peabody Issue Price Summary Document.

BDA and Nixon Peabody have released an Issue Price Summary Document to assist BDA members in engaging issuer clients in conversations about the new issue price rules, which are effective on June 7th.

The BDA / Nixon Peabody document is designed to provide an overview of the new issue price rules, including important new definitions and requirements related to competitive and negotiated deals.

BDA Next Steps on Issue Price

BDA and Nixon Peabody will host an in-depth conference call on issue price during the week of May 22nd. That call will include a more detailed overview of how the obligations and requirements of underwriters will differ for negotiated and competitive deals. It will also provide an opportunity for BDA members to ask questions and discuss priority compliance issues.

Please expect a scheduling email for that call shortly. In the interim, please email jvahey@bdamerica.org with any issue price questions so we can be sure to address common questions on the upcoming call.

Additional Information

The final IRS issue price rule is here.
The SIFMA model issue price documents are here.
The NABL model issue price certificates are here.

MSRB to Pull its Proposed Minimum Denomination Rule from the SEC.

WASHINGTON – The Municipal Securities Rulemaking Board is pulling its proposed standalone minimum denomination rule from the Securities and Exchange Commission after dealers argued it is overly complex and would hamper liquidity.

The SEC must approve the rule for it to take effect. But the board decided to pull the rule back

during its quarterly board meeting here last week where it discussed comments market participants had submitted to the SEC.

The board also decided to seek a second round of comments on its controversial proposal to require CUSIP numbers for
private placements and publish guidance for so-called solicitor municipal advisors, an MA that solicits issuers or others borrowers for business on behalf of certain other professionals.

The board is instructing its staff to have more discussions with stakeholders as it further considers the future form of the stand-alone minimum denomination rule, according to MSRB executive director Lynnette Kelly. The current minimum denomination requirements under MSRB Rule G15 will remain in place as the discussions continue, she said.

“The feedback [on the proposal] was very specific and quite negative,” Kelly said. “Given that feedback, the board decided it wanted to obtain more information regarding any proposed amendment and, in order to allow for this because of an upcoming statutory deadline for the SEC to act, the board agreed to withdraw its current rule proposal with the SEC and … conduct additional outreach to a diverse, broad group of municipal market participants.”

Kelly added that the MSRB specifically will be soliciting feedback from issuers, which did not submit comments to the SEC on the proposal.

The standalone Rule G49, as it was proposed, would have contained current requirements from MSRB Rule G15 that prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities set by issuers. It also would have included two current exceptions to the prohibition as well as one more exception first proposed in April 2016. That exception would allow a dealer that has bought a customer’s liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

The standalone rule also would have eliminated the current requirement in G15 that a dealer, in some situations, must obtain a “liquidation statement” from a party that isn’t its customer but rather the party from which the dealer purchased the securities. The current rule requires the liquidation statement to be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

By taking away the liquidation statement, the MSRB felt that another safeguard was needed for an existing exception under G15 that says a dealer can sell a below-minimum amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

It proposed a new “safeguard” that would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB’s goal by preventing the creation of additional below-minimum positions, the MSRB said.

Dealer groups complained that the proposed new safeguard would have limited interdealer transactions and thus liquidity.

Tom Dannenberg, Bond Dealers of America’s chair, said the proposed rule was complex and that the board had lost sight of the original intent of the regulations, protecting small investors.

The MSRB is going out for a second round of comments on the CUSIP rule proposal after participants said the change would have negative repercussions for the muni market in part because banks looking for loans would be dissuaded from buying municipal securities. Many market groups refer to the proposal as a change, but the MSRB has held that it is more of a clarification of its longstanding interpretation of its rule. The proposal additionally requires non-dealer MAs acting as financial advisors in a competitive sale to get CUSIPs.

Kelly said the first proposal "was quite proscriptive" and that the proposal underlying the next request for comment will be designed to provide dealers flexibility when they are acting as placement agents. It "will be more principles-based, which will give dealers more flexibility but require that dealers establish certain policies or procedures or conversations internally about whether or not a particular transaction needs a CUSIP," Kelly said.

The MSRB, responding to other criticisms, is also holding off for the time being on an SEC filing about its proposed advertising rules designed to harmonize advertising regulations for dealers and MAs. An advisors' group complained the proposal did not do enough to distinguish between dealers and MAs. The board instructed its staff to continue working on that proposal.

The board will be publishing regulatory guidance for solicitor municipal advisors some time in May, Kelly said, to provide more clarity and promote understanding of the MSRB rules that apply to those participants. The guidance will cover, among other things, registration, professional qualifications, supervisory responsibilities, and conflicts of interest.

There were also discussions on future staff work to study the way MSRB rules have affected municipal advisors and the current state of primary offering practices in the market.

The Bond Buyer

By Jack Casey

Published May 01 2017, 11:40am EDT

MSRB Provides Guidance on Application of Rules to Solicitor Municipal Advisors.

Washington, DC – To promote understanding of the regulatory framework for municipal advisors acting as solicitors, the Municipal Securities Rulemaking Board (MSRB) today published guidance summarizing MSRB rules applicable to this category of municipal advisory activity. Solicitor municipal advisors, for compensation, solicit municipal entities, including public pension plans, and obligated persons for business on behalf of certain other financial professionals.

Under the MSRB's mandate to protect municipal entities and obligated persons, the MSRB has developed a core regulatory framework for all municipal advisors. Today's guidance comprehensively summarizes that framework and specifically addresses how that framework applies to solicitor municipal advisors. The guidance also compiles and includes links to the numerous resources available from the MSRB and the Securities and Exchange Commission for additional information.

"One component of creating a comprehensive regulatory framework for municipal advisors is addressing the activities of solicitor municipal advisors in their interactions with public pension

plans, municipal bond issuers and other municipal entities," said MSRB Executive Director Lynnette Kelly. "Today's guidance furthers the MSRB's efforts to ensure all municipal advisors understand their regulatory obligations."

The MSRB established the core standards of conduct for non-solicitor municipal advisors with the 2015 adoption of MSRB Rule G-42. When developing Rule G-42, the MSRB communicated its intention to undertake separate rulemaking or guidance for solicitor municipal advisors. MSRB outreach to and questions received from solicitor municipal advisors informed the development of the new guidance.

"While the guidance is directly responsive to requests for information from solicitor municipal advisors, we believe all municipal advisors can benefit from the rule summaries and resources provided," Kelly said.

Read the guidance.

Access additional resources for municipal advisors.

Date: May 4, 2017

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) held its quarterly meeting April 26-27, 2017 where it discussed the role of solicitor municipal advisors as well as industry feedback on several regulatory topics related to protecting investors and municipal entities, and promoting a fair and efficient municipal securities market. The Board also met with Securities and Exchange Commission (SEC) Acting Chairman Michael Piwowar.

Consistent with the MSRB's federal mandate to develop a comprehensive regulatory framework for municipal advisors, the Board discussed the role of the category of municipal advisors that, for compensation, solicit municipal entities and obligated persons for business on behalf of certain other financial professionals. To directly address the application of MSRB rules to these "solicitor" municipal advisors, the Board agreed to publish guidance designed to promote understanding of the regulatory framework that applies to solicitor municipal advisory activities. The MSRB also expects that, more generally, all municipal advisors may benefit from the forthcoming guidance.

The MSRB has been implementing its municipal advisor regulatory framework for several years. When the developing regulatory framework is more fully in place, the MSRB plans to assess retrospectively the impact and effectiveness of the municipal advisory framework. At its recent meeting, the Board discussed the importance of this future analysis to understanding the benefits and costs of the municipal advisory regulatory regime.

Advertising Rules

The Board also discussed comments received on the MSRB's proposal to update and harmonize certain provisions of its municipal securities dealer advertising rule with those of other financial

regulators, and to create similar advertising standards for municipal advisors. The MSRB received substantive input on both aspects of its proposal and will continue to consider that input as it develops enhancements to the regulatory framework for advertising by municipal market professionals.

Primary Offering Practices

The MSRB is currently engaged in a multi-year review of primary offering practices to identify any necessary revisions to existing rules or the need for guidance to support existing protections for municipal securities investors and issuers. At its meeting, the Board discussed preliminary input from market stakeholders and the MSRB's retail investor advisory group, and policy themes related to syndicate practices. The Board directed staff to continue its review of primary offering practices, with the goal of publishing a concept proposal to solicit formal industry feedback.

In a related discussion, the Board evaluated comments received on proposed changes to MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements, to clarify the rule's definition of "underwriter" and requirements for obtaining CUSIP numbers when dealers act as placement agents in municipal securities transactions, including direct purchases. In response to comments received, the Board agreed to issue a second request for comment to refine the rule's application and provide flexibility to dealers when acting as placement agents.

Minimum Denominations

The Board also discussed comments received by the SEC on the MSRB's proposal to amend provisions in MSRB Rule G-15, on transactions below the minimum denomination of an issue. The Board determined it is desirable to obtain more information and, if possible, greater consensus, regarding any proposed amendments. To provide time for the MSRB to engage in meaningful outreach with stakeholders and obtain additional information, and in light of the upcoming statutory deadline for the SEC to act on the proposal, the Board agreed to withdraw its current proposal. By deferring SEC action, the MSRB can conduct additional outreach to a broad and diverse group of market participants, including issuers that establish minimum denominations for their municipal securities issues, and to the extent appropriate, reach greater consensus on any future amendments that may be considered. In the meantime, below-minimum denomination transactions will continue to be governed by existing Rule G-15(f).

Updates to Customer Account Transfers

As part of the MSRB's regulatory efficiency initiative, the Board discussed comments received on its review of existing MSRB Rule G-26, on customer account transfers, and agreed to seek SEC approval of proposed changes designed to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers and municipal securities dealers.

Date: May 1, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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MSRB Reminds Municipal Advisors of September 12, 2017 Deadline for Series

50 Exam.

The Municipal Securities Rulemaking Board (MSRB) is reminding municipal advisor firms of their obligation to ensure that every individual associated with the municipal advisor firm is qualified in accordance with the rules of the MSRB. Pursuant to MSRB Rule G-3, an associated person of a municipal advisor firm who engages in municipal advisory activities on behalf of the municipal advisor firm is required to be qualified as a "municipal advisor representative" by passing the Municipal Advisor Representative Qualification Examination (Series 50). After September 12, 2017, only an associated person of a municipal advisor firm who has passed the Series 50 exam can engage in municipal advisory activities on behalf of the municipal advisor firm.

Read the full notice.

Resources:

FAQs about the Series 50 exam
Content outline for the Series 50 exam
Additional information on the MSRB's website

T+2 Settlement Cycle Change Set for September 2017.

The MSRB recently announced the September 5, 2017 effective date of amendments to MSRB Rules G-12, on uniform practice, and G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle (T+2). The SEC had previously approved these amendments and other technical changes to MSRB rules on April 29, 2016. The migration to a T+2 settlement is expected to provide significant benefits to the financial industry broadly, including the mitigation of counterparty risk and an increase in global settlement harmonization by aligning the U.S. markets with other major markets.

Read the full regulatory notice.
